



## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a right knee injury on May 5, 2014, as alleged; and (2) whether OWCP properly refused to reopen her case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On May 5, 2014 appellant, then a 46-year-old nursing assistant, alleged that she sustained a right knee strain that day at 8:55 a.m. when she slipped on a milky substance at work. On the claim form appellant's supervisor Mary Hale, R.N., a nurse manager, stated that appellant had slipped on a milky substance on the floor and that she saw appellant's knee hit the floor. Appellant originally lost no time from the incident and her work stoppage first occurred 45 days later. No evidence was submitted with the claim.

By letter dated July 31, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the type of medical and factual evidence required to support her claim and accorded 30 days to submit such evidence.

In response, appellant submitted an incident report for the May 5, 2014 injury, a July 30, 2014 receipt of information for traumatic injury claim (Form CA-1), and a July 23, 2014 treatment election for a work-related injury, all of which noted that on May 5, 2014 appellant injured her right knee. Work restrictions dated July 23, 30, and August 11, 2014 were also received.

Health unit progress notes dated May 5, July 23, and August 11, 2014, cosigned by a physician with an illegible signature, were received. The May 5, 2014 note indicated that appellant slipped on thickened juice that was on the floor and fell onto her right knee. Minimal tenderness with palpation was noted with no bruising, and x-rays were noted as negative. Appellant was released to full duty. No diagnosis was provided. The July 23, 2014 note indicated right pain and stiffness after sitting for a while and then getting up. The note indicated that appellant believed that this was related to the alleged fall she had on May 5, 2014. Appellant related that the pain and stiffness began approximately one week ago and she did not recall reinjuring her right knee. She reported no history or injury to her right knee until the May 5, 2014 incident. Appellant was advised to continue regular duty. On July 30, 2014 she was diagnosed with right knee strain. The August 11, 2014 note diagnosed right knee strain and indicated that appellant could work with restrictions.

In a July 29, 2014 report, Dr. Nicole A. Patino, Board-certified in occupational medicine, noted that appellant was seen on July 29, 2014 for follow up of right knee strain which occurred on May 5, 2014. She reported that appellant fell on her right knee, but was able to walk afterward. X-rays revealed no fracture or dislocation. Appellant reported subsequent pain mostly when getting up and sitting down, and mostly in the back of her knee. Examination findings revealed tenderness in the back of right knee with good strength, stability and full range of motion. Pain was elicited with squatting but, no pain was noted with valgus or varus stress. Negative McMurray's, negative posterior drawer, and steady gait were also noted. An assessment of right knee strain was provided and appellant was released to modified work. In an

August 8, 2014 report, Dr. Patino presented examination findings, diagnosed right knee strain, and provided work restrictions.

By decision dated September 9, 2014, OWCP denied appellant's claim on the grounds that there was no medical evidence containing a diagnosis causally related to the accepted employment injury.

On September 12, 2014 OWCP received appellant's request for reconsideration. Evidence included with the request included letters dated August 25 and September 12, 2014 regarding limited duty and work restrictions dated August 25, 2014.

Health unit progress notes dated August 11, 25, and September 9, 2014 continued to diagnose either right knee strain or right knee pain.

In an August 22, 2014 report, a physician with an illegible signature diagnosed right knee pain and provided restrictions. He also noted that appellant should have an x-ray and a closed magnetic resonance imaging (MRI) scan of the right knee.

By nonmerit decision dated September 22, 2014, OWCP denied reconsideration.

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

An employee seeking benefits under FECA has the burden of proof to establish 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.<sup>3</sup> 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.<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.<sup>5</sup> First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>6</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>7</sup>

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<sup>3</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *B.F.*, Docket No. 09-60 (issued March 17, 2009).

<sup>6</sup> *D.B.*, 58 ECAB 464 (2007); *Paul Foster*, 56 ECAB 208 (2004).

<sup>7</sup> *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3; *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>9</sup> 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>10</sup>

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

Appellant alleged that she sustained a right knee injury on May 5, 2014 when she slipped on a milky substance and fell onto her right knee. OWCP accepted, and the evidence supports, that the May 5, 2014 employment incident occurred at the time, place, and in the manner alleged. The issue is whether the medical evidence establishes that appellant sustained a right knee injury as a result of this incident.

The Board finds that appellant has not established that the May 5, 2014 employment incident caused her right knee strain. The determination of whether an employment injury is causally related to work factors is generally established by medical evidence.<sup>11</sup>

Appellant submitted health unit progress notes dated May 5, July 24, and August 11, 2014. While the initial progress note dated May 5, 2014 notes the history of injury as a slip and fall onto the right knee, the report did not provide a diagnosis and appellant was released to full duty with no restrictions.

