

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

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**K.R., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET SOUND  
NAVAL SHIPYARD & INTERMEDIATE  
MAINTENANCE FACILITY, Bremerton, WA,  
Employer**

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**Docket No. 14-732  
Issued: September 2, 2014**

*Appearances:*  
*Cathy C. Deno, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 12, 2014 appellant, through her representative, filed a timely application for review from the October 10, 2013 and January 16, 2014 nonmerit decisions of the Office of Workers’ Compensation Programs (OWCP) denying her requests for reconsideration. Because more than 180 days elapsed from June 24, 2013, the date of the most recent merit decision, to the filing of this appeal, pursuant to the Federal Employees’ Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant’s claim.

**ISSUE**

The issue is whether OWCP properly denied appellant’s requests for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

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

## **FACTUAL HISTORY**

On November 15, 2011 appellant, then a 66-year-old lead library technician, filed an occupational disease claim (Form CA-2) alleging that she developed post-traumatic or secondary osteoarthritis of the right knee as a result of repeated traumas to her knees at work. She became aware of her condition and of its relationship to her employment on July 27, 2010. Appellant did not stop work.

By letter dated November 30, 2011, OWCP requested additional factual and medical evidence from appellant. It noted that she had not submitted factual or medical evidence in support of her claim and afforded her 30 days to submit additional evidence. OWCP requested information regarding appellant's duties from the employing establishment on the same date.

In a report dated July 20, 2011, Dr. Michael S. McManus, Board-certified in occupational medicine, diagnosed appellant with work-related post-traumatic or secondary osteoarthritis of the right knee. He reviewed the history of her right knee condition, which revealed multiple prior injuries to her right knee with an original injury to her right knee in a fall at work on September 8, 1992. At that time, appellant was diagnosed with right traumatic chondromalacia patellae. She subsequently reinjured her right knee at work on December 14, 1999. Appellant had stepped onto a stepstool when she felt a sudden "pop" and immediate onset of severe pain in her right knee joint. She was diagnosed with probable internal derangement and continued conservative treatment measures. Appellant underwent arthroscopic surgery with an orthopedic specialist. She subsequently continued to experience intermittent problems with her right knee, noting aching, stiffness and occasional catching. Appellant reinjured her knee again at work on July 27, 2010. She entered the back seat of a taxi at her workplace and felt a "pop" with immediate onset of severe pain in the anterolateral aspect of her right knee. Appellant was diagnosed with aggravation of secondary or post-traumatic osteoarthritis of the right knee.

In a report dated October 5, 2011, Dr. McManus noted no improvement in appellant's right knee symptoms. He stated that her pain was aggravated by walking up and down inclines and stairs. On October 26, 2011 Dr. McManus diagnosed appellant with aggravation of secondary osteoarthritis in the right knee, status post arthroscopic partial meniscectomy. He stated that she was last seen on October 5, 2011 and that her condition was improved.

Appellant submitted a statement on November 14, 2011. She noted that she had previously filed traumatic injury claims for her right knee for injuries on September 8, 1992 under claim number xxxxxx087 and on December 14, 1999 under claim number xxxxxx119. Appellant stated that, from 1991 through 2006, she worked at a technical data center, in a position where she would spend 70 to 85 percent of her days on her feet. On January 14, 2000 she underwent right knee surgery. Appellant noted that her right knee had bothered her intermittently ever since the surgery and that it had progressively worsened.

The employing establishment responded to OWCP's inquiries on December 14, 2011, providing a description of tasks performed by appellant and a copy of her position description with physical requirements. A supervisor sent an e-mail to OWCP on December 9, 2011, noting that appellant had not worked in a position that required continuous or frequent kneeling or work

on the knees, and that she did not recall appellant reporting any knee injuries in the summer of 2010.

By decision dated February 22, 2012, OWCP denied appellant's claim. It found that she had not provided an explanation from a physician as to the causal relationship between accepted work factors and her diagnosed condition.

