

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 January 18, 2012 appellant, then a 35-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on January 17, 2012, she injured her right knee and lower back when she slipped and fell while in the performance of duty.³ In May 2012, OWCP accepted her claim for lumbar sprain and right knee sprain.

On January 23, 2013 appellant underwent an OWCP-approved right knee arthroscopy with partial medial meniscectomy and shaving of the condylar cartilage.

In a report dated June 12, 2013, Dr. Charlie Talbert, a Board-certified orthopedic surgeon, noted that appellant had degenerative changes to the left knee that predated her right knee injury. He indicated that it was possible that by favoring her right knee, she could have placed more load on the left knee.

On July 30, 2015 appellant underwent a subsequent OWCP-approved right knee arthroscopy with anterior cruciate ligament (ACL) reconstruction, partial medial and lateral meniscectomies, and abrasion chondroplasty.

By letter dated August 22, 2017, appellant requested that OWCP review and accept her left leg/knee condition as a consequential injury. She explained that she had undergone multiple right knee surgeries and during the postoperative periods she had to shift her weight to the left leg because she was unable to bear weight on the right leg. Appellant also noted that she was scheduled for additional right knee surgery in November 2017.

By development letter dated September 27, 2017, OWCP informed appellant that the evidence of record was insufficient to support that her left knee condition was causally related to her accepted right knee condition because it had not received supporting medical evidence. It afforded her 30 days to submit medical evidence, including a reasoned medical opinion as to how her left knee condition was a direct result of the January 17, 2012 incident or due to conditions accepted by OWCP as work related.

By letter dated October 10, 2017, Dr. Calvin Spellmon Jr., Board-certified in pediatric sports medicine, noted that appellant was under his care for severe left knee pain and instability. He explained that, as a result of appellant's right knee injury in 2012, she was forced to overcompensate on her left leg, aggravating her symptoms. Dr. Spellmon noted that she had

³ Appellant indicated that she was working in the critical care unit when her right knee buckled after sliding on some material on the floor. Her knee reportedly hit the floor, and while attempting to break her fall appellant jarred her back.

severe arthritis in the left knee and a recently-discovered torn medial meniscus.⁴ On examination on October 3, 2017, she was found to have severe knee effusion, significant pain, inability to ambulate, as well as severely limited range of motion. Dr. Spellmon opined that, when appellant was forced to rely heavily on her left leg secondary to her fall in 2012, the progression of arthritis in her left knee was aggravated and expedited. In addition, he noted that her meniscal tear was directly related to the progression of arthritis due to the overcompensation.

By decision dated November 1, 2017, OWCP denied expansion of appellant's claim to include an additional diagnosis of a left knee condition. It found that Dr. Spellmon's October 10, 2017 letter was insufficiently rationalized, as it did not contain a thorough medical and factual history of appellant's condition, physical examination, objective clinical findings, an opinion relating the cause and effect of the diagnosed condition to factors of employment, or an explanation of how work activities caused the diagnosed condition.

On February 2, 2018 appellant requested reconsideration of OWCP's November 1, 2017 decision. She reiterated that her various right knee surgeries, including her latest procedure performed on December 21, 2017, forced her to shift her weight to her left leg, which resulted in severe left knee pain.

OWCP received additional evidence since its November 1, 2017 decision, including medical evidence appellant submitted in conjunction with her February 2, 2018 request for reconsideration.

On September 19, 2016 Dr. Anthony Tropeano, a Board-certified orthopedic surgeon, examined appellant for complaints of left knee pain. Appellant informed Dr. Tropeano that she began having left knee pain after her right knee surgery. She described the pain as intermittent and stated that the left knee pain was a result of her original injury, with no injury to the left knee otherwise. On examination of the left knee, Dr. Tropeano noted an effusion value of one, tenderness on palpation, a positive patella femoral grinding test, no instability, no anterior or posterior drawer signs, and negative Lachman and McMurray tests. He diagnosed localized primary osteoarthritis of the left knee, patellar chondromalacia, and hydrarthrosis of the knee/patella/tibia/fibula.

In a report dated October 28, 2016, Dr. Tropeano examined appellant for complaints of right and left knee pain, with right knee buckling. On examination of the left knee, he noted tenderness on palpation, an effusion value of one, no instability, no anterior or posterior drawer signs, and negative Lachman and McMurray tests. Dr. Tropeano diagnosed localized primary osteoarthritis of the left knee, assessing her with left knee joint pain. He administered an injection to the suprapatellar pouch of the left knee.

In a report dated February 10, 2017, Dr. Tropeano discussed the results of a January 16, 2017 right knee MRI scan, which demonstrated a previous ACL reconstruction, generalized

⁴ An October 8, 2017 magnetic resonance imaging (MRI) scan of appellant's left knee demonstrated chondromalacia patellae and a torn medial meniscus.

degenerative changes, evidence of previous partial medial meniscectomy, a focal tear in the mid-body of the lateral meniscus, and evidence of previous patellar tendon graft harvest.

A December 21, 2017 operative report indicated that Dr. Tropeano performed a right knee arthroscopy with partial medial and lateral meniscectomies and abrasion chondroplasty.⁵

Appellant also submitted physical therapy treatment records covering the period January 5 through February 5, 2018. She also resubmitted her October 8, 2017 left knee MRI scan results and Dr. Spellmon's October 10, 2017 report.

By decision dated February 14, 2018, OWCP denied appellant's request for reconsideration. It found that the evidence submitted on reconsideration was irrelevant as to the underlying issue in this case.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁷ 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.⁸ 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.⁹ 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.¹⁰

ANALYSIS

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).

⁵ OWCP authorized appellant's December 21, 2017 right knee arthroscopy.

⁶ 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 own motion or on application." 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.607.

⁸ *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 OWCP's 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). *Id.* at Chapter 2.1602.4b.

⁹ 20 C.F.R. § 10.606(b)(3).

¹⁰ *Id.* at § 10.608(a), (b).

In her February 2, 2018 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She also did not advance a relevant legal argument not previously considered by OWCP. Thus, appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).¹¹

Appellant submitted new evidence, however, it was not relevant and pertinent to support her request for reconsideration. The underlying issue in this case is whether appellant established a left knee consequential injury. The evidence received regarding appellant's December 21, 2017 right knee surgery and postoperative care does not specifically address her claimed left knee consequential injury, and therefore, this evidence is not relevant to the issue on reconsideration. Additionally, Dr. Tropeano's September 19 and October 28, 2016 reports, while referencing appellant's left knee complaints, do not include an opinion on the issue of whether the diagnosed left knee conditions were either caused or aggravated by appellant's work-related right knee injury and subsequent surgeries. Evidence that fails to address the underlying issue on reconsideration is insufficient to warrant further merit review.¹² Lastly, the October 8, 2017 left knee MRI scan results and Dr. Spellmon's October 10, 2017 report were previously of record. Providing evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹³ Because appellant did not provide relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁴

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

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).

¹¹ *Id.* at § 10.606(b)(3)(i) and (ii).

¹² *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁴ 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2019
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