

(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 29, 2018 appellant, then a 39-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2018 he injured his right knee when it struck the metal corner of a secondary inspection area conveyor belt while in the performance of duty.

In a report dated December 20, 2018, Dr. Trong B. Nguyen, a Board-certified orthopedic surgeon, examined appellant and diagnosed internal derangement of right knee. In a work excuse note of the same date, he indicated that appellant was to be off work until January 20, 2019. In a diagnostic report of the same date, Dr. David P. Juice, a Board-certified diagnostic radiologist, administered an x-ray of appellant's right knee and noted an impression of no acute osseous abnormality.

In a report dated January 22, 2019, Dr. Nguyen diagnosed right knee contusion in addition to the previously diagnosed right knee internal derangement. He indicated that appellant was unable to work for two weeks, but then could return to work without restrictions.

In a development letter dated February 22, 2019, OWCP informed appellant that, when his claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work, and thus it administratively approved payment of a limited amount of medical expenses. However, it advised him that his claim was reopened for consideration of the merits because the medical bills had exceeded \$1,500.00. OWCP further informed appellant of the deficiencies of his claim and requested that he provide medical evidence to establish that the diagnosed condition resulted from the alleged incident. It afforded him 30 days to submit the necessary evidence. .

In response to OWCP's development letter, appellant resubmitted Dr. Juice's December 20, 2018 diagnostic report and Dr. Nguyen's January 22, 2019 report.

By decision dated March 28, 2019, OWCP denied appellant's claim finding that the evidence was insufficient to establish that his diagnosed conditions were causally related to the accepted November 28, 2018 employment incident.

On April 30, 2019 appellant requested reconsideration of OWCP's March 28, 2019 decision. He submitted no additional evidence along with his request.

By decision dated May 2, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim.

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 timely filed within the applicable

time limitation period,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.⁵

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.⁶ The second component is whether the employment incident caused a personal injury.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background, 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 incident.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted November 28, 2018 employment incident.

In support of his traumatic injury claim, appellant submitted two narrative reports dated December 20, 2018 and January 22, 2019, and a work excuse note dated December 20, 2018, from Dr. Nguyen. In his reports, Dr. Nguyen diagnosed internal derangement of right knee and right knee contusion. However, he did not provide an opinion as to the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ Because Dr. Nguyen has not provided a reasoned opinion explaining how the November 28, 2018

³ *J.C.*, Docket No. 18-1503 (issued May 2, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *E.S.*, Docket No. 18-1750 (issued March 11, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *J.C.*, *supra* note 3; *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *C.W.*, Docket No. 19-0231 (issued July 15, 2019).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹⁰ *L.C.*, Docket No. 19-0804 (issued August 23, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

employment incident physiologically caused or aggravated appellant's knee condition, his reports are insufficient to establish this claim.¹¹

In his December 20, 2018 diagnostic report, Dr. Juice noted an impression of no acute osseous abnormality. The Board has held that diagnostic reports do not offer an opinion regarding the cause of an employee's condition and are therefore of no probative value on the issue of causal relationship.¹² Thus, Dr. Juice's report is insufficient to meet appellant's burden of proof.

The Board has held that a claimant has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.¹³ Because appellant failed to provide such evidence demonstrating that his diagnosed knee conditions were causally related to the accepted November 28, 2018 employment incident, he has not met his burden of proof to establish his traumatic injury claim.

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

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.¹⁴ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).¹⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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.¹⁶ Section 10.608(b) provides that when a request for reconsideration is

¹¹ *K.J.*, Docket No. 18-1520 (issued June 13, 2019).

¹² *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, No. 17-1549 (issued July 6, 2018).

¹³ *Supra* note 9.

¹⁴ 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 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. *Id.* at Chapter 2.1602.4b.

¹⁶ *Id.* at 10.606(b)(3).

timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁷

ANALYSIS -- ISSUE 2

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

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. As such, 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).

OWCP denied appellant's claim as it determined that he had not established that his diagnosed knee condition was causally related to the accepted November 28, 2018 employment incident. Appellant did not submit additional evidence along with his April 30, 2019 request for reconsideration. Because he has not submitted relevant and pertinent new evidence not previously considered by OWCP, he is not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 condition causally related to the accepted November 28, 2018 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁷ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the May 2 and March 28, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 15, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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