Appellant submitted an incomplete duty status report. She also submitted a summary of her visit with Dr. McManus on July 20, 2011, which stated diagnoses of strain of the knee, tear of the medial meniscus of the knee and osteoarthritis of the right knee.

In a report dated May 1, 2012, Dr. McManus diagnosed appellant with a right knee sprain, right knee osteoarthritis and a possible recurrent tear of the medial meniscus of the right knee. He related each diagnosis to a date of injury of July 27, 2010 and provided an OWCP claim number of xxxxxx119. Dr. McManus noted that appellant's pain was aggravated by walking up inclines and stairs.

On June 4, 2012 appellant requested reconsideration of OWCP's February 22, 2012 decision.

By letter dated February 27, 2013, the employing establishment stated that appellant had timely requested reconsideration, although OWCP did not have her request on file. It noted that OWCP had not sent a copy of the February 22, 2012 decision to her representative and requested that OWCP reissue this decision in order to protect appellant's appeal rights.

On March 11, 2013 OWCP vacated its February 22, 2012 decision and issued a *de novo* decision on appellant's claim on the basis that her representative had not been provided with a copy of the original decision. It considered all evidence that had been submitted since November 20, 2011. OWCP denied appellant's claim on the basis that she had not provided an explanation from a physician as to the causal relationship between the accepted work factors and her diagnosed condition, noting that Dr. McManus' most recent report of May 1, 2012 did not discuss work-related factors.

On March 14, 2013 appellant requested reconsideration of OWCP's March 11, 2013 decision. With her request, she resubmitted Dr. McManus' reports of July 20, October 5 and 26, 2011 and May 1, 2012.

In a duty status report dated February 14, 2013, Dr. McManus noted that appellant had injured her right knee on February 4, 2013 when she stepped on a rock, resulting in a varus stress injury. He diagnosed her with right knee sprain and right osteoarthritis of the lower leg.

By decision dated June 24, 2013, OWCP reviewed the merits of appellant's case and denied modification of its March 11, 2013 decision. It stated that none of the medical reports submitted contained a medical opinion explaining how her diagnosed conditions were medically related to her work activities.

On September 6, 2013 appellant requested reconsideration of OWCP's June 24, 2013 decision.

In a letter dated September 4, 2013, Dr. McManus noted that appellant's present right knee condition was the direct result of a prior work injury on December 14, 1999. He stated that, on that date, she stepped onto a stool at work, felt a sudden pop and an immediate onset of severe deep right knee pain. Appellant was subsequently diagnosed with internal derangement and underwent arthroscopic surgery or bilateral partial meniscectomies. Dr. McManus noted that she subsequently reinjured or aggravated her right knee condition at work on July 27, 2010.

By decision dated October 10, 2013, OWCP denied to consider the merits of appellant's request for reconsideration. It found that Dr. McManus' letter of September 4, 2013 was cumulative and substantially similar to evidence previously considered.

Appellant again requested reconsideration of OWCP's June 24, 2013 decision on October 23, 2013.<sup>2</sup>

In a letter dated October 21, 2013, Dr. McManus described appellant's history of injury and stated his opinion that her condition resulted from work-related factors. He wrote, in part,

“As per my letter of September 4, 2013, [appellant] required prior right knee arthroscopic partial lateral and medial meniscectomies due to her work injury of December 14, 1999. This injury and subsequent surgery resulted in a loss of the cushion in her knee joint, predisposing her to secondary osteoarthritis due to load and shear forces. With loss of the dis[c] space height, there was an associated laxity or redundancy of the ligaments, with increased shear stress with shear force and acceleration of the degenerative processes. This resulted in progressive post-traumatic osteoarthritis of [appellant's] right knee, which she aggravated due to the work injury of July 27, 2010. Her present primary problem is secondary or post-traumatic osteoarthritis of her right knee due to her December 14, 1999 injury, aggravated by her work injury of July 27, 2010 and also due to her prior need for arthroscopic partial medial meniscectomies. For this reason, I am specifically request[ing] reconsideration of your Notice of Decision dated June 24, 2013.”

