

FACTUAL HISTORY

OWCP accepted that on September 2, 2011 appellant, then a 33-year-old correctional officer, twisted his left knee when he slipped while walking downstairs. He stopped work and returned on September 9, 2011. Appellant's claim was accepted for left knee patellar tendinitis and left knee synovitis. On September 20, 2012 he underwent left patellar tendon repair.

On September 23, 2012 appellant filed a recurrence claim alleging that on September 18, 2012 his knee collapsed while he was jogging. He believed that the incident was related to the original September 2, 2011 injury because it never healed. Appellant stated that a September 19, 2011 magnetic resonance imaging (MRI) scan examination revealed partial patellar tendon tear and that September 18 and 19, 2012 x-rays demonstrated that he ruptured the patellar tendon of the same knee. He explained that he underwent physical therapy treatment after the original injury but continued to experience periodic pain, weakness and swelling. Appellant stopped work on September 19, 2012. The employing establishment noted that he worked temporary alternative duty following the original September 2, 2011 injury.

By letter dated October 22, 2012, OWCP advised appellant that, according to the evidence, he sustained a new traumatic injury, not a recurrence of the September 2, 2011 employment injury. It stated that it would administratively create a new traumatic injury claim with a new case number.

In an October 22, 2012 report, Philip M. Suess, III, a physical therapist, stated that appellant was referred to physical therapy after a left knee patellar tendon repair. He related that appellant worked as a correctional officer who initially hurt his knee at work when he walked downstairs. Appellant explained that he was diagnosed with a partial tendon tear, went to physical therapy and was getting along fairly well but he still had problems with the knee giving way on him. He explained that he was in a slight jog or run when the knee finally gave way on him and he could tell something was seriously wrong because his kneecap was up high in his mid-thigh area. Upon examination, Mr. Suess observed well-healed incisions in the anterior portion of the left knee with no excessive edema present. He noted full extension to 40 degrees of flexion and intact sensation to light touch in the lower left extremity. Mr. Suess reported a significant amount of muscle wasting in the left lower extremity. He recommended that appellant continue with physical therapy working on range of motion and strengthening of the entire left lower extremity. Mr. Suess submitted various physical therapy treatment notes.

On October 31, 2012 appellant informed the employing establishment *via* telephone that appellant's recurrence claim would be developed as a consequential injury, not a new claim as originally requested. The employing establishment pointed out that he was not jogging for work or on duty while jogging.

By letter dated November 5, 2012, OWCP informed appellant that it appeared he was claiming disability due to a consequential condition, not a recurrence of the September 2, 2011 injury. It advised him that it received insufficient evidence to establish his claim and requested that he complete a questionnaire and submit additional medical evidence.

On November 26, 2012 appellant noted in his responses to OWCP's questionnaire that the new condition was related to his accepted work-related condition because the original injury never healed. He explained that a September 19, 2011 MRI scan revealed a tendon tear, which had now worsened to a rupture of the same tendon. Appellant noted that he had no patella or knee injuries between September 2, 2011 and September 18, 2012. He provided dates of his medical treatment following the September 2, 2011 employment injury.

On December 10, 2012 OWCP requested clarification regarding whether appellant was required to jog on September 18, 2012 and whether he was jogging at home or another facility. It also requested that he submit medical evidence from his treating physician.

Appellant resubmitted September 2, 2011 emergency room records and diagnostic report regarding medical treatment for his left knee. He also resubmitted a September 12, 2011 report by Dr. Douglas P. Hein, a Board-certified orthopedic surgeon, who diagnosed torn meniscus of the left knee and a September 19, 2011 MRI scan which revealed possible medial meniscus tear of the left knee.

In a September 19, 2012 report, Dr. Ralph W. Morales, a Board-certified orthopedic surgeon, related appellant's complaints of diffuse knee pain with a palpable defect over the patellar tendon. He noted that on September 18, 2012 appellant's left knee gave way while running. Upon examination of the left knee, Dr. Morales observed moderate effusion and normal alignment. He also noted a palpable defect over the patellar tendon. Dr. Morales reported that x-ray findings revealed no acute bony abnormalities and well-maintained joint space. He diagnosed rupture of patellar tendon of the left knee and recommended a left patellar tendon repair.

In reports dated September 21 through December 10, 2012, Dr. Morales related appellant's complaints of left knee pain and noted that he underwent a left patella tendon repair on September 20, 2012. Upon examination of the left knee, he observed active range of motion and negative ligamentous laxity. Calf was soft and nontender, neurovascularly intact distally. Dr. Morales diagnosed left knee rupture of patellar tendon. In a December 10, 2012 report, he related that appellant was undergoing physical therapy treatments and noted improved symptoms. Examination revealed normal alignment with no effusion or erythema and no specific tenderness on palpation. Dr. Morales recommended no running or jumping for two months and no squatting for four weeks.

Appellant also resubmitted various medical reports dated September to October 2011 regarding treatment for his left knee.

In a decision dated February 14, 2012, OWCP denied appellant's claim finding insufficient medical evidence to establish that his present knee condition was causally related to the original September 2, 2011 employment injury. It noted that the medical evidence failed to demonstrate that he was disabled from work due to a material change or worsening of his accepted left knee injury.

