

**United States Department of Labor
Employees' Compensation Appeals Board**

A.A., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS)
ENFORCEMENT, Tallahassee, FL, Employer)

Docket No. 11-1272
Issued: November 17, 2011

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 29, 2011 appellant filed a timely appeal from a November 1, 2010 merit decision and a December 10, 2010 nonmerit decision of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a bilateral knee injury in the performance of duty on September 3, 2009; and (2) whether OWCP properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 23-year-old customs agent, filed a claim for traumatic injury on October 14, 2009, alleging that he injured both knees after completing a training examination on September 3, 2009.

By letter dated September 24, 2009, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from a treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit the additional evidence within 30 days.

In a September 8, 2010 report, received by OWCP on October 12, 2010, Dr. David A. Bellamy, Board-certified in orthopedic surgery, advised that appellant had medial-sided bilateral knee pain the previous year while engaged in a training exercise. Appellant's condition significantly improved, but had recently worsened. Dr. Bellamy did not find any mechanical symptoms or swelling. On examination appellant showed good range of motion but was very tender along the medial joint line; his collateral ligaments were intact. Dr. Bellamy recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the knees to determine whether he had any meniscal pathology.

By decision dated November 1, 2010, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that she sustained a bilateral knee injury in the performance of duty on September 3, 2010.

On November 27, 2010 appellant requested reconsideration. He did not submit any additional medical evidence in support of his claim.

By decision dated December 10, 2010, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

OWCP accepted that appellant experienced bilateral knee pain after engaging in a training examination on September 3, 2009. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁹ Appellant has not submitted sufficient rationalized medical evidence to establish that the September 3, 2009 employment incident caused injury to his knees.

Dr. Bellamy stated in a September 8, 2010 report that appellant was experiencing bilateral knee pain, medial-sided, which stemmed from a September 3, 2009 training exercise. He showed no mechanical symptoms or swelling and had a good range of motion on examination, with intact collateral ligaments. Dr. Bellamy recommended a diagnostic MRI scan of the knees to determine whether there was any meniscal pathology. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *Carlone*, *supra* note 4.

completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ Dr. Bellamy did not contain a firm diagnosis of the claimed knee condition or a rationalized medical opinion addressing how the September 3, 2009 work incident caused or contributed to the findings on examination. His opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale to support his conclusions.¹¹ Dr. Bellamy did not describe appellant's accident in any detail or how the accident would have been competent to cause an injury. His opinion is of limited probative value for the further reason that Dr. Bellamy only noted briefly that appellant's condition was attributable to the September 3, 2009 work incident. Appellant failed to provide a medical report from a physician that explains how the work incident of September 3, 2009 caused or contributed to the claimed bilateral knee injury.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the September 3, 2009 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a left shoulder injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.¹² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. He has not submitted any medical evidence which addresses the relevant issue of whether he sustained a bilateral knee injury in the performance of duty on September 3, 2009. Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹¹ *William C. Thomas*, 45 ECAB 591 (1994).

¹² 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

¹³ *Howard A. Williams*, 45 ECAB 853 (1994).

considered by OWCP. OWCP did not abuse its discretion in refusing to reopen his claim for a review on the merits.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a bilateral knee injury in the performance of duty on September 3, 2009. The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 10 and November 1, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 17, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ The Board notes that appellant submitted additional evidence to the record following the July 16, 2008 OWCP decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501(c).