

FACTUAL HISTORY

On November 4, 2016 appellant, then a 56-year-old manual mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2016 she sustained a right knee injury when she fell after tripping over a green strap on the floor that was tied to some parcels. She first received medical care on October 12, 2016 and notified her supervisor on November 4, 2016. Appellant did not stop work.

In an October 12, 2016 medical report, Dr. W. Steven Wilson, a family practitioner, reported that appellant complained of right knee pain which began following a specific incident two weeks prior, which had gradually worsened. He noted that the pain radiated up to her leg, but the cause was unknown. Dr. Wilson further noted back pain. He provided findings on physical examination, diagnosed right anterior knee pain, and recommended a magnetic resonance imaging (MRI) scan of the right knee.

In an October 20, 2016 diagnostic report, Dr. Eugene Lee, a Board-certified radiologist, reported that a right knee MRI scan revealed an extensive horizontal tear circumferentially involving the lateral meniscus with parameniscal cystic tissue along the lateral joint line. He also noted focal four millimeters (mm) by six mm high-grade chondral defect involving the central posterior lateral tibial plateau articular cartilage with underlying subchondral marrow edema and mild cystic signal, as well as a ganglion cyst within the anterior aspect of the intercondylar notch.

In an undated witness statement, a coworker, T.P., reported that on September 13, 2016 she witnessed appellant trip over a green strap that was wrapped around an empty pallet, causing her to fall to the floor on her knees.

In an October 28, 2016 witness statement, a coworker, C.R., reported that on September 13, 2016 he witnessed appellant trip over a green strap that was wrapped around an empty pallet, causing her to fall to the floor on her knees.

By letter dated November 29, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence necessary to establish her claim. She was afforded 30 days to submit additional evidence.

In a December 15, 2016 medical report, Dr. Wilson reported that appellant was treated on October 7, 2016 for back pain with no injury reported. Appellant returned on October 12, 2016 for complaints of right knee pain with no injury reported. An x-ray was performed on that visit and she was scheduled for a right knee MRI scan. At her follow-up visit on October 21, 2016, Dr. Wilson reviewed the MRI scan which revealed a lateral meniscus tear. On November 14, 2016 appellant returned for treatment of right groin and thigh pain. She then reported that her knee problem was actually due to an injury and that the new groin and thigh pain was possibly related. Appellant was evaluated on November 23 and December 8, 2016 with persistent right thigh pain. Dr. Wilson reported that examination revealed muscle spasm and tenderness in the right thigh. He opined that the knee meniscus tear was certainly consistent with an injury, and the thigh pain was also related due to her inability to use her knee completely from the tear.

Dr. Wilson referred her for an orthopedic evaluation and opined that her thigh issue was related to her previous knee problem.

In a December 16, 2016 narrative statement, appellant responded to OWCP's development letter explaining the incident of her injury when she tripped over a green strap on the floor, causing her to fall down on her hands and knees with more pressure on her right knee. In explaining the delay in filing her claim, she reported that she did not know the severity of her knee injury at the time of the incident because she was on pain medication for her back. Appellant's right knee pain gradually worsened and when she first notified her physician about the condition, she had forgotten about her fall at work as she had been seeking treatment for her back pain. By the time she sought treatment with her physician and underwent the right knee diagnostic testing, it had been about two months after the incident. Appellant reported no prior injury to her right knee and no other injury from September 3 through November 4, 2016.

By decision dated December 30, 2016, OWCP accepted that appellant's right knee injury occurred as alleged, but denied appellant's claim finding that the medical evidence of record failed to establish that her diagnosed right knee injury was causally related to the accepted September 13, 2016 employment incident.

On March 8, 2017 appellant requested reconsideration of OWCP's decision. She submitted an October 28, 2016 narrative statement describing the September 13, 2016 employment incident and subsequent treatment. Appellant also resubmitted Dr. Wilson's October 12, 2016 medical report.

By decision dated April 6, 2017, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included relevant and pertinent new evidence.