By decision dated January 16, 2014, OWCP denied to consider the merits of the request for reconsideration. It noted that the October 21, 2013 letter did not describe the traumatic event of July 27, 2010, and that it contained the same opinion on causation as in previous reports from Dr. McManus, such that it constituted cumulative and repetitious evidence.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's 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 relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new

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<sup>2</sup> The appeal request form lists a decision date of October 10, 2013, but as this decision was not made on the merits, OWCP treated her request as an appeal from the June 24, 2013 decision.

evidence not previously considered by OWCP.<sup>3</sup> Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

The Board held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.<sup>5</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup> While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>7</sup>

### ANALYSIS

OWCP issued a June 24, 2013 decision denying appellant's claim for compensation. On September 6 and October 23, 2013 appellant requested reconsideration of this decision. OWCP declined her requests for reconsideration in nonmerit decisions on October 10, 2013 and January 16, 2014.

The Board does not have jurisdiction over the June 24, 2013 merit decision. The issue on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of her claim. In her September 6 and October 23, 2013 requests for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously interpreted or applied. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board finds that appellant did not submit any new and relevant evidence in this case. OWCP properly declined to reopen her case for review of the merits.

With her reconsideration request of September 6, 2013, appellant submitted a letter dated September 4, 2013 from Dr. McManus. He reiterated his opinion that her right knee condition was the direct result of a prior work injury on December 14, 1999. Dr. McManus stated that on, that date, she stepped onto a stool at work, felt a sudden pop and an immediate onset of severe deep right knee pain. Appellant was subsequently diagnosed with internal derangement and underwent arthroscopic surgery or bilateral partial meniscectomies. Dr. McManus noted that she subsequently reinjured or aggravated her right knee condition at work on July 27, 2010. He

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<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

<sup>4</sup> *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495, 499 (2008).

<sup>5</sup> See *Daniel Deparini*, 44 ECAB 657, 659 (1993).

<sup>6</sup> *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

<sup>7</sup> *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

substantially repeated his opinion as noted in his May 1, 2012 report. Dr. McManus' opinion was cumulative and substantially similar to prior evidence from him considered by OWCP. Thus, Dr. McManus' September 4, 2013 letter did not constitute relevant and pertinent new evidence not previously considered by OWCP and its submission did not require OWCP to review appellant's case on the merits.

With her reconsideration request of October 23, 2013, appellant submitted a letter dated October 21, 2013, in which Dr. McManus stated that her injury and subsequent surgery resulted in a loss of the cushion in her knee joint, predisposing her to secondary osteoarthritis. There was an associated laxity or redundancy of the ligaments, with increased shear stress with shear force and acceleration of the degenerative processes which resulted in post-traumatic osteoarthritis of her right knee, which she aggravated on July 27, 2010. OWCP declined appellant's request for reconsideration on the basis that this letter was duplicative of the September 4, 2013 letter that appellant's condition was aggravated by an event on July 27, 2010. It found this letter cumulative and repetitious, and thus insufficient to warrant review of the June 24, 2013 decision. The underlying issue upon reconsideration was whether appellant submitted rationalized medical evidence of a causal relationship between her diagnosed knee condition and work-related factors. Dr. McManus reiterated his opinion on causal relationship in a substantially similar fashion as in prior reports. The Board finds that Dr. McManus' October 21, 2013 letter did not constitute relevant and pertinent evidence not previously considered by OWCP, such that it required OWCP to reopen the case for merit review.<sup>8</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3) in her reconsideration requests of September 6 and October 23, 2013. 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 submit relevant and pertinent new evidence not previously considered. Thus, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> See *M.G.*, Docket No. 10-230 (issued September 7, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2014 and October 10, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 2, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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