

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

D.C., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Birmingham, AL,
Employer**)

**Docket No. 12-1118
Issued: October 11, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 21, 2012 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs (OWCP) dated October 31, 2011 and March 8, 2012. Pursuant to the Federal Employees' Compensation Act¹ (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 sustained a left knee injury in the performance of duty on August 10, 2011; and (2) whether OWCP properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 2011 appellant, a 58-year-old transportation security officer, filed a claim alleging that she injured her left knee on August 10, 2011 while engaged in pat down searches of airline passengers.

By letter dated September 26, 2011, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from a treating physician describing her symptoms and the medical reasons for her condition, with an opinion as to whether her claimed condition was causally related to her federal employment. OWCP requested that appellant submit the evidence within 30 days.

Appellant submitted treatment slips dated May 2 and 7, 2007 from Dr. Matthew Berke, Board-certified in pain management, who outlined her work restrictions and recommended that she wear a brace for her left knee.

A September 13, 2011 form report noted that appellant had been treated for chondromalacia of the left patella tendon and degenerative joint disease of the left knee. The report contained an illegible signature but did not state whether it was written by a physician.

By decision dated October 31, 2011, OWCP denied appellant's claim finding that she failed to submit sufficient medical evidence to establish a left knee injury in the performance of duty on August 10, 2011.

On November 4, 2011 appellant requested reconsideration. She did not submit any additional medical evidence with her request.

By decision dated March 8, 2012, OWCP denied appellant's application for review on the grounds that it did not raise any substantive legal questions or include new and relevant evidence sufficient to require further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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.³ 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.⁴

² 5 U.S.C. §§ 8101-8193.

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

⁴ *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.⁵ 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.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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 performed pat down searches of airline passengers on August 10, 2011. The question of whether the accepted employment incident caused a personal injury, this can only be established by probative medical evidence.⁹ The Board finds that appellant did not submit sufficient medical evidence to establish that the August 10, 2011 employment incident caused the claimed left knee injury.

Dr. Berke’s treatment notes from 2007 related that appellant was treated for a left knee condition and was prescribed a left knee brace in May 2007. This report pertaining to prior treatment of the left knee is of no probative value as to whether appellant sustained a left knee injury in August 2011. It was written four years prior to the August 10, 2011 work incident.

The September 13, 2011 form report contained a diagnosis of patella chondromalacia and degenerative joint disease of the left knee. It was not signed by a physician. Therefore it does not constitute medical evidence under section 8101(2).

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and 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 Appellant failed to submit a medical report which addressed

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

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

⁸ *Id.*

⁹ *Carlone*, *supra* note 5.

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

how she sustained a left knee injury while conducting pat down searches on August 10, 2011. There is insufficient evidence of record that appellant's left knee injury was work related. Therefore, she failed to meet her burden of proof.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a narrative medical opinion from a physician that described or explained how the August 10, 2011 incident caused or contributed to a left knee injury. Accordingly, she did not establish that she sustained a left knee injury in the performance of duty.

On appeal alleges that an event in January 2005, when she hit her knee on the conveyor belt, caused her left knee to become swollen in August 2011. The present appeal before the Board concerns her claim for a traumatic injury to the left knee on August 10, 2011, while she was patting down airline passengers.

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

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.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by OWCP; and she has not submitted relevant and pertinent evidence not previously considered by OWCP. Her reconsideration request failed to establish that OWCP erroneously applied or interpreted a point of law or advanced a point of law or fact not previously considered. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a left knee injury on August 10, 2011. The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits under 5 U.S.C. § 8128(a).

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

¹² *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2012 and October 31, 2011 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 11, 2012
Washington, DC

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

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

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