

FACTUAL HISTORY

This case was previously before the Board. In a September 24, 2012 decision, the Board affirmed an August 16, 2011 OWCP decision. It met its burden of proof to establish that the temporary aggravation of osteoarthritis of both knees resolved by April 30, 2004, based on the opinion of Dr. Lance Brigham, an impartial medical examiner.² The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.³

On November 26, 2012 appellant filed a Form Ca-2a, notice of recurrence of disability but did not list a specific date of recurrence. He noted that the original injury was on December 11, 2006 and he stopped work on April 30, 2004 and did not return.

By letter dated December 11, 2012, OWCP advised appellant of the factual and medical evidence needed to establish his claim for recurrence of disability. It requested that he submit a physician's reasoned opinion addressing the causal relationship of his claimed disability to specific employment factors.

Appellant submitted reports from Dr. Jean M. Walsh, a Board-certified orthopedic surgeon, who treated him for bilateral knee pain. In a December 1, 2011 report, Dr. Walsh noted that his history was significant for work injuries to both knees and surgeries in the 1970's. On examination, both knees were visually abnormal consistent with osteoarthritis, with limited range of motion with pain and crepitus, intact sensation and motor function. On November 14, 2012 she diagnosed advanced osteoarthritis of both knees and recommended surgery. November 14, 2012 x-rays revealed severe degenerative changes of both knees.

On November 28, 2012 appellant was treated by Dr. McManus for severe secondary osteoarthritis of the knees. Dr. McManus noted findings of gross genu varum deformity of the right knee, limited range of motion, crepitance in all compartments, tenderness of the medial and lateral joint line, positive patellar compression test and mildly positive anterior drawer test. With regards to the left knee, he noted swelling, limited range of motion, markedly tender medial joint line and crepitance in all compartments. Dr. McManus diagnosed severe post-traumatic or secondary osteoarthritis in the medial compartment of the bilateral knees and status post bilateral partial medial meniscectomies. He noted that appellant's permanent work restrictions were unchanged.

By letter dated December 11, 2012, OWCP advised appellant that the evidence submitted in support of his claim was insufficient to establish a recurrence and requested that he indicate when and how the recurrence of disability occurred.

² Docket No. 12-590 (issued September 24, 2012). Dr. Brigham resolved the conflict that was created between an OWCP referral physician and appellant's physician, Dr. Michael McManus, a Board-certified orthopedic surgeon.

³ Appellant has an accepted occupational disease claim for bilateral carpal tunnel syndrome, claim file number xxxxxx527. He was separated from employment on April 30, 2004 due to an inability to perform his job due to his carpal tunnel syndrome. This claim is not before the Board on this appeal.

In a February 1, 2013 statement, appellant indicated that there were no intervening injuries when his injury recurred and he was not doing anything out of the normal daily activities.

In a February 20, 2013 decision, OWCP found that the evidence submitted did not establish that appellant sustained a recurrence of disability causally related to his December 11, 2006 work injury.

On March 14, 2013 appellant requested reconsideration. He submitted a March 6, 2013 letter from Dr. McManus, who noted appellant's history of bilateral knee partial medial meniscectomies. This condition predisposed appellant to the development of secondary post-traumatic osteoarthritis involving the medial compartment. Dr. McManus opined that appellant sustained a work injury on December 11, 2006 which permanently aggravated his secondary knee osteoarthritis. He advised that appellant's condition was a permanent aggravation not a temporary aggravation which resolved. Dr. McManus noted that since the time of the injury appellant's secondary knee osteoarthritis has continued to progress to end stage osteoarthritis of the medial compartment of both knees with chronic pain and stiffness, limited range of motion of the knee and chronic weakness and instability. He noted that appellant required a total left knee arthroplasty. Dr. McManus diagnosed permanent aggravation of bilateral knee severe secondary and post-traumatic osteoarthritis.

In a decision dated April 3, 2013, OWCP denied modification of the February 20, 2013 decision.

In an appeal request form dated May 17, 2013, appellant requested reconsideration. He submitted a copy of Dr. McManus's report dated March 6, 2013, previously of record.

In a July 30, 2013 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

A "recurrence of disability" means an 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 a new exposure to the work environment.⁴

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.⁵ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports

⁴ 20 C.F.R. § 10.5(x).

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996); see *Dominic M. DeScala*, 37 ECAB 369 (1986).

that conclusion with sound medical reasoning.⁶ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained temporary aggravation of osteoarthritis of the bilateral knees resolved by April 30, 2004. Appellant was separated from employment on April 30, 2004 due to an inability to perform his job due to his carpal tunnel syndrome.⁸ On November 26, 2012 he filed a notice of recurrence but did not note a date of recurrence. The Board finds that the medical record lacks a well-reasoned narrative from appellant's physicians relating his claimed recurrent disability to his accepted employment injury.

