United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 11-385**
	)	**Issued: September 8, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Tulsa, OK, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 7, 2010 appellant timely appealed the November 5, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied reconsideration. She also filed a timely appeal with respect to an October 13, 2010 merit decision that denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on June 20, 2009; and (2) whether OWCP properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 3, 2009 appellant, a 49-year-old mail handler, filed a claim (Form CA-1) alleging she sustained a left knee injury in the performance of duty on June 20, 2009. She sustained injury while standing and manually moving heavy trays of first class letters. Appellant felt a sudden sharp pain at the front of her left knee. She stopped working on June 27, 2009. The employing establishment controverted the claim, noting that appellant had previously undergone surgery and it was not until after she was denied limited-duty work that she advised of her alleged injury. It noted a six-week delay in reporting the alleged June 20, 2009 injury.

Appellant had previously worked at another postal facility in her hometown of Memphis, TN. Effective June 20, 2009, she was transferred to the Tulsa Processing & Distribution Center (P&DC). In February 2009, she had surgery to repair a torn left meniscus. Appellant had reportedly been on light-duty status at her old facility; but when transferred to Tulsa, she was placed on full-duty status.

Dr. Kenneth S. Weiss, a Board-certified orthopedic surgeon, treated appellant for her left knee condition as of January 2008. In a note dated May 29, 2009, he indicated that appellant was released to perform restricted work. Appellant was limited to sedentary work only, with no excessive walking and no lifting. Dr. Weiss' May 29, 2009 return to work note did not include a specific diagnosis. A similar note dated July 9, 2009 indicated that appellant must be on light-duty, sedentary work until November 1, 2009. Again, Dr. Weiss did not provide a specific diagnosis. He did not reference any history of the June 20, 2009 employment-related injury or aggravation of appellant's preexisting left knee condition.

In a report dated July 29, 2009, Dr. Weiss stated that he examined appellant on July 9, 2009. Appellant advised him that she started work in Tulsa on June 20, 2009. She felt that working at the Tulsa facility had increased the pain she experienced in her left knee. Appellant believed she had a major setback due to being forced to work full duty. Dr. Weiss advised appellant that with her type of surgery, one would expect to return to full duty six to nine months after surgery. He recommended that appellant remain on light-duty, sedentary work through November 1, 2009, which would allow for a full nine-month postsurgery recovery period.

Dr. Weiss completed an August 11, 2009 duty status report (Form CA-17) in which he noted "[left] knee pain after surgery." The report identified June 20, 2009 as the date of injury. The reported diagnosis was left knee pain. Dr. Weiss advised that appellant could work under restrictions of March 9, 2009.

On August 12, 2009 the employing establishment offered appellant limited-duty work as modified mail handler. Appellant accepted the offer.

In an October 20, 2009 attending physician's report (Form CA-20), Dr. Weiss noted that he first examined appellant on January 15, 2008. At that time, appellant reported having knee pain for seven months. Dr. Weiss advised that a magnetic resonance imaging scan revealed a "degenerative" meniscal tear. He diagnosed patella chondromalacia, status post lateral release

and lateral meniscus tear, status post partial meniscectomy on February 2, 2009.[2] Dr. Weiss noted that appellant was totally disabled from February 2 to March 8, 2009, and partially disabled from March 9 to October 31, 2009. He discharged appellant from his care effective October 20, 2009, and advised that she would be able to resume her regular duties effective November 1, 2009.

In a decision dated November 24, 2009, OWCP denied appellant's claim, finding that she failed to establish fact of injury. It accepted that the June 20, 2009 employment incident occurred as alleged; but the medical evidence was not sufficient to establish causal relation.

On July 29, 2010 appellant requested reconsideration. In a March 3, 2009 report, Dr. Weiss explained that the damage to appellant's left knee was "accumulative from wear and tear...." Appellant also submitted a copy of Dr. Weiss' July 29, 2009 report.

By decision dated October 13, 2010, OWCP denied modification of the November 24, 2009 decision.

Appellant requested reconsideration on October 26, 2010. She submitted another copy of the July 29, 2009 medical report.

In a decision dated November 5, 2010, OWCP denied appellant's October 26, 2010 request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" is established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that

[2] Dr. Weiss did not identify which knee he was referring to.

