



## **FACTUAL HISTORY**

Appellant, a 55-year-old food service worker, filed a claim for benefits (Form CA-1) on November 18, 2013, alleging that on October 13, 2013 his right knee gave out and he fell to the floor while carrying a tray.

In an October 22, 2013 report, received by OWCP on December 31, 2013, Dr. Charles R. Kaelin, a specialist in orthopedic surgery, stated that appellant had right knee pain which was worsening. He indicated that the pain was interfering with daily activities and advised that appellant had decreased range of motion and swelling in the right knee. Dr. Kaelin diagnosed osteoarthritis of the right knee.

By letter dated November 26, 2013, OWCP informed appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit the additional evidence within 30 days.

OWCP received a report dated October 29, 2013, on December 31, 2013, in which Dr. Kaelin reiterated the diagnosis of osteoarthritis and stated that appellant continued to experience severe, worsening right knee pain which he described as aching, dull, sharp, shooting, stabbing, stiff, and throbbing. Appellant associated the pain with work and the progression from his original injury. Dr. Kaelin advised that appellant experienced a fall at work and was having difficulty bearing weight since that time. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan.

Dr. Kaelin, in a November 7, 2013 report, reiterated his previous findings and conclusions. He reviewed emergency room x-rays from his emergency room visit and found nothing acute but noted prominent patellofemoral changes in the right knee compartment are prominent. Dr. Kaelin discussed the possibility of knee replacement with appellant.

Dr. Kaelin's December 17, 2013 report, examined appellant for complaints of constant, worsening right knee pain which appellant attributed to the recent giveaway of his knee in October 2013. He stated that the pain occurred in association with work and progressed from the original injury. Dr. Kaelin advised that exacerbating factors consisted of initial weight bearing, movement, prolonged standing, and squatting. Appellant also experienced swelling, decreased range of motion, difficulty with movement (bending, lifting, pivoting, pulling, pushing, reaching, squatting, standing upright, and turning), edema, joint stiffness, and popping joints. Dr. Kaelin stated that there was a positive McMurray's test; x-rays showed mild narrowing of the medial compartment but no acute disease process. He administered an MRI scan and diagnosed a right medial meniscus tear.

On December 31, 2013 OWCP received a number of medical reports which predated appellant's alleged October 13, 2013 injury. In an x-ray report dated October 11, 2007, Dr. David T. Lin, a Board-certified diagnostic radiologist, noted mild-to-moderate degenerative changes in both knees, slightly worse on the right.

On June 3, 2010 Dr. John M. Miller, a Board-certified orthopedic surgeon, related that appellant had fallen while carrying trays at work four to six weeks ago and now had increasing right knee pain. He related that an MRI scan taken subsequent to the fall suggested a partial medial tear of the right knee. In a progress note dated September 7, 2012, Dr. Miller related that appellant was seen for a painful right knee. A history established that appellant had undergone arthroscopy of the right knee approximately two years prior, and now had medial compartment osteoarthritis of the right knee.

On August 14, 2013 Dr. John F. Carroll, a Board-certified diagnostic radiologist, reported that appellant had fallen at work three months ago and injured his right knee. He related that an MRI scan of appellant's right knee showed tricompartmental osteoarthritis, with partial and full thickness loss; free edge maceration with ill-defined underlying tear of the anterior horn and bony medial meniscus, with concern for a re-tear if there was prior medial meniscus debridement; and free edge and surface fraying lateral meniscus, with subtle faint horizontal tear through the posterior horn/posterior junction. By progress note dated August 22, 2013, Dr. Miller related that appellant had continued problems with his right knee, he noted appellant's complaint that his knee was unstable, and gave out when he was standing performing his work as a food server. He diagnosed degenerative arthritis of the right knee.

By letter dated December 19, 2013, the employing establishment controverted appellant's claim, noting that appellant had a history of right knee issues since 2007.

By decision dated January 21, 2014, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he injured his right knee in the performance of duty on October 13, 2013.

