

federal employment; and (2) whether OWCP properly refused to reopen her case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant, through her representative, contends that OWCP was not diligent in filing evidence for her case as it failed to file additional reports by Dr. John Pak, a Board-certified orthopedic surgeon, which she submitted with her request for reconsideration.

FACTUAL HISTORY

On September 21, 2010 appellant, then a 53-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that her right knee popped out of its joint due to factors of her federal employment, including standing on concrete floors for 10 hours a day, six days a week, entering and exiting a vehicle and sitting on a vehicle seat which was too low and caused her knee to be too high and her leg not to be at a 90-degree angle. She first became aware of her condition and attributed it to her federal employment on September 15, 2010. Appellant did not stop work.

By letter dated September 24, 2010, OWCP requested additional factual and medical information from appellant. It allotted her 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a position description with a note from the employing establishment indicating that it concurred with her allegations because her duties involved physical exertion including lifting trays that weigh up to 40 pounds, pushing hampers full of these same trays of mail and parcels, pulling down mail from the carrier case, bending and stooping.

In an October 25, 2010 report, Dr. Pak diagnosed patellofemoral chondrosis based on x-rays of the right knee and a physical examination. He indicated that on September 15, 2010 appellant was at work delivering mail when she felt popping and catching sensations of her right knee. Since that time her right knee continued to bother her and she had a difficult time standing from a sitting position as well as with certain activities. Appellant denied any previous injury.

By decision dated December 29, 2010, OWCP denied the claim for compensation finding that the medical evidence submitted was not sufficient to establish fact of injury. It found that the medical evidence only contained a diagnosis of patellofemoral chondrosis which is "pain" and pain is considered a symptom under FECA, not a diagnosis of a medical condition.

On January 27, 2011 appellant, through her representative, requested an oral hearing before an OWCP hearing representative and submitted hospital reports related to a right eye injury on November 24, 2010.

A video hearing was held before an OWCP hearing representative on June 8, 2011. Appellant testified that she never missed work due to her right knee condition. Although her right knee was in pain, she continued to work every day, with the exception of leaving for a few hours to see a doctor or attend physical therapy. The hearing representative held the record open for 30 days for the submission of additional evidence.

By decision dated August 4, 2011, OWCP's hearing representative affirmed and modified the December 29, 2010 decision finding that patellofemoral chondrosis was a diagnosis which was known to cause knee pain; however, the medical evidence was not sufficient to establish causal relationship between the diagnosed condition and the implicated employment factors.

On August 16, 2011 appellant, through her representative, requested reconsideration, indicating that she enclosed additional reports by Dr. Pak.

By decision dated August 25, 2011, OWCP denied appellant's request for reconsideration of the merits. It noted that additional reports by Dr. Pak were not received as part of the reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of establishing 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 and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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 implicated employment factors. 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

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ *O.W.*, Docket No. 09-2110 (issued April 22, 2010). See *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet her burden of proof to establish a claim that federal employment factors caused or aggravated her right knee condition. While appellant submitted a statement in which she identified the factors of employment that she believed caused the condition, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.⁸

On October 25, 2010 Dr. Pak diagnosed patellofemoral chondrosis based on x-rays of the right knee and a physical examination. He indicated that on September 15, 2010 appellant was at work delivering mail when she felt popping and catching sensations of her right knee. Since that time her right knee continued to bother her and she had a difficult time standing from a sitting position as well as with certain activities. Although he provided a firm diagnosis, Dr. Pak did not provide a rationalized medical opinion as to how the implicated factors of appellant's federal employment, such as standing on concrete floors for 10 hours a day, six days a week, entering and exiting a vehicle and sitting on a vehicle seat which was too low, caused or aggravated her right knee condition. Therefore, appellant failed to meet her burden of proof.

Appellant submitted November 24, 2010 hospital reports related to a right eye injury. The issue here is causal relationship between a right knee condition and factors of her federal employment. Thus, these medical reports are immaterial in nature.

Appellant also submitted a position description with a note from the employing establishment indicating that it concurred with her allegations. However, causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁹ As found above, the medical evidence is insufficient to establish the claim. This document does not constitute medical evidence and appellant's submission thereof is insufficient to establish causal relationship.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a 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.

⁷ *O.W.*, *supra* note 5.

⁸ *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *See Robert G. Morris*, 48 ECAB 238 (1996).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128 of FECA,¹⁰ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹¹ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.¹²

ANALYSIS -- ISSUE 2

On appeal, appellant contends that OWCP was not diligent in filing evidence for her case as it failed to file additional reports by Dr. Pak, which she submitted with her request for reconsideration. On August 16, 2011 she requested reconsideration, indicating that she enclosed additional reports by Dr. Pak. In its August 25, 2011 decision, OWCP denied appellant request, noting that additional reports by Dr. Pak were not received as part of the reconsideration request. As the record shows that OWCP did not receive any additional medical evidence from appellant, the Board finds that her argument is not substantiated.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Because she did not submit any evidence with her request for reconsideration, the Board finds that she did not meet any of the necessary requirements and she is not entitled to further merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right knee condition in the performance of duty causally related to factors of her federal employment. Because appellant's request for reconsideration did not meet at least one of the criteria required to reopen a case, the Board finds that OWCP properly denied her request for reconsideration without a merit review.

¹⁰ *Supra* note 3. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application. 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(1)-(2). *See Susan A. Filkins*, 57 ECAB 630 (2006).

¹² *Id.* at § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements OWCP will deny the application for review without reviewing the merits of the claim).

ORDER

IT IS HEREBY ORDERED THAT the August 25 and 4, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 17, 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