By letter dated March 4, 2013 and received on March 12, 2013, Paul Felser, appellant's attorney, requested an oral hearing. In a letter dated May 14, 2013, he requested that the request

for an oral hearing be changed to a request for a review of the written record. Mr. Felser stated that a September 19, 2011 MRI scan report indicated a partial tear of the patellar tendon and noted that this condition was not accepted as part of the original claim.

Appellant resubmitted a September 21, 2011 report by Dr. Hein, who stated that his MRI scan showed some abnormality in the proximal portion of the patellar tendon, minimal changes in the acromioclavicular ligament. Dr. Hein reported no other significant abnormality or any meniscal tears. Appellant resubmitted various medical reports regarding his September 2, 2011 employment injury.

In a May 29, 2013 report, Dr. Hein stated that he examined appellant in 2011 with a diagnosis of patellar tendinitis and partial patellar tendon tear following a twisting injury when appellant walked downstairs at work. He initially believed that appellant had a torn meniscus but diagnostic studies demonstrated a partial patellar tendon injury or repair. Dr. Hein reported that they did not treat appellant again for that injury and that appellant apparently developed a complete tear approximately a year later. He related that appellant underwent a patellar tendon repair and continued to experience symptoms of pain and weakness in the left knee and leg. Dr. Hein opined that appellant had an anticipated complication of a partial patellar tendon tear, which became a complete tear. He explained that this was all a continuation of the process for which he initially treated appellant in September 2011. Dr. Hein advised that appellant was not capable of running activities, engaging in any form of manual restraint and combatting with a potentially hostile individual. He recommended a quadriceps strengthening program and physical therapy.

In a June 18, 2013 letter, appellant informed OWCP that he changed his representation to Joe Mansour, a union representative. He requested that the telephone hearing be rescheduled.

On June 20, 2013 a telephone hearing was held. Mr. Mansour alleged that the employing establishment failed in providing any assistance to appellant regarding his federal compensation claim. He reported that based on Dr. Hein's May 29, 2013 report appellant sustained a recurrence of disability related to the original injury. Appellant described the original September 2, 2011 employment injury and noted that a September 19, 2011 MRI scan revealed a partial patella tear. He stated that a second MRI scan in 2012 showed that his patella tendon was actually torn. Appellant described the September 18, 2012 employment incident and stated that he was jogging on a track in preparation for a physical fitness test for the employing establishment when his tendon just tore and he fell down.

Appellant submitted a September 20, 2012 operative report and a February 18, 2013 MRI scan of the left knee which revealed marked expansion and abnormal signal intensity compatible with edema involving the patellar tendon that may relate to recent surgery.

By decision dated September 12, 2013, an OWCP hearing representative affirmed the February 14, 2012 denial decision. OWCP found that appellant's claim could not be considered a recurrence claim as there was no spontaneous change in his condition and denied the claim finding insufficient medical evidence to establish that appellant's September 18, 2012 left knee injury was related to the original injury.

In a letter received on October 25, 2013, appellant requested reconsideration. He stated that, according to the employing establishment's program statement, employees must be able to perform various physical activities, including running an extended distance. Appellant included an attachment of the employing establishment's physical requirements for the position.

In a decision dated November 1, 2013, OWCP denied appellant's reconsideration request finding that he did not provide any information sufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

The term disability as used in FECA means the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.³ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁴

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.⁵ A claimant bears the burden of proof to establish a claim for consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete medical and factual background, establishing causal relationship.⁶ 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

² 20 C.F.R. § 10.5(x).

³ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

⁵ *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994); *John R. Knox*, 42 ECAB 193, 196 (1990).

⁶ *Jennifer Atkerson*, 55 ECAB 317 (2004); *R.C.*, Docket No. 10-1789 (issued April 22, 2001).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained left knee patellar tendinitis and synovitis as a result of a September 2, 2011 employment incident. Appellant worked temporary alternative duty after the injury. On September 23, 2012 he filed a recurrence claim alleging that on September 18, 2012 his knee collapsed while he was jogging in preparation for a physical fitness test. Appellant underwent left patellar tendon repair and stopped work. OWCP denied his claim finding insufficient medical evidence to establish that his current left knee condition was causally related to his original September 2, 2011 employment injury. The Board finds that appellant failed to submit sufficient medical evidence to establish that his present left knee symptoms resulted from the September 2, 2011 injury.

The Board finds that OWCP properly determined that appellant's claim does not meet the definition of a recurrence of disability as his circumstances do not involve a spontaneous change in his accepted condition but demonstrate an intervening injury.⁸ Appellant testified that on September 18, 2012 he was jogging around a track when his knee suddenly gave out. The Board notes that this claim is similar to *John R. Knox*,⁹ where appellant claimed that a recurrence of disability occurred when he was playing basketball and dislocated his left knee patella. In that case, the Board determined that appellant's current disability was not the result of a natural consequence or progression of his accepted condition but was due to an independent intervening cause. Likewise, the Board finds that, in this case, jogging around a track was an incident unrelated to his accepted injury of September 2, 2011.

