

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

C.H., Appellant	)	
	)	
and	)	<b>Docket No. 17-0266</b>
	)	<b>Issued: May 17, 2018</b>
DEPARTMENT OF AGRICULTURE,	)	
U.S. FOREST SERVICE, Hayward, WI,	)	
Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 8, 2016 appellant filed a timely appeal from a May 12, 2016 merit decision and an August 30, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from May 12, 2016, the date of OWCP's last merit decision, was November 8, 2016. Since using November 15, 2016, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is November 8, 2016, rendering the appeal timely filed with respect to OWCP's May 12, 2016 merit decision. See 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant provided the Board additional evidence that was not part of the record when OWCP issued its August 30, 2016 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that his left knee condition is causally related to the November 7, 2015 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On November 9, 2015 appellant, then a 44-year-old law enforcement officer, filed a traumatic injury claim (Form CA-1) for a knee injury that allegedly occurred in the performance of duty on November 7, 2015. He explained that he was kneeling on the ground to provide detailed, step-by-step instructions to a group of officers. Appellant stated that when his "right" knee made contact with the ground, it made a popping noise. He then "rolled to [his] back and slightly straightened it, making it pop again." Appellant indicated that he finished the training day, and experienced pain for the remainder of the session. He reported that his knee was swollen and was painful to walk on.

On November 9, 2015 Dr. Benjamin F. Turner, a Board-certified family practitioner, evaluated appellant for complaints of a left knee injury. Appellant reported having been involved in a defensive tactical training course two days prior. Dr. Turner noted that appellant "jumped down from a height, landing on his left knee" and felt a popping sensation. Since then, appellant's knee was reportedly unstable and he had difficulty fully straightening it. He noted some swelling the following morning, but presently there was no appreciable bruising, and the swelling had subsided with icing, but he continued to have difficulty bearing weight and with instability. On physical examination, Dr. Turner noted considerable discomfort with weight bearing and evidence of a mild joint effusion, but no bruising and no joint line tenderness. He further noted a small amount of laxity in all the major ligaments when compared to the right side, and somewhat more laxity with testing of the medial collateral ligament (MCL) and perhaps the posterior cruciate ligament (PCL). Dr. Turner also noted that McMurray's test was negative. Left knee x-rays obtained that day demonstrated normal joint spaces and no appreciable fractures. However, Dr. Turner noted the presence of some loose bodies posteriorly, which appeared to be chronic.<sup>4</sup> He expressed some concern for possible MCL versus PCL injury, and therefore, recommended a magnetic resonance imaging (MRI) scan. In the interim, Dr. Turner advised appellant to continue icing, elevation, and rest. He also provided appellant with a hinged knee brace for additional stability.

A November 24, 2015 left knee MRI scan revealed a medial meniscus tear, grade two MCL sprain, a very small knee joint effusion, and a small popliteal cyst.

On November 30, 2015 Dr. Turner spoke with appellant *via* telephone regarding the results of his recent left knee MRI scan. He noted that appellant continued to be symptomatic with some locking and catching. Dr. Turner referred appellant to an orthopedist.

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<sup>4</sup> Dr. Turner noted that a final radiology read was pending. The films were subsequently reviewed by Dr. Robert G. Lind, a Board-certified diagnostic radiologist, who reported minimal degenerative arthritic changes in the knee joint, slight narrowing of the medial joint space, a small calcific density near the proximal tip of the fibula, which was of questionable significance, and evidence suggestive of an effusion.

In a December 1, 2015 work capacity evaluation (OWCP-5c), Dr. Turner indicated that appellant was disabled from work. He noted that appellant had an acute left medial meniscus and MCL injury that limited his ability to ambulate or stand for any period of time, and that he was awaiting an orthopedic consultation for definitive treatment.

On December 8, 2015 Dr. Justin S. Cummins, a Board-certified orthopedic surgeon, examined appellant for complaints of left knee pain. He noted a history of injury at work on November 7, 2015 when appellant was teaching self-defense maneuvers. As appellant was demonstrating a maneuver, one of the trainees grabbed a hold of his leg. Appellant twisted, and they both fell to the ground. Dr. Cummins reported that appellant felt a pop and had significant pain afterwards. He tried resting it and experienced some swelling. Appellant initially felt like his condition was slowly improving, but then as he attempted to increase activity on uneven ground, his symptoms recurred. Dr. Cummins reported that appellant continued to feel pain and catching, mostly on the medial side. Appellant denied any prior issues with his knee. Dr. Cummins examined appellant's left knee, and he independently reviewed the recent x-rays and MRI scan. He diagnosed left knee symptomatic medial meniscus tear, and recommended left knee arthroscopy with likely partial medial meniscectomy. Lastly, Dr. Cummins advised that appellant was capable of sedentary duty until surgery. Appellant's work limitations included no bending, kneeling, or climbing.

