

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

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C.N., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Atlanta, GA, Employer )

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**Docket No. 11-1944  
Issued: April 16, 2012**

*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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 18, 2011 appellant filed a timely appeal from an April 19, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) and a June 20, 2011 nonmerit decision. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 met his burden of proof to establish that his right knee condition was causally related to factors of his employment; and (2) whether OWCP properly denied his May 31, 2011 request for reconsideration under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On February 22, 2011 appellant, then a 46-year-old distribution clerk, filed an occupational disease claim alleging that he suffered a right knee condition as a result of his

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment because it involved the same knee for which he previously had surgery for a work-related accident. He first became aware of his condition on February 12, 2011 and stopped work on that day.

The employing establishment controverted appellant's claim on the grounds that he failed to establish that his knee condition was causally related to factors of his employment.

In a March 1, 2011 magnetic resonance imaging (MRI) scan report, Dr. Robert Pham, a Board-certified diagnostic radiologist, noted appellant's history of knee pain and swelling for two weeks and his prior arthroscopic surgery in 2007. The MRI scan revealed abnormal appearance of the posterior horn and body of the lateral meniscus, which may be in part due to prior partial meniscectomy. Appellant's medial meniscus, anterior cruciate ligament, posterior cruciate ligament and lateral collateral ligament complexes appeared intact with no tear or advanced degeneration. Dr. Pham observed significant lateral compartment osteoarthritis with high-grade cartilage loss along the flexion weight-bearing surface of lateral femoral condyle as well as the lateral tibial plateau, small effusion and a trace of Baker's cyst. He also noted degenerative, reactive marrow edema throughout the lateral femoral condyle and lateral tibial plateau. Dr. Pham diagnosed significant lateral compartment osteoarthritis with cartilage loss and subchondral cysts, degenerative/reactive marrow edema, bipartite patella, thickened fibrotic methylcellulose compatible with old injury and trace of Baker's cyst.

In a March 3, 2011 note, Dr. David A. Williams, a Board-certified family practitioner, stated that appellant was treated in his medical clinic and was unable to work from February 14 to March 28, 2011.

In a March 7, 2011 health care certification, Dr. Williams indicated that appellant would be incapacitated for three to six months. He stated that appellant suffered a torn cartilage of the right knee and damaged cartilage of the left knee since February 14, 2011.

On March 18, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional factual and medical evidence.

In a March 29, 2011 excuse slip, Dr. Williams stated that appellant was unable to work from February 14 to April 11, 2011.

By decision dated April 19, 2011, OWCP denied appellant's occupational disease claim finding insufficient medical evidence to establish that his right knee condition was causally related to factors of his employment.

On May 31, 2011 appellant filed a request for reconsideration. He explained that he experienced problems with his knees prior to February 12, 2011 and that his knee problems were ongoing since his 2007 right knee arthroscopy. Appellant stated that every time he bent his knee he heard a popping sound and that his knee was constantly giving out since his 2007 surgery. On February 12, 2011 he was walking across the workroom floor when he suddenly fell down. Appellant reported that he received medical treatment from Dr. Williams, but he was unable to get a statement because Dr. Williams was unauthorized to do so.

In a decision dated June 20, 2011, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review under 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence<sup>2</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>3</sup> In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>5</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>7</sup>

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate

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<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>3</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>5</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *Solomon Polen*, 51 ECAB 341 (2000); *B.B.*, 59 ECAB 234 (2007).

history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleges that he suffered a right knee condition as a result of his employment as a distribution clerk. OWCP accepted that he worked as a distribution clerk and that he has a diagnosed right knee condition. It denied appellant's occupational disease claim finding insufficient medical evidence to establish causal relationship.

The Board finds that appellant did not submit sufficient medical evidence to demonstrate that he sustained a right knee condition as a result of his employment duties.

While appellant stated that his employment duties and his previously accepted right knee injury caused his current right knee condition, the Board notes that he has not described in detail the actual duties to which he ascribes his knee condition. He has mentioned, without specificity, a fall at work on February 12, 2011, but it is unclear as to whether this is a singular event or he claims that daily activities as well as this fall, contributed to his current condition.

Appellant submitted medical reports from Dr. Williams, who stated that appellant suffered a torn cartilage of the right knee and damaged cartilage of the left knee since February 14, 2011. Dr. Williams excused appellant from work until April 11, 2011. He did not, however, provide any opinion regarding the cause of appellant's knee condition or explanation of how his condition was causally related to his federal employment. The Board has found that medical evidence which is not based upon an actual factual history and does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> Thus, Dr. Williams' report is insufficient to establish appellant's claim.

Similarly, Dr. Pham also failed to provide any opinion on the cause of appellant's condition or explain how his knee condition resulted from his federal employment. Since appellant did not submit probative medical opinion discussing how his current right knee condition was caused by factors of his employment, OWCP properly denied his claim.

On appeal, appellant explained that his doctor mistakenly sent in the required information to his employing establishment, instead of OWCP. He stated that, if this evidence was considered, it would clearly substantiate his work-related injury. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final decision.<sup>10</sup> The Board may not consider this evidence for the first time on appeal.<sup>11</sup> As the medical evidence of record does not contain probative medical evidence establishing that appellant's right knee

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<sup>8</sup> *Patricia J. Bolleter*, 40 ECAB 373 (1988).

<sup>9</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>10</sup> *See* 20 C.F.R. § 501.2(c).

<sup>11</sup> *Sandra D. Puitt*, 57 ECAB 126 (2005).

condition was causally related to his employment, he did not meet his burden of proof to establish his claim.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>12</sup> OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district OWCP.<sup>13</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>14</sup>

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.<sup>15</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>16</sup> If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

On May 31, 2011 appellant submitted a request for reconsideration along with a handwritten statement. OWCP denied his reconsideration request finding that his statement did not constitute new, relevant or pertinent evidence or argument to warrant further merit review of

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<sup>12</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>13</sup> 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>14</sup> *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>15</sup> *Id.* at § 10.607(a).

<sup>16</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>17</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

his case. The Board finds that it properly denied appellant's request for reconsideration as he did not meet any of the requirements sufficient to warrant merit review.

In his May 31, 2011 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by OWCP. To support his request for reconsideration, appellant submitted a handwritten statement regarding his knee problems. The underlying issue on reconsideration was whether he submitted sufficient medical evidence to establish that his knee condition resulted from his employment. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>18</sup> As the underlying issue was medical in nature, appellant's statement did not constitute relevant evidence and was immaterial to the case.

Because appellant's request for reconsideration failed to show that OWCP erroneously applied or interpreted a specific point of law, failed to advance a relevant legal argument not previously considered by OWCP and failed to provide relevant and pertinent new evidence not previously considered by OWCP, the Board finds that OWCP properly denied further merit review of his case. The Board will affirm the June 20, 2011 decision.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that appellant did not establish that his right knee condition was causally related to factors of his employment. The Board also finds that OWCP properly denied appellant's request for reconsideration.

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<sup>18</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 20 and April 19, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 16, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board