



## ISSUE

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

## FACTUAL HISTORY

On April 7, 2014 appellant, then a 54-year-old correspondence examination technician, filed a traumatic injury claim (Form CA-1) alleging that on April 2, 2014, she sustained right knee and back injuries due to tripping over a trash can and falling on her right knee at work.<sup>3</sup> She stopped work on April 3, 2014 and returned to work on April 9, 2014. OWCP accepted appellant's claim for right knee contusion and sprains of her neck and back (lumbar region).

On April 2, 2014 appellant received medical treatment at the Truman Medical Center in Kansas City, Missouri, at which time she reported falling on her right knee at work on that date. The findings of right knee x-rays obtained on April 2, 2014 contained an impression of no acute osseous abnormality, mild-to-moderate tri-compartmental degenerative osteoarthritis, and minimal knee joint effusion.

Appellant received treatment for her medical conditions from Dr. Jonathan D. Schultz, a Board-certified family practitioner. In an April 16, 2014 report, Dr. Schultz discussed her April 2, 2014 fall and reported the findings of his physical examination. He diagnosed sprain of the posterior cruciate ligament of the right knee (grade 1).<sup>4</sup>

Dr. Schultz arranged for appellant to undergo a magnetic resonance imaging (MRI) scan of her right knee on April 22, 2014 which revealed distal quadriceps and patellar tendinosis, medial collateral ligament sprain, tri-compartmental degenerative changes (most advanced in the patellofemoral joint with significant joint space narrowing/chondromalacia), small volume suprapatellar joint effusion, and nonspecific soft tissue edema.

In an April 23, and May 27, 2014 reports, Dr. Schultz diagnosed right knee pain from knee contusion and aggravation of underlying right knee osteoarthritis. He recommended that appellant continue to use a topical analgesic compound.

The record contains personnel records showing that appellant voluntarily resigned from the employing establishment effective June 13, 2014, for "personal reasons" identified as the reason for the resignation. She last worked for the employing establishment on June 6, 2014.

In a July 3, 2014 report, Dr. Schultz noted that appellant reported that her right knee pain was "not much better" despite her participation in physical therapy. He indicated that his physical examination showed tenderness to palpation of the medial joint line of the right knee and he diagnosed aggravation of preexisting osteoarthritis with possible lateral meniscus tear (despite

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<sup>3</sup> Appellant did not sign the (Form CA-1) and it appears that an unidentified individual completed the form on her behalf.

<sup>4</sup> An authorization for examination and/or treatment form (Form CA-17) was issued to appellant on April 10, 2014.

most of the pain being medial in nature). Dr. Schultz recommended that appellant undergo arthroscopic surgery of her right knee.

On July 21, 2014 appellant visited Dr. Akin Cil, a Board-certified orthopedic surgeon, and informed him that she had a chief complaint of right knee pain. She advised him that her right knee pain began after her April 2, 2014 fall at work and reported that the pain was diffuse and located primarily in the anterior of her right knee. Dr. Cil detailed his physical examination findings, including tenderness in the anterior right knee with significant tenderness laterally and less significant tenderness medially along the joint lines. He diagnosed right knee tri-compartmental osteoarthritis and right knee lateral meniscus tear. Dr. Cil advised that he was planning to perform arthroscopic debridement of the right lateral meniscus.

On August 8, 2014 Dr. Cil performed OWCP-approved right knee surgery, including arthroscopy with debridement, removal of a loose body, and abrasion chondroplasty.

In a brief July 6, 2015 report, Dr. Cil had indicated that appellant had right knee osteoarthritis and noted that he gave her a Kenalog/Lidocaine injection in her right knee. In an October 12, 2015 report, he diagnosed tri-compartmental osteoarthritis of the right knee and discussed her treatment options.

In November 2015, appellant filed a claim for compensation (Form CA-7) claiming that she sustained disability for the period June 14 to July 6, 2014 due to her accepted employment conditions.

In a November 24, 2015 development letter, OWCP requested that appellant submit additional evidence in support of her claim for disability for the period June 14 to July 6, 2014.

Appellant submitted an April 16, 2014 duty status report (Form CA-17) in which Dr. Jayden Price, an attending Board-certified osteopath, recommended work restrictions. In an April 23, 2014 attending physician's report (Form CA-20), Dr. Price noted treatment for her back condition on several dates in April 2014.

In a January 11, 2016 decision, OWCP denied appellant's claim for employment-related disability for the period June 14 to July 6, 2014. It found that she failed to submit medical evidence to establish disability for the period June 14 to July 6, 2014 due to her accepted employment conditions.

On February 21, 2016 appellant requested a hearing with a representative of OWCP's Branch of Hearings and Review regarding OWCP's January 11, 2016 decision.

In a May 4, 2016 decision, OWCP determined that appellant was not entitled to a hearing as a matter of right because her hearing request was untimely filed given that it had not been filed within 30 days of its January 11, 2016 decision. It further indicated that it was denying her hearing request because the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered regarding the claim for employment-related disability for the period June 14 to July 6, 2014.

On January 9, 2017 appellant requested reconsideration of OWCP's January 11, 2016 decision.

Appellant submitted a February 1, 2016 report in which Dr. Cil described the physical examination findings from this date, noting that she had tenderness along the lateral aspect of the patella and some medial and lateral joint line tenderness. Dr. Cil diagnosed right knee osteoarthritis.

In a brief April 18, 2016 report, Dr. Cil had indicated that appellant had right knee osteoarthritis and noted that he gave her a Kenalog/Lidocaine injection in her right knee. The findings of April 18, 2016 x-ray testing of appellant's right knee contained an impression of no acute osseous abnormalities, tri-compartmental degenerative joint disease of both knees, mild medial and lateral tibio-femoral joint space narrowing bilaterally, mild patellofemoral degenerative joint disease in both knees (right greater than left), and small right knee joint effusion.

