

incident; and (2) whether OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 16, 2014 appellant, then a 66-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2014 around 10:00 a.m. he sustained a medial gastrocnemius tear as a result of his right knee buckling while he was loading mail onto a cart and trying to position himself to keep from falling. He stated that he tore a muscle in his right leg. Appellant also noted that his right leg was still recovering from a previous total right knee replacement.

By letter dated January 8, 2015, OWCP informed appellant of the evidence necessary to establish his claim. It noted that he had not provided sufficient medical evidence to establish his claim, because no diagnosis had been provided, and no opinion from a physician as to the cause of his alleged injury. OWCP requested that appellant submit additional evidence and afforded him 30 days to do so.

In a report dated November 19, 2014, Dr. Craig H. Phillips, a Board-certified family practitioner, examined appellant and diagnosed him with right leg sprain. He noted that at around 10:00 a.m. on that date appellant tripped and immediately developed pain in the upper right calf. Dr. Phillips noted that appellant's medical history included a right knee replacement on January 22, 2014. He recommended no weight-bearing for the next week. Dr. Phillips noted that appellant was followed by an orthopedic surgeon for arthritis in the right knee.

In a note dated December 4, 2014, Dr. Nicholas R. Harding, a Board-certified orthopedic surgeon, examined appellant, stating that his right knee was status post arthroplasty, and doing well with good range of motion and a stable joint. On examination of an x-ray he noted that the articular surface of the right knee medial compartment was reasonably well-preserved, along with the other segments of the knee. Dr. Harding diagnosed internal derangement of the left knee on the basis of a physical examination. He further noted that appellant would need physical therapy for a right knee medial gastrocnemius tear.

By decision dated February 9, 2015, OWCP denied appellant's claim for compensation. It accepted that the employment incident occurred as alleged. However, OWCP found that appellant had not submitted a medical report containing a well-reasoned medical opinion as to how the incident of November 19, 2014 caused a diagnosis of "left" knee meniscus tear.

On February 20, 2015 appellant requested a review of the written record before an OWCP hearing representative.

By letter dated February 18, 2015, appellant noted that, while he had a separate workers' compensation claim for an injury to his left knee, the present claim was for the gastrocnemius tear in his right leg, and as such the February 9, 2015 denial was not accurate.

By decision dated July 22, 2015, a hearing representative affirmed OWCP's decision dated February 9, 2015. The decision did not address OWCP's mischaracterization of appellant's injury under the present claim as for his left lower extremity. OWCP found that

appellant had not submitted sufficient evidence to establish that his right knee medial gastrocnemius tear was caused by the incident of November 19, 2014.

By letter dated July 27, 2015, appellant requested reconsideration. In support of his request, he submitted numerous reports from physical therapists, urinalysis reports, and a prescription slip.

By decision dated February 25, 2016, OWCP reviewed the merits of appellant's case and affirmed the decision of July 22, 2015. It noted that he had not submitted a report from a physician containing a well-reasoned explanation of the causal relationship between his diagnosed right medial gastrocnemius tear and the incident of November 19, 2014.

On April 15, 2016 appellant again requested reconsideration. With his request, appellant submitted a direct deposit sign-up form.

By decision dated July 20, 2016, OWCP denied appellant's request for reconsideration, noting that he had not submitted relevant and pertinent new evidence in support of his claim.

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 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.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ 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.⁸

³ *Id.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁵ *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4.

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁹ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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 compensable employment factors.¹² 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.¹³

ANALYSIS -- ISSUE 1

The Board finds that the medical evidence submitted by appellant is insufficient to establish that the incident of November 19, 2014 caused a right knee injury.

Appellant submitted several medical reports containing diagnoses, but did not submit any reports containing a well-reasoned and explicit opinion from a physician as to the cause of appellant's diagnosed right knee condition. In a report dated November 19, 2014, Dr. Phillips examined appellant and diagnosed him with leg sprain. He noted that at around 10:00 a.m. on that date, appellant tripped and immediately developed pain in the upper right calf. Dr. Phillips also noted appellant's medical history of total right knee replacement and arthritis of the right knee. However, he did not offer a rationalized medical opinion explaining how appellant's knee buckling while he was loading mail caused a leg sprain. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically-sound explanation of how the claimed work event caused or aggravated the claimed condition.¹⁴

In a note dated December 4, 2014, Dr. Harding related that appellant was status post arthroplasty of the right knee and that appellant would need physical therapy for a right knee

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

¹⁰ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

¹² *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹³ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

medial gastrocnemius tear. This report, while probative on the issue of appellant's diagnosis, does not contain a sufficient biomechanical explanation of how the event of November 19, 2014 caused or aggravated his right medial gastrocnemius tear. This is especially important given appellant's preexisting right knee conditions of arthritis and total knee replacement.¹⁵

OWCP has also received reports from physical therapists. However, the Board has held that reports signed by a physical therapist are not considered medical evidence as these providers are not considered physicians under FECA.¹⁶

As appellant has not submitted any sufficiently rationalized medical evidence to support his allegation that he sustained an injury causally related to a work-related incident on November 19, 2014, he has not met his burden of proof to establish his claim.¹⁷

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), 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.¹⁸ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁹

ANALYSIS -- ISSUE 2

OWCP issued a February 25, 2016 decision, denying modification of a July 22, 2015 decision which found that appellant had not submitted sufficient medical evidence to establish causal relationship between the November 19, 2014 work incident and his diagnosed right medial gastrocnemius tear.

¹⁵ *G.M.*, Docket No. 1367 (issued November 19, 2013).

¹⁶ See *David P. Sawchuk*, 57 ECAB 316 (2006) (by individuals such as physician assistants, nurse and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See *Merton J. Sills*, 39 ECAB 572, 575 (1988); *P.R.*, Docket No 14-1007 (issued August 13, 2014).

¹⁷ *Supra* note 12.

¹⁸ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

¹⁹ *Id.* at. § 10.608(b); see *K.H.*, 59 ECAB 495, 499 (2008).

On April 15, 2016 appellant requested reconsideration. With his request, appellant submitted a direct deposit sign-up form.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of his claim. In his April 15, 2016 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance relevant new legal pertinent argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant has submitted sufficient evidence to establish a causal relationship between the November 19, 2014 work incident and appellant's diagnosed medical condition. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any relevant and pertinent new evidence in this case. The only evidence submitted by appellant on reconsideration of the February 25, 2016 decision was a direct deposit sign-up form. While this evidence was not previously reviewed by OWCP, it was irrelevant to the denial of appellant's claim. As such, it was insufficient to warrant reconsideration of appellant's claim.

The Board accordingly finds that appellant has not met 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, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee injury causally related to the accepted November 19, 2014 employment incident. The Board further finds that OWCP properly denied appellant's request reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 20 and February 25, 2016 are affirmed.

Issued: March 22, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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