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 or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

In order to determine whether an employee actually sustained an 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

³ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁴ Michael E. Smith, 50 ECAB 313 (1999).

actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁶ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that the September 13, 2016 employment incident occurred as alleged. The issue on appeal, therefore, is whether appellant established that the accepted incident caused her right knee injury.

The Board finds that she failed to submit sufficient medical evidence to support that her right knee lateral meniscus tear was causally related to the September 13, 2016 employment incident.⁸

Appellant first sought treatment for her right knee pain on October 12, 2016 with Dr. Wilson, her treating physician. In a December 15, 2016 report, Dr. Wilson diagnosed lateral meniscus tear as noted on a right knee MRI scan. While he provided a firm medical diagnosis of right knee lateral meniscus tear, he failed to provide any opinion on the cause of appellant's injury, only generally noting that the tear was consistent with an injury. In fact, Dr. Wilson noted that appellant reported no injury when initially seeking treatment for right knee pain and did not relate her knee problem to an injury until November 14, 2016 when seeking treatment for right groin and thigh pain. He did not reference the September 13, 2016 employment incident and failed to provide any details pertaining to the incident alleged to have caused appellant's right knee injury. Without any reference of the September 13, 2016 employment incident, Dr. Wilson's report is of limited probative value.⁹ The Board has held that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *See Robert Broome*, 55 ECAB 339 (2004).

⁹ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

whether the employment incident described caused or contributed to the diagnosed medical condition.¹⁰ Although Dr. Wilson related appellant's right knee tear to an injury, he failed to provide an opinion that the right knee lateral meniscus tear was caused by the September 13, 2016 employment incident. As such, his opinion is of limited probative value and insufficient to meet appellant's burden of proof.¹¹

Dr. Lee's October 20, 2016 report is also insufficient to establish appellant's claim as the physician merely interpreted diagnostic studies, but offered no opinion regarding the cause of appellant's diagnosed condition.¹² His report is therefore of limited probative value. Medical opinion evidence must reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated her right knee injury.¹³

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁴ An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁵ Appellant's honest belief that the September 13, 2016 employment incident caused her medical injury is not in question. Belief, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship.¹⁶ In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the September 13, 2016 employment incident and her right knee lateral meniscus tear. Thus, appellant has failed to meet her burden of proof.

Appellant may submit this additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP 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.¹⁷ Section 10.608(b) of OWCP regulations

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹² *C.N.*, Docket No. 16-1597 (issued August 10, 2017).

¹³ *T.G.*, Docket No. 14-751 (issued October 20, 2014).

¹⁴ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁵ *D.D.*, 57 ECAB 734 (2006).

¹⁶ *See J.S.*, Docket No. 17-0507 (issued August 11, 2017).

¹⁷ *D.K.*, 59 ECAB 141 (2007).

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.¹⁸

ANALYSIS -- ISSUE 2

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

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 the claim. In her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant argued that her injury was employment related and described the September 13, 2016 employment incident and subsequent medical treatment,¹⁹ but the underlying issue in this case was whether appellant sustained a right knee injury causally related to the accepted September 13, 2016 employment incident. That is a medical issue which must be addressed by pertinent and relevant medical evidence.²⁰ As well, appellant failed to submit pertinent new and relevant medical evidence in support of her claim.²¹

In support of her claim, appellant resubmitted Dr. Wilson's medical reports previously of record. Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.²² A claimant may obtain a merit review of an OWCP decision by submitting relevant and pertinent new evidence. In this case, appellant did not submit any relevant and pertinent new medical evidence.²³

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). She 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 failed to meet her burden of proof to establish that her right knee lateral meniscus tear was causally related to the accepted September 13, 2016

¹⁸ *K.H.*, 59 ECAB 495 (2008).

¹⁹ *Sherry A. Hunt*, 49 ECAB 467 (1998).

²⁰ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

²¹ *See id.*

²² *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

²³ *M.H.*, Docket No. 13-2051 (issued February 21, 2014); *M.C.*, Docket No. 14-21 (issued March 11, 2014).

employment incident. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of appellant's claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated April 6, 2017 and December 30, 2016 are affirmed.

Issued: November 2, 2017
Washington, DC

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

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

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