

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

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**B.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Louisville, KY, Employer**

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**Docket No. 16-1778  
Issued: August 24, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 7, 2016 appellant filed a timely appeal from a July 26, 2016 merit decision and an August 19, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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 her diagnosed bilateral knee condition was causally related to factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128.

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

<sup>2</sup> Appellant submitted additional medical evidence with her appeal that was not part of the record when OWCP issued its August 19, 2016 decision. The Board's jurisdiction, however, is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On May 5, 2016 appellant, a 53-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral hip and knee conditions in the performance of duty on or about December 23, 2015. She attributed her conditions to excessive standing, bending, stooping, and going up/down steps. Appellant also indicated that she sat for extended periods and that her job required repetitive rising from a seated position. She stated that over time the identified employment activities aggravated her bilateral knee osteoarthritis and bilateral hip bursitis.

In a separate, undated statement, appellant asserted that her job required repetitive activities such as retrieving letters, tubs, trays, and mail flats from the mail distribution case in her work area and moving the various items to the sorting area. The items reportedly weighed from a couple of ounces to 10 or more pounds. Appellant also reported having had to occasionally lift sacks of mail from the floor and the surrounding area. She indicated that she was also required to push mail hampers and sort parcels, lifting them from the hampers. On a daily basis, appellant made three or four trips pushing a hamper on uneven pavement to the parking lot to load parcels into her mail truck. In addition, she noted that while driving her mail vehicle she had to constantly brake and apply her foot to the gas pedal. Once appellant arrived on a street, she had to deliver mail to mailboxes, walk up numerous steps at houses, and deliver mail to apartment buildings with as many as three flights of stairs. She asserted that, over time, these activities aggravated her bilateral hip and knee conditions.

On June 22, 2016 OWCP advised appellant that it required additional factual information, as well as medical evidence in support of her claim. It requested that she submit a comprehensive report from a treating physician describing her symptoms and the medical reasons for her conditions, with an opinion as to whether her claimed conditions were causally related to her federal employment. OWCP afforded appellant 30 days to submit this evidence.

In a June 17, 2016 report, Dr. Akbar Nawab, a Board-certified orthopedic surgeon, advised that appellant had bilateral knee pain. He related that she continued to have severe, worsening pain around the anterior compartments of both knees. Dr. Nawab reported that appellant experienced difficulty getting up from a chair. He also noted that she had recently tried to modify her activities and utilized some off-the-shelf bracing. Dr. Nawab diagnosed bilateral patellofemoral osteoarthritis. He advised that he would treat appellant with injections for now but that, given the severity of arthritis in her patellofemoral joints, he believed that the only option that would give her significant pain relief was patellofemoral joint replacements. Dr. Nawab restricted appellant to working on level surfaces, with no squatting, crawling, stair climbing, or lifting in excess of 20 pounds.

Appellant also submitted a June 17, 2016 attending physician's report (Form CA-20) from Dr. Nawab who diagnosed preexisting osteoarthritis that was "[a]ggravated by work."

OWCP received a June 29, 2016 supplemental statement from appellant outlining the duties she believed caused or aggravated her bilateral hip and knee conditions. The description was consistent with her previously submitted statement. Additionally, appellant indicated that she did not engage in any physical activities outside of her federal employment. She explained

that her conditions would not allow her to perform her job duties, let alone any social or recreational activities.

By decision dated July 26, 2016, OWCP found that appellant failed to meet her burden of proof to establish that her claimed condition was causally related to the accepted employment factors. It noted that Dr. Nawab's reports were insufficient to establish that the diagnosed knee osteoarthritis was causally related to the accepted employment factors.

On August 12, 2016 appellant requested reconsideration. She resubmitted Dr. Nawab's June 17, 2016 reports, as well as her previous narrative statement. OWCP also received a rural carrier position description.