[3] 20 C.F.R. § 10.115(e), (f) (2010); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

allegedly occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS -- ISSUE 1

Appellant claimed that the duties she performed on June 20, 2009 as a full-time mail handler aggravated her preexisting left knee condition. On her August 3, 2009 CA-1, she reported feeling a sudden sharp pain at the front of her left knee while standing and manually moving heavy trays of first class letters. OWCP accepted that the June 20, 2009 employment incident occurred as alleged. Appellant's claim was denied by the Office because the medical evidence of record did not relate her condition to the June 20, 2009 employment incident.

Beginning January 15, 2008, Dr. Weiss treated appellant for left knee complaints that dated back some seven months. He diagnosed a meniscal tear and patella chondromalacia, which he characterized as degenerative. On February 2, 2009 appellant underwent a partial lateral meniscectomy. According to Dr. Weiss, she was totally disabled through March 8, 2009. He released her to perform limited-duty work effective March 9, 2009. Appellant claimed that she worked limited-duty prior to her June 20, 2009 transfer to Tulsa. After working one day as a full-time, regular mail handler, appellant claimed that her left knee condition was aggravated by her employment.

On July 9, 2009 Dr. Weiss advised that appellant should work light-duty, sedentary work until November 1, 2009. He did not provide any specific diagnosis, reference the June 20, 2009 employment incident, or address how her work that day caused or contributed to her left knee condition.

In a July 29, 2009 report, Dr. Weiss mentioned that appellant believed she suffered a major setback due to her employment duties beginning June 20, 2009; but he did not provide a specific diagnosis relative to her left knee complaints or address whether her work had aggravated her preexisting condition. Dr. Weiss recommended that she perform light-duty, sedentary work through November 1, 2009. The August 11, 2009 duty status report also failed to include a specific medical diagnosis or provide a rationalized opinion on causal relation. Dr. Weiss noted "[left] knee pain after surgery."

In an October 20, 2009 report, Dr. Weiss diagnosed patella chondromalacia, status post lateral release and lateral meniscus tear, status post partial meniscectomy on February 2, 2009. He did not address the June 20, 2009 incident at work or provide an opinion on how appellant's employment related to the diagnosed conditions.

---

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

The Board finds that the record is devoid of any probative medical opinion relating the June 20, 2009 employment incident to appellant's left knee complaints. Accordingly, OWCP properly found that she failed to establish fact of injury.

LEGAL PRECEDENT -- ISSUE 2

OWCP has the discretion to reopen a case for review on the merits.[6] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either:

(i) shows that OWCP erroneously applied or interpreted a specific point of law;

(ii) advances a relevant legal argument not previously considered by OWCP; or

(iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.[7] When an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[8]

ANALYSIS -- ISSUE 2

Appellant's October 26, 2010 request for reconsideration consisted of the preprinted appeal request form that accompanied the October 13, 2010 decision. She placed a checkmark on the form indicating she was requesting reconsideration. Appellant did not otherwise indicate the basis for her request for reconsideration. As such, her October 26, 2010 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by OWCP. Merely submitting the appeal request form that accompanied the October 13, 2010 decision does not entitle appellant to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[9]

Appellant also failed to submit any "relevant and pertinent new evidence" with her October 26, 2010 request for reconsideration. Dr. Weiss' July 29, 2009 report was already part of the record. Appellant initially submitted this report in August 2009. OWCP received another copy on December 3, 2009. Appellant submitted yet another copy with her July 29, 2010 request for reconsideration. The record includes no less than four copies of Dr. Weiss' July 29, 2009 report. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.[10] Consequently, appellant's latest

[6] 5 U.S.C. § 8128(a).

[7] 20 C.F.R. § 10.606(b)(2).

[8] *Id.* at § 10.608(b).

[9] *Id.* at § 10.606(b)(2)(i) and (ii).

[10] *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

submission of Dr. Weiss' July 29, 2009 report does entitle her to a review of the merits based on the third requirement under section 10.606(b)(2).[11]

CONCLUSION

Appellant has not established that she sustained an injury in the performance of duty on June 20, 2009. The Board further finds that OWCP properly denied appellant's October 26, 2010 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the November 5 and October 13, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 8, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[11] 20 C.F.R. § 10.606(b)(2)(iii).