The Board also finds that the medical evidence does not establish that appellant's current disability was causally related to the original September 2, 2011 employment injury. Appellant submitted various reports dated September 19 to December 10, 2012 by Dr. Morales, who related appellant's complaints of left knee pain over the patellar tendon. Dr. Morales accurately described the September 18, 2012 jogging incident and provided findings on examination. He diagnosed rupture of the patellar tendon of the left knee. Dr. Morales does not, however, mention appellant's previous September 2, 2011 left knee injury nor whether his current left knee condition and disability were causally related to the 2011 injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Accordingly, Dr. Morales's reports are of limited probative value and are insufficient to establish appellant's claim.

In a May 29, 2013 report, Dr. Hein related that in 2011 appellant sustained patellar tendinitis and partial patella tendon tear following a twisting injury at work. He stated that he

⁷ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

⁸ *See M.D.*, Docket No. 11-1078 (issued January 27, 2012); *Bryant F. Blackmon*, 56 ECAB 752, 764 (2005).

⁹ *Supra* note 8.

¹⁰ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

did not treat appellant for a year and that appellant apparently developed a complete tear approximately a year later. Dr. Hein noted that appellant continued to experience symptoms of pain and weakness in his left leg and knee. He reported that appellant had an anticipated complication of a partial patellar tendon tear, which became a complete tear and opined that this was all a continuation of the process for which he initially treated appellant in September 2011. The Board notes that while Dr. Hein attributes appellant's current left knee condition to the September 2011 work injury, he does not sufficiently explain how appellant's current condition and disability were causally related to the original September 2, 2011 employment injury and not jogging. Dr. Hein's blanket statement that appellant's current left knee condition was a continuation of the process of the initial September 2, 2011 injury, unsupported by any medical rationale, is insufficient to establish appellant's claim.¹¹

The additional physical therapy reports and treatment notes are likewise insufficient to establish appellant's claim because physical therapists are not physicians as defined by FECA. Therefore, their medical opinions regarding diagnosis and causal relationship are of no probative value.¹²

On appeal, counsel notes that in a letter dated October 22, 2012 OWCP advised appellant that his claim was not a recurrence claim but a new traumatic injury and that it would generate a new traumatic injury claim with a new case number. She asserts that OWCP did not handle appellant's case in accordance with FECA Procedure Manual, Chapter 1.500 Case Maintenance. The Board notes that while OWCP initially advised appellant that it would adjudicate his claim as a new traumatic injury claim, it later informed him in a letter dated November 5, 2012 that his claim was not a new claim and would be adjudicated with his original September 2, 2011 injury. The record reveals that appellant's current claim was properly filed with the same file number as his original September 2, 2011 traumatic injury. Furthermore, the Board finds that he has not provided any evidence that his case was mishandled pursuant to FECA Procedure Manual.

Counsel further cites *V.H. v. Department of Housing and Urban Development*¹³ in support of her contention that OWCP did not properly process appellant's claim. The Board notes, however, that the facts of this case are distinguishable. In *V.H.*, appellant filed a recurrence claim alleging that she sustained a recurrence of disability on January 17, 2012 causally related to an April 14, 2011 back injury. OWCP filed the claim under a different claim number than the April 14, 2011 injury and adjudicated the claim as a new traumatic injury claim. The Board determined that it should have adjudicated appellant's current claim as a recurrence of disability as he initially requested and remanded the case for OWCP to combine the current case record with the April 14, 2011 injury record and properly address the recurrence issue. In this case, however, OWCP properly combined his September 18, 2012 recurrence of disability claim with the same file number as his initial September 2, 2011 injury and did not separately

¹¹ See *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹² Section 8102(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹³ Docket No. 12-1523 (January 25, 2013).

adjudicate his claim. Accordingly, the Board finds that it properly reviewed the complete record pertinent to appellant's recurrence of disability 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.¹⁴ OWCP's regulations provide that it 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 Office.¹⁵

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.¹⁶

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.¹⁷ 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.¹⁸ 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.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and he has not submitted relevant and pertinent new evidence not previously considered by OWCP.

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

¹⁵ 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).

¹⁶ *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).

¹⁷ *Id.* at § 10.607(a).

¹⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

By decision dated September 12, 2013, OWCP denied appellant's claim finding that the evidence did not establish that his current left knee condition was causally related to his original September 2, 2011 employment injury. In a statement dated October 16, 2013 and received on October 25, 2013, appellant requested reconsideration and submitted a copy of the employing establishment's physical requirements for his position. OWCP had denied his claim based on the insufficiency of the medical evidence. A list of the physical requirements for the position is neither relevant nor pertinent to the medical issue in this case and is not sufficient to require OWCP to reopen appellant's claim for consideration of the merits.²⁰

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

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen his case for further consideration of the merits of his claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his current knee conditions and inability to work are causally related to his original September 2, 2011 employment injury. The Board also finds that OWCP properly denied appellant's October 25, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

²⁰ See *James W. Scott*, 55 ECAB 606 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 25 and September 12, 2013 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 8, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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