

ISSUES

The issues are: (1) whether appellant sustained an injury on February 7, 2014 in the performance of duty; and (2) whether OWCP properly denied his request to reopen his case for further review of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

On February 10, 2014 appellant, then a 55-year-old city carrier, filed a traumatic injury claim alleging that on February 7, 2014 he sprained his right knee when he fell on stairs while working. He stopped work on February 10, 2014. The employing establishment did not controvert the claim.

On February 8, 2014 appellant related that he fell on stairs while delivering mail and asked to see a “company doctor.”

In a work status report dated February 10, 2014, Dr. Charlotte H. Albinson, Board-certified in emergency medicine, diagnosed a knee and leg sprain at an unspecified site and a hand sprain at an unspecified site. She released appellant to return to work on that date with restrictions.

A magnetic resonance imaging (MRI) scan study of the right knee performed on March 12, 2014 revealed a horizontal tear of the posterior horn of the medial meniscus, apparent mucoid degeneration of the lateral meniscus, degenerative changes, grade 2 chondromalacia patella, and moderate effusion.

By letter dated April 7, 2014, OWCP requested that appellant submit a medical report from his attending physician addressing the relationship between any diagnosed condition and the identified work incident.

In a decision dated June 9, 2014, OWCP denied appellant’s claim after finding that he did not establish that he sustained an injury on February 7, 2014. It determined that the medical evidence was insufficient to show that he sustained a diagnosed condition as a result of the accepted February 7, 2014 employment incident.

On July 10, 2014 appellant requested reconsideration. In a letter dated July 12, 2014, he indicated that he was submitting medical evidence.

By decision dated July 31, 2014, OWCP denied appellant’s request for reconsideration as he did not raise an argument or submit evidence sufficient to warrant reopening his case for further merit review under section 8128.

On appeal, appellant contends that he submitted medical evidence from Dr. Charles Mercier, a Board-certified orthopedic surgeon, and an attending physician’s form report from Dr. Albinson to OWCP, but that it was not contained in the case record. He notes that Dr. Mercier wanted to perform knee surgery and also told him that it would be very expensive to write a report addressing causation.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 States” within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁷ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁸

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an injury to his right knee on February 7, 2014 when he fell on stairs. There is no dispute that the February 7, 2014 incident occurred at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has not established that the February 7, 2014 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.⁹

On February 10, 2014 Dr. Albinson diagnosed knee, leg, and hand sprains at unspecified sites. She found that appellant could work with restrictions. Dr. Albinson, however, did not provide a history of the February 7, 2014 work incident or address causation. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished

³ *Id.*

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *Id.*

⁹ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

probative value on the issue of causal relationship.¹⁰ Additionally, medical reports based on an incomplete factual history of are little probative value.¹¹

Appellant also submitted a March 12, 2014 MRI scan study. The diagnostic study, however, does not address causation and thus is insufficient to establish causal relationship between any diagnosed conditions and the February 7, 2014 work incident.¹²

By letter dated April 7, 2014, OWCP notified appellant of the type of medical evidence required to establish his claim. Appellant did not, however, provide the medical evidence necessary to substantiate his claim. Therefore, he has not met his burden of proof.

On appeal, appellant maintains that Dr. Mercier told him that it would cost him a lot of money to obtain a medical opinion with a causation finding. He has the burden, however, to establish causal relationship through the submission of rationalized medical opinion evidence.¹³

Appellant further asserts that he submitted additional medical evidence from Dr. Mercier and Dr. Albinson to OWCP, but that it is not in the case record. He submitted new evidence with his appeal. The Board, however, has no jurisdiction to review new evidence on appeal.¹⁴ However, 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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁵ OWCP's regulations provide that 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 evidence not previously considered by OWCP.¹⁶ 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.¹⁷ When a claimant fails to meet one of the above standards, OWCP

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹¹ *See M.W.*, 57 ECAB 734 (2006).

¹² *See supra* note 10.

¹³ *John J. Montoya*, 54 ECAB 306 (2003).

¹⁴ *See* 20 C.F.R. § 501.2(c).

¹⁵ *Supra* note 2. Section 8128(a) of FECA provides that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.”

¹⁶ 20 C.F.R. § 10.606(b)(3).

¹⁷ *Id.* at § 10.607(a).

will deny the application for reconsideration without reopening the case for review on the merits.¹⁸

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁹ 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.²⁰ 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.²¹

ANALYSIS -- ISSUE 2

On July 10, 2014 appellant requested reconsideration and, on July 12, 2014, asserted that he was submitting medical evidence in support of his request. In his request for reconsideration, he did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he interpret or advance a new and relevant legal argument, or submit any new and relevant evidence. Appellant argued that he submitted additional medical evidence to OWCP, but OWCP did not receive any medical evidence with his reconsideration request. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on February 7, 2014 in the performance of duty. The Board further finds that OWCP properly denied his request to reopen his case for further review of the merits under section 8128.

¹⁸ *Id.* at § 10.608(b).

¹⁹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

²⁰ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

²¹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

ORDER

IT IS HEREBY ORDERED THAT the July 31 and June 9, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 23, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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