

FACTUAL HISTORY

On June 25, 2010 appellant, then a 36-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2010 he twisted his left knee as he was getting out of an armored vehicle at work.

By letter dated April 5, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit medical evidence, including a rationalized medical opinion from an attending physician describing a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with an explanation as to why the diagnosed condition was caused or aggravated by the June 19, 2010 incident. Appellant was afforded 30 days to submit the requested evidence. He did not respond.

In a May 12, 2011 decision, OWCP denied appellant's claim. It found that the evidence established that the June 19, 2010 incident occurred as alleged. OWCP, however, found that appellant failed to submit any medical evidence establishing a causal relationship between a medical condition and the accepted employment-related incident.

In an undated letter received by OWCP on June 27, 2011, appellant requested reconsideration. He stated that, after several unsuccessful attempts, his Form CA-1 was finally submitted to OWCP in May 2011. However, appellant was unable to schedule an appointment with a physician until late May 2011. He stated that his claim was denied before he could be evaluated by a physician and thus, he was unable to submit the requested evidence. Appellant stated that he had been seen by a physician and undergone a magnetic resonance imaging scan. He contended that the physician's medical report had been submitted.

In a July 11, 2011 decision, OWCP denied appellant's request for reconsideration finding, that he did not submit any new legal argument or relevant medical evidence not previously considered and, thus, it was insufficient to warrant a merit review of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 filed within the applicable time limitation; that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁵ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁹

ANALYSIS -- ISSUE 1

In a May 12, 2011 decision, OWCP accepted as factual that appellant exited an armored vehicle on June 19, 2010 while working as a special agent. While the work incident is established, the Board finds that appellant failed to establish a causal relationship between the claimed left knee injury and accepted employment incident. OWCP's April 5, 2011 developmental letter specifically requested that he submit a rationalized medical opinion from his attending physician addressing whether the accepted work incident caused or aggravated the claimed injury. Appellant did not submit any medical evidence in response to OWCP's request prior to the issuance of the May 12, 2011 decision. The Board finds, therefore, that he failed to meet his burden of proof.¹⁰

On appeal, appellant submitted new medical evidence and contended that it established that he sustained an employment-related left knee injury. However, evidence submitted by him after issuance of the final OWCP decision cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.¹¹ Appellant may submit additional evidence, together with a written request for

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁶ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁸ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁹ *Charles E. Evans*, 48 ECAB 692 (1997).

¹⁰ See *Donald W. Wenzel*, 56 ECAB 390 (2005).

¹¹ See 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128 of FECA,¹² 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.¹³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁴ 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.

ANALYSIS -- ISSUE 2

On May 12, 2011 OWCP denied appellant's traumatic injury claim on the grounds that he failed to submit any medical evidence establishing that he sustained an injury causally related to the accepted June 19, 2010 employment incident. Appellant requested reconsideration in an undated letter received by OWCP on June 27, 2011, stating that relevant new medical evidence was submitted by his attending physician. The evidence, however, was not contained in the case record prior to OWCP's issuance of its July 11, 2011 decision denying his request for reconsideration.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his June 27, 2011 request for reconsideration.¹⁵

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a left knee injury on June 19, 2010, as alleged. The Board further finds that OWCP properly denied his request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

¹² 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b)(1)-(2).

¹⁴ *Id.* at § 10.607(a).

¹⁵ *M.E.*, 58 ECAB 694 (2007) (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).

ORDER

IT IS HEREBY ORDERED THAT the July 11 and May 12, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 2, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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