In a January 9, 2014 report, received by OWCP on January 24, 2014, Dr. Kaelin again diagnosed medial meniscus tear of the right knee and reiterated his previous findings and conclusions. He also noted that appellant was waiting for authorization of total knee replacement.

On February 24, 2014 appellant requested reconsideration. By decision dated March 18, 2014, OWCP denied his application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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.<sup>3</sup> These are the essential elements of each and every

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’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 claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the mere fact that a condition manifests itself during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant experienced right knee pain when the knee gave out and while he was carrying a tray to a cart on October 13, 2013. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>9</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the October 13, 2013 employment incident would have been competent to cause the claimed injury.

The record contains substantial evidence that appellant had preexisting conditions of the right knee as far back as 2007, including a prior arthroscopy of the knee in 2010, as noted by

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

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

<sup>7</sup> *Id.*

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>9</sup> *Carlone*, *supra* note 5.

Dr. Miller in his September 7, 2012 progress note, medial tear diagnosed by him on June 3, 2010, and osteoarthritis as noted by Dr. Lin on October 11, 2007.

Dr. Kaelin submitted several reports in which he noted appellant's complaints of right knee pain on examination and diagnosed osteoarthritis and torn medial meniscus of the right knee. 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.<sup>10</sup> Dr. Kaelin never provided a complete history of appellant's preexisting conditions and most importantly he did not discuss whether appellant's October 13, 2013 incident would have aggravated his preexisting conditions or caused a newly diagnosed condition. As such, his reports are of limited probative value. In his October 22, 2013 report, Dr. Kaelin diagnosed right knee osteoarthritis and advised that appellant had worsening right knee pain with decreased range of motion and swelling which was causing him to reduce his daily activities. He stated that appellant had experienced a fall at work and was having difficulty bearing weight since that time. Dr. Kaelin advised that emergency room x-rays showed prominent patellofemoral changes in the right knee compartment though there was nothing acute. He stated in his December 17, 2013 report that appellant continued to have complaints of constant, worsening right knee pain which he attributed to the recent giveaway of his knee in October 2013. Dr. Kaelin reiterated that the pain occurred in association with work and progressed from the original injury. He stated that there was a positive McMurray's test; x-rays which showed mild narrowing of the medial compartment but no acute disease process; and an MRI scan which revealed a right medial meniscus tear.

Although Dr. Kaelin presented diagnoses of appellant's condition, he did not adequately address how these diagnoses were causally related to the October 13, 2013 work incident. The medical reports of record did not explain medically how carrying a tray and falling when his knee gave out could have caused the diagnosed condition. A definitive explanation is particularly important noting the same condition had been previously diagnosed for years by other physicians. There is insufficient rationalized evidence in the record to establish that appellant's right knee condition was caused by the work incident.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to provide a medical opinion which describes or explains the medical process through which the October 13, 2013 work incident would have caused the claimed injury. Accordingly, he did not establish that he sustained a right knee injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

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.

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<sup>10</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

### **LEGAL PRECEDENT**

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 new evidence not previously considered by OWCP.<sup>11</sup> 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.<sup>12</sup>

### **ANALYSIS**

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. He did not submit a new January 9, 2014 medical report from Dr. Kaelin. The evidence appellant submitted in connection with his February 24, 2014 reconsideration request, however, merely reiterates the findings and conclusions he made in his previous reports. Dr. Kaelin again diagnosed medical meniscal tear and provided the same findings and conclusions. The Board has found reports which are cumulative or duplicative are insufficient to reopen the claim for a review of the merits.<sup>13</sup> Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in denying appellant's reconsideration request in its March 18, 2014 decision.

### **CONCLUSION**

The Board finds that appellant has failed to establish a right knee injury in the performance of duty on October 13, 2013. The Board further finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

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

<sup>12</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>13</sup> *Patricia G. Aiken*, 57 ECAB 441 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 18 and January 21, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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