

OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).³

On appeal, appellant contends that the medical evidence of record supports that he was injured while performing his federal duties.

FACTUAL HISTORY

On August 11, 2015 appellant, then a 28-year-old senior firefighter, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2015 he was mopping up after a fire when he slipped and his left foot stuck between two rocks. He indicated that he fell backward while his leg stayed in the same place. Appellant noted that he felt a tear on the inside of his left knee. He listed the nature of his injury as sprain.

By letter dated August 28, 2015, OWCP informed appellant that his claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that based on these criteria and because the employing establishment had not controverted the claim, payment of a limited amount of medical expenses was administratively approved. However, as appellant's medical bills had exceeded \$1,500.00, OWCP informed him that further evidence, including medical evidence was necessary to support his claim. It afforded appellant 30 days to submit the evidence.

An x-ray taken on July 26, 2015 of appellant's left knee was interpreted by Dr. Alexander C. Guo, a Board-certified radiologist, as showing no evidence of fracture or dislocation. He noted a question with regard to small joint effusion.

In an August 20, 2015 report, Dr. Brian Gilmer, a Board-certified orthopedic surgeon, described appellant's employment incident and history and the results of his physical examination. He concluded that appellant had left knee pain and internal derangement of his knee. Dr. Gilmer noted that his history and clinical examination were consistent with intraarticular pathology and therefore a magnetic resonance imaging (MRI) scan was medically indicated to evaluate the soft tissue of the joint.

An x-ray of the left knee taken on August 20, 2015 was interpreted by Dr. Don Harrell, a Board-certified radiologist, as showing dystrophic calcification in the quadriceps femoris tendon which could be due to a prior injury and minimal degenerative changes in the medial compartment of the right knee joint.

By decision dated October 7, 2015, OWCP denied appellant's claim as the medical evidence of record failed to demonstrate that the claimed medical condition was causally related to the established employment incident.

³ On appeal, appellant submitted new evidence. However, the Board's jurisdiction is limited to the review of evidence that was before OWCP at the time it issued its final decision. Thus, the Board may not consider new evidence for the first time on appeal. See 20 C.F.R. § 501.2(c)(1).

By letter and appeal request form dated November 16, 2015 and received by OWCP on November 30, 2015, appellant requested reconsideration. He contended that the evidence established that he was injured during his federal employment at the Kyburz fire on July 25, 2016. Appellant noted that he had an x-ray on July 26, 2015 and that he saw Dr. Gilmer on August 20, 2015. He related that Dr. Gilmer requested an MRI scan as he thought he may have torn his anterior cruciate ligament (ACL), but that the request was denied. Appellant argued that OWCP believed that the injury was caused by a prior workers' compensation injury that occurred in 2009 when he suffered a laceration to the left leg which resulted in a quad tendon tear but he contended that he tore his ACL in the July 25, 2015 incident. With his request, he resubmitted a copy of the October 7, 2015 decision, a copy of his traumatic injury claim, and a copy of Dr. Gilmer's August 20, 2015 report.

By decision dated January 21, 2016, OWCP denied appellant's request for reconsideration without conducting a merit review.

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁵ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the

⁴ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁶ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that the employment incident occurred as alleged on January 25, 2015. It also determined that the evidence established a medical diagnosis. However, OWCP denied appellant's claim as he failed to establish a causal relationship between the accepted employment incident and the accepted medical diagnosis.

The Board finds that appellant has not met his burden of proof. Dr. Gilmer noted in his August 20, 2015 report that appellant had left knee pain and internal derangement of his knee. He also noted appellant's employment incident. However, Dr. Gilmer did not provide a clear, rationalized opinion establishing a causal relationship between the employment incident and the internal derangement of his knee. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.⁹ Dr. Gilmer did not provide any medical rationale explaining how appellant's diagnosed left knee internal derangement was caused by the employment incident. As such, this report is of limited probative value on the issue of causal relationship.¹⁰

Similarly, the diagnostic studies do not establish a causal relationship. Dr. Guo interpreted a July 26, 2015 x-ray as showing no fracture or dislocation, although he did note a question with regard to small joint effusion. Dr. Harrell interpreted an x-ray of the left knee as showing dystrophic calcification in the quadriceps femoris tendon and minimal degenerative changes in the medial compartment of the right knee joint. Neither of the radiologists discussed causal relationship. Accordingly, these reports are of limited probative value as neither radiologist provided an opinion on causal relationship.¹¹

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹² Appellant's honest belief that the July 25, 2015

⁸ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁰ *See M.M.*, Docket No. 16-1751 (issued December 27, 2016).

¹¹ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹² *D.D.*, 57 ECAB 734 (2006).

employment incident caused his medical injury is not in question, but that belief, however sincerely held, does not constitute medical evidence to establish causal relationship.¹³

The Board therefore finds that appellant failed to establish that his left knee condition was causally related to his accepted employment incident. Because he has not provided a rationalized opinion supporting causal relationship, appellant has not met his burden of proof.¹⁴

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,¹⁵ 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 evidence not previously considered by OWCP.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

In an October 7, 2015 merit decision, OWCP denied appellant's claim because the evidence of record failed to establish that the diagnosed condition was causally related to the accepted employment incident. Appellant submitted a timely request for reconsideration received by OWCP on November 30, 2015, which was denied without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration. The underlying issue in this case is whether appellant met his burden of proof to establish that accepted July 25, 2015 employment incident caused a left knee condition. This is a medical issue. In support of his reconsideration request, appellant reviewed his medical treatment and contended that OWCP believed his left knee condition was related to a prior incident. His allegations in his reconsideration request neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP. Appellant's allegations did not address the underlying issue in this case.

¹³ *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

¹⁴ *See J.E.*, Docket No 16-0509 (issued September 16, 2016).

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b)(3).

¹⁷ *Id.* at § 10.608(b).

Appellant also resubmitted a copy of his claim form, OWCP's October 7, 2015 decision, and Dr. Gilmer's August 25, 2015 report. These documents do not constitute relevant and pertinent new evidence. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹⁸

Appellant's reconsideration request did not show that OWCP erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by OWCP. Furthermore he did not submit relevant and pertinent new evidence not previously considered by OWCP. Because he failed to meet one of the criteria enumerated under 20 C.F.R. § 10.606(b)(3), appellant was not entitled to further merit review of his claim.

CONCLUSION

The Board finds that appellant has not established that he sustained a left knee condition causally related to the accepted July 25, 2015 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

¹⁸ See *M.D.*, Docket No. 16-0745 (issued February 8, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 21, 2016 and October 7, 2015 are affirmed.

Issued: March 20, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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