Approximately two months later, in July 2014, Dr. Patino diagnosed a right knee strain. In reports dated July 29 and 30, 2014, she reported examination findings of July 9 and 29, 2014 diagnosed right knee strain and released appellant to modified work. While Dr. Patino noted that appellant was seen for follow up of May 5, 2014 right knee strain and noted the history of the May 5, 2014 injury, she provided no opinion as to how appellant's current right knee condition and need for modified work was related to the May 5, 2014 work incident. Dr. Patino did not explain why the right knee strain diagnosed in late July 2014 was caused by the May 5, 2014 fall, in light of the apparent lack of symptoms or need for medical treatment during the intervening time period. A physician must provide a narrative description of the specific employment incident and a reasoned opinion on whether the employment incident described caused or

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<sup>8</sup> *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

<sup>9</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</sup> *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

contributed to her diagnosed medical condition.<sup>12</sup> Thus, these reports are insufficient to meet appellant's burden of proof.

The health unit progress note of July 23, 2014 noted appellant's belief that her right knee condition was due to the May 5, 2014 work incident. However, appellant's statements regarding causation are immaterial as causal relationship is a medical issue which can only be addressed by medical opinion evidence.<sup>13</sup> No diagnosis was provided on the July 23, 2014 progress note. Subsequent health unit progress notes dated July 30 and August 11, 2014 diagnosed right knee strain and provided restrictions, but failed to offer any opinion on causal relationship between the diagnosed medical condition and the May 5, 2014 employment incident. Thus, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted work restriction notes in support of her claim that she sustained a right knee condition on May 5, 2014. However, these notes do not offer any opinion on causal relationship between the diagnosed medical condition and the May 5, 2014 employment incident. Thus, these notes are insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment, is sufficient to establish causal relationship.<sup>14</sup> Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence of record is insufficient to establish appellant's claim. Consequently, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

On appeal, appellant asserted that she suffered a job injury on May 5, 2014 and noted her medical course. As noted above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to the accepted May 5, 2014 employment incident. Reports from appellant's physicians failed to provide sufficient medical rationale based on a complete factual background explaining the reasons why her diagnosed conditions were caused or aggravated by the accepted employment incident.

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**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>15</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or

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<sup>12</sup> *John W. Montoya*, 54 ECAB 306 (2003); *K.E.*, Docket No. 08-1461 (issued December 17, 2008).

<sup>13</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>14</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>15</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

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.<sup>16</sup> To be entitled to a merit review of OWCP's 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>17</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>18</sup>

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

The underlying issue on reconsideration is whether appellant submitted sufficient medical evidence to show that she sustained a right knee condition as a result of the May 5, 2014 employment incident. Appellant's September 12, 2014 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She also did not provide any relevant or pertinent new evidence warranting the reopening of the case on the merits.

In support of her reconsideration request, appellant submitted letters pertaining to limited duty, which are irrelevant to the issue on reconsideration. She also submitted evidence which included work restrictions dated August 25, 2014 and health unit progress notes dated August 11, 25, and September 9, 2014, which diagnosed either right knee strain or right knee pain, and an August 22, 2014 report, which diagnosed right knee pain and provided restrictions. These reports, however, are duplicative of reports previously reviewed by OWCP, which provide diagnoses and restrictions but offer no opinion on causal relationship. As these reports are repetitious and cumulative of earlier reports from the same providers, the Board finds that it is insufficient to reopen appellant's claim for further merit review.

The Board finds that appellant did not submit arguments or evidence showing that OWCP erroneously applied or interpreted a specific point of law; advanced a relevant legal argument not previously considered; or constituted relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen her claim for further merit review.<sup>19</sup>

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<sup>16</sup> 20 C.F.R. § 10.606(b)(2). *Susan A. Filkins*, 57 ECAB 630 (2006); see *J.M.*, Docket No. 09-218 (issued July 24, 2009).

<sup>17</sup> *Id.* at § 10.607(a). *Robert G. Burns*, 57 ECAB 657 (2006); see *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

<sup>18</sup> 20 C.F.R. § 10.608(b). *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); see *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

<sup>19</sup> *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**CONCLUSION**

The Board finds that appellant has not established that she sustained a right knee injury in the performance of duty on May 5, 2014, as alleged. The Board further finds that OWCP did not abuse its discretion by refusing to reopen her case for review of the merits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 22 and 9, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 25, 2015  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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