In a December 17, 2015 development letter, OWCP advised appellant that the medical evidence submitted was insufficient to establish that the diagnosed condition was caused or aggravated by the work injury. It afforded him 30 days to submit additional medical evidence. OWCP's December 17, 2017 correspondence was subsequently returned as undeliverable.

By decision dated January 21, 2016, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed injury and the accepted employment incident of November 7, 2015.

On February 12, 2016 appellant requested reconsideration.

In a February 5, 2016 report, Dr. Turner noted that he initially evaluated appellant on November 9, 2015 for a knee injury sustained on November 7, 2015 "while teaching a tactical course." He reiterated that appellant "jumped down from a height landing on his left knee," and felt a popping sensation, with subsequent difficulty with instability and an inability to fully straighten his knee. Dr. Turner also noted that he had referred appellant for an MRI scan, which revealed a medial meniscus tear and a grade two MCL sprain. He then referred appellant to Dr. Cummins, who examined him on December 8, 2015, and agreed with the diagnosis of left knee symptomatic medial meniscus tear, and recommended arthroscopic surgery. Dr. Turner noted that in his initial evaluation on November 9, 2015, he clearly explained how the accident occurred, and that this was "clearly ... a work-related incident."

In a March 21, 2016 initial examination report, Dr. Thomas R. Rollie, a family practitioner, noted that appellant injured his "right" knee at work in November 2015 "by jumping." Appellant also felt a popping sensation. Dr. Rollie further noted that Dr. Turner previously treated appellant. He recited the findings and diagnoses provided by Dr. Turner and Dr. Cummins, as well as noting the previously recommended arthroscopic repair. Dr. Rollie also noted that appellant claimed this

was a workers' compensation injury, which he noted he agreed with.<sup>5</sup> Appellant reported that he still had clicking in the knee, but denied any significant pain. Dr. Rollie also reported that appellant believed he was able to resume unrestricted work. He diagnosed left knee medial meniscus tear with resolved MCL sprain. Dr. Rollie also indicated that appellant could return to regular work requirements.

By decision dated May 12, 2016, OWCP denied modification of its prior decision, finding that appellant had not established that his diagnosed left knee condition was causally related to the accepted November 7, 2015 employment incident. It noted that the reports of Dr. Turner and Dr. Rollie were based on an inaccurate factual history.

On June 23, 2016 appellant again requested reconsideration.

In a separate statement dated June 6, 2016, appellant described the November 7, 2015 training incident as follows:

“[D]uring the training day ... I was moving and speaking at a high rate of speed, and was required to show many training techniques over and over again. The movements would require me to drop to the ground in a very forceful manner while at the same time wearing the weight of a full duty belt with all components attached. And while dropping to the ground (from an elevated position and in a forceful manner) to show a technique, I heard and felt an audible popping noise in my left knee. I finished showing the technique and while trying to get back up and putting weight on my left knee I felt immediate pain.”

Appellant attributed his “short or incomplete narrative” on the Form CA-1 to the pain and discomfort he experienced at the time. He also explained that the limited amount of space available on the claim form hindered his ability to describe the events in their entirety.

OWCP subsequently received another copy of Dr. Turner's December 1, 2015 OWCP-5c, as well as a duplicate of appellant's November 24, 2015 left knee MRI scan.

By decision dated August 30, 2016, OWCP denied appellant's request for reconsideration of the merits of the claim. It explained that the evidence received was repetitious, and consisted of copies of documentation previously considered. OWCP specifically noted that both the November 24 and December 1, 2015 medical reports were on file prior to issuing its May 12, 2016 decision.

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

An employee seeking benefits under FECA<sup>6</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

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<sup>5</sup> Dr. Rollie reported that appellant worked in law enforcement for the Forest Service.

<sup>6</sup> See *supra* note 2.

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>7</sup>

To determine whether an employee 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>8</sup> The second component is whether the employment incident caused a personal injury.<sup>9</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>10</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>11</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>12</sup> 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 factor(s).<sup>13</sup>

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

OWCP found that appellant established both components of fact of injury. However, it denied his traumatic injury claim because the medical evidence of record was insufficient to establish that the diagnosed left knee conditions were causally related to the accepted November 7, 2015 employment incident. The Board finds that appellant has not met his burden of proof to establish causal relationship.

