

FACTUAL HISTORY

On August 2, 2012 appellant, a 58-year-old tool and parts attendant, filed a traumatic injury claim alleging that she twisted her left knee in the performance of duty on July 31, 2012: “While unloading materials from the back of the truck my foot got stuck and I twisted my left knee and fell from the tailgate.” She did not stop work.

An August 20, 2012 health record from the Madigan Army Medical Center noted appellant’s history of twisting her left knee at work on July 31, 2012 while in the rear of a truck. She was tender to palpation in the popliteal space.

On August 21, 2012 Dr. Steven R. Smith, Board-certified in occupational medicine, completed an attending physician’s form report. He related that appellant twisted her left knee while standing in a truck on July 31, 2012. Dr. Smith noted that she had a prior arthroscopic surgery on that knee. His findings included tenderness to palpation at the back of the knee. Dr. Smith diagnosed left knee strain and indicated with an affirmative mark that this condition was caused or aggravated by the employment activity: “description fits injury.”

In a September 12, 2012 decision, OWCP denied appellant’s claim for compensation. It found that the evidence was insufficient to establish that her left knee condition was causally related to the accepted work incident on July 31, 2012. OWCP explained that Dr. Smith’s form report did not discuss whether appellant received any previous treatment or whether there were any intervening factors that could have caused a left knee strain.

Appellant requested reconsideration. An October 18, 2012 magnetic resonance imaging scan of her left knee showed an acute tear of the medial meniscus.

In a December 6, 2012 decision, OWCP reviewed the merits of appellant’s claim and denied modification of its prior decision. It found that the new medical evidence failed to offer any opinion on causation.

Appellant submitted an appeal request form indicating that she was requesting reconsideration. OWCP received this request on January 3, 2013.

In a January 7, 2013 decision, OWCP denied appellant’s reconsideration request. It explained that the appeal request form neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a review of the prior decision.

Appellant argues that her appointments and the timeliness of the filings were guided by the availability of the medical staff to prepare an evaluation and submit it to her for processing by OWCP. She offers a summary of the event and submits new evidence to the Board that was not before OWCP at the time it issued its final decisions.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

ANALYSIS -- ISSUE 1

OWCP accepts appellant's account of the July 31, 2012 incident at work when she twisted her left knee. Appellant has thus met her burden to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether this incident caused her diagnosed left knee condition.

The only medical evidence that addressed the issue of causal relationship is the August 21, 2012 attending physician's form report completed by Dr. Smith, the specialist in occupational medicine, who stated that appellant twisted her left knee while standing in a truck. Dr. Smith diagnosed a left knee strain and indicated with an affirmative mark that this incident caused the diagnosed condition. He added: "description fits injury."

Dr. Smith's description of the injury is lacking. He acknowledged only that appellant was standing in a truck. Dr. Smith did not describe what she was doing in the truck or how, exactly, she twisted her left knee. He did not demonstrate that he understood the mechanism of

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

injury. Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁸

While Dr. Smith's opinion on causal relationship is supportive of appellant's claim that she injured her left knee in the performance of duty on July 31, 2012, its probative value is diminished by a lack of medical rationale. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁹ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports her conclusion with sound medical reasoning. As Dr. Smith did little more than check "yes" to a form question, his opinion carries little probative value and is insufficient to establish the critical element of causal relationship.¹⁰

The Board finds that appellant has not met her burden of proof to establish the element of causal relationship. The medical opinion evidence that supports her claim for compensation is based on an incomplete history of what happened at work and does not provide sound medical reasoning to explain how the work incident caused the diagnosed left knee condition.

Accordingly, the Board will affirm OWCP's December 6 and September 12, 2012 decisions denying appellant's traumatic injury claim.

The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.¹¹ The Board therefore had no jurisdiction to review the new evidence appellant has submitted on appeal. Nonetheless, 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

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.¹² An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP

⁸ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

⁹ E.g., *Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁰ Medical conclusions unsupported by rationale are also of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹¹ 20 C.F.R. § 501.2(c)(1).

¹² 5 U.S.C. § 8128(a).

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.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁵

ANALYSIS -- ISSUE 2

OWCP received appellant's reconsideration request on January 3, 2013, within one year of its most recent merit decision on December 6, 2012. Appellant's request is therefore timely. The question for determination is whether this request meets at least one of the three standards for obtaining a merit review of her case.

Appellant submitted no argument or evidence to support her reconsideration request. Her appeal does not show that OWCP erroneously applied or interpreted a specific point of law. The request does not advance a relevant legal argument not previously considered by OWCP. It contained no evidence that constitutes relevant and pertinent new evidence not previously considered by OWCP.

As appellant's reconsideration request was insufficient to warrant a reopening of her case for a review on the merits, the Board finds that OWCP properly denied that request. The Board will affirm OWCP's January 7, 2013 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a left knee injury in the performance of duty on July 31, 2012, as alleged. The medical opinion evidence is insufficient to establish the element of causal relationship. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606.

¹⁴ *Id.* at § 10.607(a).

¹⁵ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2013, December 6 and September 12, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 8, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board