



## **FACTUAL HISTORY**

On October 10, 2012 appellant, then a 54-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2012 he injured his right knee in the performance of duty. He indicated on the claim form that a cart door struck his right knee.

In a report dated October 22, 2012, Dr. Smitha J. Thomas, a Board-certified family practitioner, provided a history that appellant had a two-month history of right medial knee pain after being hit by a door at work. He noted the results of a September 12, 2012 x-ray and diagnosed enthesopathy of the patellar tendon. By letter dated October 10, 2012, the employing establishment controverted the claim, stating that appellant now stated the date of injury was September 4, 2012.

In a report dated March 11, 2013, Dr. Carlos Adams, a Board-certified internist, diagnosed a right medial meniscus tear and degenerative changes. He indicated that a February 23, 2013 magnetic resonance imaging (MRI) scan had revealed a medial meniscus tear and degenerative joint disease.

By decision dated April 26, 2013, OWCP denied the claim for compensation. It found the evidence was not sufficient to establish an employment incident as alleged.

On June 13, 2013 OWCP received an April 19, 2013 report from Dr. Adams, who again noted the results on the February 23, 2013 MRI scan. Dr. Adams stated there had been no recent MRI scan prior to the injury for comparison purposes, but based on the history and examination results, "it is highly likely that [appellant's] work injury did exacerbate his right knee conditions." According to Dr. Adams, appellant should work with restrictions that included 50-pound lifting and no repeated squatting of knee bending.

On August 26, 2013 appellant requested reconsideration. He indicated that the injury occurred on September 11, 2012 and he reported the injury to his supervisor. Appellant also indicated that he had knee surgery on August 13, 2013.

By decision dated October 24, 2013, OWCP reviewed the merits of the claim for compensation. It found the incident occurred as alleged, but the medical evidence was not sufficient to establish a diagnosed condition causally related to the employment incident. According to OWCP, Dr. Adams did not provide a rationalized medical opinion on the issue.

On April 17, 2014 appellant requested reconsideration. He submitted a November 16, 2013 report from Dr. Thomas, who stated that he had arthroscopic knee surgery on August 3, 2013. Dr. Thomas stated that an MRI scan had shown a medial meniscal tear but "I cannot tell whether it is related to the incident he had at work or whether it is from his [history of] long time foot problems. [Appellant's] foot problems are related to his flat feet and also bunion." Dr. Thomas provides results on examination and stated that appellant was doing better since surgery.

By decision dated June 26, 2014, OWCP determined appellant's request for reconsideration was insufficient to warrant merit review. It found the report from Dr. Thomas was similar to reports of record.

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."<sup>3</sup> 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

## ANALYSIS

In the present case, appellant submitted an application for reconsideration of the October 24, 2013 OWCP decision. He did not attempt to show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument. Appellant did submit a November 16, 2013 report from Dr. Thomas. OWCP had denied the claim for compensation on the grounds that the medical evidence did not establish a diagnosed condition causally related to the September 11, 2012 employment incident. The question is whether the evidence submitted is sufficient to reopen the claim for review of the merits of the claim.

While appellant does not have to submit evidence that is sufficient to establish the claim, he does have to submit relevant and pertinent evidence not previously considered by OWCP. In this regard the November 16, 2013 report from Dr. Thomas is not sufficient to require OWCP to reopen the claim for merit review. He confirms that appellant had a medial meniscus tear of the right knee, which had previously been established. On the critical question of causal relationship with employment, Dr. Thomas states only that she cannot tell whether it is employment-related, referring to a long-standing foot problem related to appellant's flat feet. This does not constitute relevant and pertinent evidence to the medical issue. As the Board has noted, the term "relevant" applies to evidence that makes a factor that is of consequence to the determination more probable or less probable than without the evidence.<sup>5</sup> On the issue of causal relationship between a knee condition and the September 11, 2012 employment incident, the November 16, 2013 report does not provide relevant evidence.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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,

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<sup>2</sup> 5 U.S.C. § 8128(a) (providing 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").

<sup>3</sup> 20 C.F.R. § 10.606(b)(3).

<sup>4</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>5</sup> *J.L.*, Docket No. 13-1010 (issued September 6, 2013).

or submit relevant evidence not previously considered by OWCP. Therefore OWCP properly denied the application for reconsideration without merit review of the claim.

**CONCLUSION**

The Board finds OWCP properly determined that appellant's application for reconsideration was insufficient to warrant a merit review of the claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 26, 2014 is affirmed.

Issued: January 21, 2015  
Washington, DC

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

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

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