In a September 28, 2016 report, Dr. Cil provided a discussion of the treatment of appellant's right knee condition since April 17, 2014. He discussed various diagnostic tests which were performed on her right knee, noting that the testing showed tri-compartmental osteoarthritis. Dr. Cil indicated that he first saw appellant on July 21, 2014 and indicated that he performed right knee surgery on August 8, 2014. He discussed his postsurgery treatment, noting that he last saw her on April 18, 2016.

Subsequently, in an October 3, 2016 report, Dr. Cil reported the findings of the physical examination he performed on that date. He indicated that, given the failure of conservative treatment, appellant should consider joint replacement surgery for her right knee.

Appellant submitted notes, dated between 2008 and 2014, produced by registered nurses at the employing establishment's health unit.

Appellant also resubmitted documents which had previously been considered by OWCP including April 16 and 23, May 27, and July 3, 2014 reports of Dr. Schultz, July 6, 2014 and October 12, 2015 reports of Dr. Cil, an April 22, 2014 MRI scan report, and documents from the August 8, 2014 right knee surgery.

In an April 4, 2017 decision, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence she submitted in support of her timely reconsideration request was duplicative or irrelevant/immaterial to the underlying issue of her case.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.<sup>5</sup>

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<sup>5</sup> 5 U.S.C. § 8128(a).

A claimant seeking reconsideration of a final decision must present arguments or provide evidence that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup> If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, it will deny the request for reconsideration without reopening the case for review on the merits.<sup>8</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP decision for which review is sought.<sup>9</sup> For OWCP decisions issued on or after August 29, 2011, the date of the application for reconsideration is the “received date” as recorded in the Integrated Federal Employees’ Compensation System (iFECS).<sup>10</sup> If the last day of the one-year time period is a Saturday, Sunday, or a legal holiday, OWCP will still consider a request to be timely filed if it is received on the next business day.<sup>11</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already of record<sup>12</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>13</sup>

### ANALYSIS

Appellant timely requested reconsideration of OWCP’s January 11, 2016 merit decision on January 9, 2017.<sup>14</sup>

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<sup>6</sup> 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>7</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *Id.* at § 10.607(a).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). *See also C.B.*, Docket No. 13-1732 (issued January 28, 2014). For decisions issued before June 1, 1987 there is no regulatory time limit for when reconsideration requests must be received. For decisions issued from June 1, 1987 through August 28, 2011, the one-year time period begins on the next day after the date of the original decision and must be mailed within one year of OWCP decision for which review is sought.

<sup>11</sup> *Id.* at Chapter 2.1602.4. *See also M.A.*, Docket No. 13-1783 (issued January 2, 2014).

<sup>12</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>13</sup> *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>14</sup> Appellant’s request was timely filed because it was received within one year of OWCP’s January 11, 2016 decision. *See supra* notes 9 through 11.

The issue presented on appeal is whether appellant's January 9, 2017 request for reconsideration met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further review of the merits of the claim.

The Board finds that appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP.

The underlying issue in this case is whether appellant submitted medical evidence sufficient to establish employment-related disability for the period June 14 to July 6, 2014.<sup>15</sup> This is a medical issue which must be addressed by relevant medical evidence.<sup>16</sup> A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, however, the Board finds that he or she did not submit such evidence in this case.

In support of her reconsideration request, appellant submitted several reports of Dr. Cil which were dated between February and October 2016. However, while these reports had not previously been submitted, they are not relevant to the main issue of the present case because none of the reports discuss her disability for the period June 14 to July 6, 2014. For example, in his February 1, April 18, and October 3, 2016 reports, Dr. Cil only described his physical examination findings from those dates. In a September 28, 2016 report, he provided a discussion of the treatment of appellant's right knee condition since April 17, 2014, including his treatment of her between July 21, 2014 and April 18, 2016. However, this report does not address her disability for the period June 14 to July 6, 2014. The Board therefore finds that the submission of these reports would not require OWCP to reopen appellant's case for further review of the merits of the claim because, as noted above, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>17</sup>

Appellant also submitted notes, dated between 2008 and 2014, produced by registered nurses at the employing establishment's health unit. However, this evidence would not be relevant to the central issue of this case, which is medical in nature, because these notes were produced by registered nurses who are not considered physicians as defined under FECA and whose reports do not constitute probative medical evidence.<sup>18</sup>

In connection with her reconsideration request, appellant also submitted documents which had previously been considered by OWCP including April 16, 23, May 27, and July 3, 2014 reports of Dr. Schultz, July 6, 2014 and October 12, 2015 reports of Dr. Cil, an April 22, 2014 MRI scan report, and documents from her August 8, 2014 right knee surgery. The Board finds that the submission of these reports would not require OWCP to reopen her case for further review of the merits of the claim because the Board has held that the submission of evidence or argument

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<sup>15</sup> In a January 11, 2016 decision, OWCP found that appellant failed to submit medical evidence sufficient to establish disability for the period June 14 to July 6, 2014 due to her accepted employment conditions.

<sup>16</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>17</sup> See *supra* note 13.

<sup>18</sup> *R.S.*, Docket No. 16-1303 (issued December 2, 2016).

which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>19</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

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).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2018  
Washington, DC

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

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

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

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<sup>19</sup> See *supra* note 12. The Board notes that an authorization for examination and/or treatment form (Form CA-16) was issued to appellant on April 10, 2014. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).