Appellant submitted a November 28, 2012 report from Dr. McManus, who treated him for severe secondary osteoarthritis of the knees. Dr. McManus noted positive findings upon examination for both knees and diagnosed severe post-traumatic or secondary osteoarthritis in the medial compartment of bilateral knees, status post bilateral partial medial meniscectomies. He noted that appellant's permanent work restrictions were unchanged. In a March 6, 2013 report, Dr. McManus noted appellant's history of bilateral partial medial meniscectomies and opined that this predisposed appellant to the development of secondary post-traumatic osteoarthritis in the medial compartment. He opined that appellant sustained a work injury on December 11, 2006 which permanently aggravated his secondary knee osteoarthritis. Dr. McManus noted that, since that time, appellant's secondary knee osteoarthritis has continued to progress to end stage osteoarthritis of the medial compartment of both knee with chronic pain and stiffness, limited range of motion of the knee and chronic weakness and instability. He diagnosed permanent aggravation of bilateral knee severe secondary and post-traumatic osteoarthritis. However, Dr. McManus failed to specifically address whether appellant sustained a recurrence of disability causally related to the accepted employment condition or otherwise provide medical reasoning explaining why any current condition or disability was due to the employment aggravation that resolved by April 30, 2004. He did not explain how or why the severe post-traumatic or secondary osteoarthritis in the medial compartment of bilateral knees was related to the accepted employment injury and why it was not due to nonwork-related factors such as age-related degenerative changes.⁹ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁰ The need for rationale is especially important in a situation where appellant claimed a recurrence of disability

⁶ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

⁷ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁸ Matters pertaining to appellant's carpal tunnel claim are not before the Board on the present appeal. See *supra* note 3.

⁹ Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ See *Jimmie H. Duckett*, 52 ECAB 332 (2001).

for an unspecified period in 2012, where he was separated from his job on April 30, 2004 and where his accepted temporary aggravation of osteoarthritis of both knees resolved by April 30, 2004.¹¹ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted reports from Dr. Walsh dated December 1, 2011 and November 14, 2012, who treated him for bilateral knee pain. In a December 1, 2011 report, she noted his history of injuries to both knees and surgeries in the 1970's. Dr. Walsh noted both knees were visually abnormal consistent with osteoarthritis, with limited range of motion with pain and crepitus. He diagnosed advanced osteoarthritis of both knees and recommended surgery. However, the Board notes that none of these reports specifically address whether appellant sustained a recurrence of disability causally related to the accepted employment condition or otherwise provide medical reasoning explaining how any condition or disability, contemporaneous with Dr. Walsh's reports, were due to the resolved employment injury. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹² Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant did not otherwise submit medical evidence supporting that he sustained a recurrence of disability causally related to his December 11, 2006 work injury.

On appeal, appellant asserts that his work-related injury caused him to have partial medical meniscectomies which accelerated his arthritis and predisposed him to his current knee problems. However, as noted above, the medical evidence submitted did not provide a rationalized medical opinion explaining why his claimed recurrent condition or disability was due to the resolved work injury. There is also no contemporaneous evidence of record establishing such assertions.

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 section 8128(a) of FECA,¹³ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may

¹¹ To the extent that Dr. McManus' report may be construed as supporting that appellant's accepted condition did not resolve by April 30, 2004, the Board notes that he was on one side of a medical conflict that was resolved by Dr. Brigham. *See supra* note 2. The Board has held that a subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion. *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

¹² *Jaja K. Asaramo*, *supra* note 9.

¹³ 5 U.S.C. § 8128(a).

obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(1) Shows that [OWCP] erroneously applied or interpreted a specific point of law; or

“(2) Advances a relevant legal argument not previously considered by [OWCP]; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”¹⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹⁵

ANALYSIS -- ISSUE 2

OWCP’s most recent merit decision dated April 3, 2013 denied appellant’s claim for a recurrence of disability on the grounds that he failed to provide sufficient medical evidence to establish that he sustained a recurrence of disability causally related to his December 11, 2006 work injury. OWCP denied his reconsideration request, without a merit review, and he appealed this decision to the Board.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument.

Appellant submitted a March 6, 2013 report from Dr. McManus. However, this report is duplicative of evidence previously submitted and was considered by OWCP in its decision dated April 3, 2013 and found insufficient. 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.¹⁶ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or

¹⁴ 20 C.F.R. § 10.606(b)(2).

¹⁵ *Id.* at § 10.608(b).

¹⁶ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability causally related to his accepted condition. The Board further finds that OWCP properly denied appellant's request for reconsideration dated May 17, 2013.

ORDER

IT IS HEREBY ORDERED THAT the July 30 and April 3, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 9, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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