

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

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**K.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Columbus, OH, Employer**

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**Docket No. 14-610  
Issued: July 21, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 24, 2014 appellant filed a timely appeal from an August 15, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury and a November 21, 2013 nonmerit decision denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a right knee or right shoulder injury in the performance of duty on June 28, 2013, as alleged; and (2) whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of the November 21, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that OWCP improperly refused to reopen her case for further reconsideration of the merits based on the new reports she submitted from Dr. Andrew Islam, a Board-certified orthopedic surgeon.

### **FACTUAL HISTORY**

On June 29, 2013 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right knee and right shoulder injury in the performance of duty on June 28, 2013 as the result of loading a tray which began to fall causing her to bounce back and twist her right knee and right shoulder.

Appellant submitted a June 29, 2013 report from Dr. DeAnn Brewer, a Board-certified internist, who diagnosed “rotator cuff strain vs. tear” and “medial collateral ligament (MCL) strain v. tear.” Dr. Brewer checked a box “yes” indicating that appellant’s conditions were caused or aggravated by an employment activity.

In a July 1, 2013 report, Dr. Andrea Islam, a Board-certified orthopedic surgeon, advised that appellant was injured on June 28, 2013 and diagnosed knee and shoulder strains.

In a July 10, 2013 letter, OWCP notified appellant of the deficiencies of her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a July 23, 2013 report from Dr. Islam who diagnosed sprain/tear of the right knee. Dr. Islam noted that a magnetic resonance imaging (MRI) scan showed a medial meniscus tear and mild degenerative changes. She released appellant back to full duty.

By decision dated August 15, 2013, OWCP accepted that the June 28, 2013 incident occurred as alleged. It denied the claim finding that appellant failed to submit sufficient medical evidence in connection with the accepted incident.

On August 20, 2013 appellant requested reconsideration. She submitted two reports dated August 20, 2013 from Dr. Islam who diagnosed right knee strain and stated that appellant had no significant complaints except for twisting-type limitations and some mild limitation of motion. Dr. Islam found that appellant had reached maximum medical improvement and instructed her in proper work-type motions. He opined that “she probably [had] a permanent partial impairment rating of approximately two percent at this point.”

By decision dated November 21, 2013, OWCP denied appellant’s request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence or show that OWCP erroneously applied or interpreted a point of law not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

Causal relationship is a medical issue 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 employee, 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 employee.<sup>7</sup>

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

OWCP accepted that the employment incident of June 28, 2013 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained an injury in the performance of duty on June 28, 2013. In a July 1, 2013 report, Dr. Islam stated that appellant was injured on June 28, 2013 and diagnosed knee and shoulder strains. However, the Board finds that appellant did not meet her burden of proof to establish the causal relationship between the conditions for which compensation is claimed and the employment incident.

Dr. Islam noted generally that appellant was injured on June 28, 2013 and diagnosed knee and shoulder strains. On July 23, 2013 he diagnosed sprain/tear of the right knee and stated that an MRI scan showed a medial meniscus tear and mild degenerative changes. Dr. Islam failed to provide a rationalized opinion addressing how appellant’s right knee or right shoulder conditions were caused or aggravated by loading a tray at work on June 28, 2013. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s condition

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<sup>4</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>5</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

is of limited probative value on the issue of causal relationship.<sup>8</sup> Lacking thorough medical rationale on the issue of causal relationship, the Board finds Dr. Islam's reports are of diminished probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on June 28, 2013.

In a June 29, 2013 report, Dr. Brewer diagnosed "rotator cuff strain vs. tear" and "medial collateral ligament (MCL) strain v. tear" and checked a box "yes" indicating that appellant's conditions were caused or aggravated by an employment activity. Although the "yes" check mark indicates general support for causal relationship, Dr. Brewer's medical report is insufficient to establish a causal relationship.<sup>9</sup> The Board has held that when a physician's opinion on causal relationship consists only of a check mark on a form, without more by way of medical rationale, the opinion is of diminished probative value.<sup>10</sup> Dr. Brewer failed to provide a sufficient medical explanation of the relationship between appellant's right knee and right shoulder conditions and the June 28, 2013 employment incident.<sup>11</sup> The Board finds that appellant did not meet her burden of proof with the submission of Dr. Brewer's report.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a June 28, 2013 employment incident, she has failed to meet her burden of proof to establish a 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>12</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>13</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a

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<sup>8</sup> See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>9</sup> See *Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

<sup>10</sup> See *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>11</sup> See *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

<sup>12</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>13</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>14</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>15</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>16</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>17</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

In support of her August 20, 2013 reconsideration request, appellant submitted two reports dated August 20, 2013 from Dr. Islam who diagnosed right knee strain and stated that appellant had no significant complaints except for twisting-type limitations and some mild limitation of motion. Dr. Islam found that appellant had reached maximum medical improvement and instructed her in proper work-type motions. He opined that “she probably [had] a permanent partial impairment rating of approximately two percent at this point.”

The Board finds that submission of these reports did not require reopening appellant’s case for merit review as they failed to address the issue of causal relationship between her right knee and right shoulder conditions and the June 28, 2013 employment incident, which was the issue before OWCP. Therefore, the reports do not constitute relevant and pertinent new evidence and are not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP, nor did she submit any relevant and pertinent new evidence not previously considered. The Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.<sup>19</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her right knee and right shoulder conditions are causally related to a June 28, 2013 employment incident,

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<sup>14</sup> 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>15</sup> 20 C.F.R. § 10.607(a).

<sup>16</sup> *Id.* at § 10.608(b).

<sup>17</sup> *See A.L.*, *supra* note 14. *See also Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>18</sup> *Id.* *See also Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>19</sup> *See L.H.*, 59 ECAB 253 (2007).

as alleged. The Board further finds that OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 21 and August 15, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 21, 2014  
Washington, DC

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

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

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