In an August 19, 2016 decision, OWCP denied appellant's application for reconsideration. It noted that the medical evidence appellant submitted was cumulative, and that the position description was irrelevant to the medical issue of causal relationship. Consequently, OWCP found that there was insufficient evidence to warrant further review of its July 26, 2016 decision.

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

A claimant seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>5</sup>

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

The Board finds that appellant has failed to submit medical evidence containing a rationalized, probative opinion relating her claimed bilateral knee osteoarthritis to factors of her

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>5</sup> *Victor J. Woodhams, id.*

employment. For this reason, she has not met her burden of proof to establish her claim that this condition was sustained in the performance of duty.

Dr. Nawab's June 17, 2016 narrative report noted appellant's complaints of left knee pain and presented a diagnosis of bilateral patellofemoral osteoarthritis. He administered injections, but advised that appellant would probably require patellofemoral joint replacements, as this was the only option that would provide significant pain relief. Dr. Nawab restricted appellant to performing work on level surfaces, with no squatting, crawling, stair climbing, or lifting exceeding 20 pounds. He did not specifically address the cause of appellant's bilateral knee condition. As such, Dr. Nawab's report is of limited probative value and is insufficient to establish his claim.<sup>6</sup>

Dr. Nawab's June 17, 2016 attending physician's report (Form CA-20) did not provide a probative, rationalized medical opinion that appellant's osteoarthritis was causally related to employment factors. He indicated that appellant's condition was "[a]ggravated by work." However, Dr. Nawab did not explain how appellant's specific rural carrier duties aggravated her osteoarthritis. A physician's opinion on causal relationship is of limited probative value when it does not contain any medical rationale explaining how or why the diagnosed condition is employment related.<sup>7</sup> Dr. Nawab did not describe appellant's job duties or explain the medical process through which such duties would have been competent to either cause or aggravate appellant's osteoarthritis. As such, his attending physician's report (Form CA-20) was insufficient to establish that appellant's claimed bilateral knee condition was causally related to her employment.

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 review of an OWCP decision as a matter of right.<sup>8</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>9</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>10</sup> A timely application for reconsideration, including all supporting documents, must set

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<sup>6</sup> See *M.W.*, Docket No. 17-0097 (issued April 11, 2017) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>7</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>8</sup> This section provides in pertinent part: "[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." 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.607.

<sup>10</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

forth arguments and contain 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 new evidence not previously considered by OWCP.<sup>11</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>12</sup>

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

Appellant's August 12, 2016 request for reconsideration was timely filed. However, she neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance any relevant legal arguments not previously considered by OWCP. The Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).<sup>13</sup>

Appellant also failed to submit any relevant and pertinent new evidence with her August 12, 2016 request for reconsideration. The issue on reconsideration was whether there was causal relationship between appellant's bilateral knee osteoarthritis and her accepted rural carrier duties. Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>14</sup> The rural carrier position description therefore cannot suffice for purposes establishing causal relationship as it does not constitute medical evidence. Any medical evidence which OWCP relies upon to resolve an issue must be in writing and signed by a qualified physician.<sup>15</sup> Lastly, appellant resubmitted Dr. Nawab's June 17, 2016 reports, which OWCP had previously found deficient. Providing additional evidence that either repeats or duplicates information already of record does not constitute a basis for reopening a claim.<sup>16</sup> Because appellant did not provide any probative relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>17</sup> Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

### **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish that her diagnosed bilateral knee condition was causally related to accepted factors of her federal

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<sup>11</sup> 20 C.F.R. § 10.606(b)(3).

<sup>12</sup> *Id.* at § 10.608(a), (b).

<sup>13</sup> 20 C.F.R. § 10.606(b)(3)(i) and (ii).

<sup>14</sup> *See Robert G. Morris*, 48 ECAB 238 (1996).

<sup>15</sup> *James A. Long*, 40 ECAB 538 (1989).

<sup>16</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

<sup>17</sup> 20 C.F.R. § 10.606(b)(3)(iii).

employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19 and July 26, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 24, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board