The November 9, 2015 left knee x-rays, as well as the November 24, 2015 left knee MRI scan are insufficient to establish causal relationship because these diagnostic studies did not specifically address the cause of the diagnosed condition(s). As such, this evidence is of limited probative value with respect to establishing causal relationship.<sup>14</sup>

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<sup>7</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>11</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>13</sup> *Id.*

<sup>14</sup> See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

When Dr. Turner initially examined appellant on November 9, 2015, he reported a history of injury two days prior (November 7, 2015) when appellant participated in a defensive tactical training course and “jumped down from a height, landing on his left knee.” He further reported that appellant felt a popping sensation, and since then had difficulty with instability and fully straightening his knee. At the time, Dr. Turner noted that appellant presented with an acute left knee injury. He expressed concern about a possible MCL versus PCL injury, but did not otherwise provide a definitive diagnosis. Dr. Turner also did not specifically address causal relationship.

After reviewing appellant’s recent left knee MRI scan, Dr. Turner provided a December 1, 2015 work capacity evaluation (OWCP-5c), wherein he noted that appellant had acute left medial meniscus and MCL injuries. However, he did not specifically address causal relationship. As noted, medical evidence that does not address the cause of the diagnosed condition(s) is of limited probative value in establishing causal relationship.<sup>15</sup>

In his February 5, 2016 report, Dr. Turner stated that when he initially examined appellant on November 9, 2015, he “clearly explained how the accident occurred and that this was “clearly ... a work-related incident.” To the contrary, Dr. Turner’s initial report did not include an opinion on causal relationship. He merely reported the history provided by appellant. While the February 5, 2016 report noted his belief that this “clearly was a work-related incident,” Dr. Turner neglected to explain how appellant’s participation in the November 7, 2015 “tactical course” either caused or contributed to the diagnosed left knee medial meniscus tear and/or MCL sprain. A physician’s opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factor(s).<sup>16</sup>

Dr. Turner referred appellant to Dr. Cummins, who examined him on December 8, 2015 and diagnosed left knee symptomatic medial meniscus tear. Dr. Cummins noted a November 7, 2015 history of injury when appellant was teaching self-defense maneuvers, and while demonstrating a maneuver, one of the trainees grabbed a hold of appellant’s leg and then appellant twisted, and they both fell to the ground. The Board notes that neither the November 9, 2015 Form CA-1 nor appellant’s subsequent statement referenced a trainee having grabbed a hold of his leg. A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>17</sup> Apart from what appears to be an inaccurate history of injury, Dr. Cummins similarly failed to definitively attribute appellant’s diagnosed left knee condition to the November 7, 2015 employment incident.<sup>18</sup>

In his March 21, 2016 report, Dr. Rollie diagnosed left knee medial meniscus tear with resolved MCL sprain. He reported that appellant injured his “right” knee at work in November 2015 “jumping” and afterwards he “felt a popping sensation.” Although Dr. Rollie noted his agreement with appellant that this was a workers’ compensation injury, he did not otherwise explain how “jumping” at work in November 2015 either caused or contributed to

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<sup>15</sup> See *supra* note 14.

<sup>16</sup> *Victor J. Woodhams, supra* note 12.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

appellant's diagnosed left knee condition(s). Absent an explanation regarding the nature of the relationship between the diagnosed condition(s) and appellant's specific employment factor(s), Dr. Rollie's opinion is insufficient to establish causal relationship.<sup>19</sup>

In light of the foregoing analysis, appellant failed to meet his burden of proof to establish causal relationship. He 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>20</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>21</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>22</sup> A timely application for reconsideration, including all supporting documents, must set 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>23</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 a review on the merits.<sup>24</sup>

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

Appellant's June 23, 2016 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by OWCP. He resubmitted a November 24, 2015 MRI scan and Dr. Turner's December 1, 2015 work capacity evaluation (OWCP-5c). The Board finds that the submission of

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<sup>19</sup> *Id.*

<sup>20</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/her] own motion or on application." 5 U.S.C. § 8128(a).

<sup>21</sup> 20 C.F.R. § 10.607.

<sup>22</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 the OWCP 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). Chapter 2.1602.4b.

<sup>23</sup> 20 C.F.R. § 10.606(b)(3).

<sup>24</sup> *Id.* at § 10.608(a), (b).

this evidence did not require reopening appellant's case for merit review because the same evidence was part of the record when OWCP issued its January 21 and May 12, 2016 decisions. As the reports repeat evidence already in the case record, they are duplicative and do not constitute relevant and pertinent new evidence.<sup>25</sup>

The Board finds that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(3), and therefore, OWCP properly denied his request for reconsideration.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his diagnosed left knee condition is causally related to the November 7, 2015 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 30 and May 12, 2016 and decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 17, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy 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

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<sup>25</sup> See *D.K.*, 59 ECAB 141 (2007).