

when she stepped onto her postal truck and her knee hyperextended backwards while in the performance of duty. She stopped work the same day.

In a development letter dated December 11, 2017, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion to provide further details regarding the circumstances of the claimed November 27, 2017 employment incident. OWCP afforded appellant 30 days to respond.

In a November 27, 2017 medical report, Dr. Austen Chai, Board-certified in emergency medicine, noted tenderness and pain in appellant's right knee. He recounted that she injured her right knee while trying to get into her truck at work and also noted her history of arthritis in both of her knees. In a diagnostic report of even date, Dr. Vivek Dave, a Board-certified diagnostic radiologist, reported that an x-ray of appellant's right knee revealed a small right knee effusion with inflammation and no acute osseous abnormality. Based on this diagnostic report and Dr. Chai's evaluation, he diagnosed a right knee injury, prescribed her medication to treat her pain, and referred her to Dr. Yolanda Co, Board-certified in internal medicine.

Appellant submitted a December 11, 2017 duty status report (Form CA-17) with an illegible signature, which provided a diagnosis of a torn/sprained right meniscus and work restrictions.

Appellant also submitted physical therapy notes dated from December 27, 2017 to January 2, 2018 from Vanessa Arce, a physical therapist, detailing treatment for her right knee injury.

By decision dated January 18, 2018, OWCP denied appellant's traumatic injury claim, finding that she failed to satisfy the medical component of fact of injury as she did not submit any medical evidence containing a medical diagnosis in connection with the accepted November 27, 2017 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. Appellant provided physical therapy notes dated from January 8 to 18, 2018 from Ms. Arce.

On February 17, 2018 appellant requested a telephonic hearing before an OWCP hearing representative.

In a November 30, 2017 medical report, Dr. Co noted that on November 27, 2017 appellant heard a pop and then felt pain in her right knee after trying to get into her postal truck. Appellant indicated that she did not fracture her right knee and opined that she likely tore her meniscus. Dr. Co referred her to Dr. Kevin Tu, a Board-certified orthopedic surgeon.

In a December 11, 2017 medical report, Dr. Tu noted that appellant had experienced right knee pain since the November 27, 2017 work incident in which she hyperextended her knee when she stepped into her postal truck. He diagnosed right knee derangement and recommended a magnetic resonance imaging (MRI) scan for further evaluation.

A December 15, 2017 MRI scan of appellant's right knee, performed by Dr. Akash Garg, a Board-certified diagnostic radiologist, revealed a large radial tear to the posterior horn of the medial meniscus and tricompartmental osteoarthritis.

In a December 21, 2017 medical report, Dr. Tu discussed the results of appellant's MRI scan revealing a torn right meniscus and osteoarthritic changes in her right knee. He administered a cortisone shot and prescribed her to physical therapy. In a Form CA-17 of even date, Dr. Tu diagnosed a torn/sprained meniscus and updated appellant's work restrictions.

In a January 18, 2018 medical report, Dr. Tu noted that appellant's symptoms had improved greatly with the cortisone shot and physical therapy and that she now felt that she was able to return to her normal work activities. In a Form CA-17 of even date, he noted that she suffered a torn meniscus when she stepped into her postal truck and provided updated work restrictions.

During a telephonic hearing held on June 22, 2018, appellant again described the November 27, 2017 employment incident and noted that she was diagnosed with arthritis in her knees approximately five years prior. The hearing representative held the case record open for additional evidence. No additional evidence was received.

By decision dated July 31, 2018, OWCP's hearing representative affirmed, as modified, the January 18, 2018 decision, finding that the new evidence submitted by appellant was sufficient to establish the medical component of fact of injury. The claim remained denied, however, because appellant failed to submit a rationalized opinion from her treating physician explaining how her diagnosed meniscus tear and osteoarthritis were causally related to the accepted November 27, 2017 employment incident.

On February 26, 2019 appellant requested reconsideration of OWCP's July 31, 2018 decision.

By decision dated February 27, 2019, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

² 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁶

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).

Appellant filed a timely request for reconsideration on February 26, 2019.⁷ The Board finds, however, that she did not submit evidence with her reconsideration request to establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).⁸

Appellant also failed to submit relevant and pertinent new evidence in support of her February 26, 2019 request for reconsideration. The underlying issue is whether she submitted sufficient evidence to establish a causal relationship between the accepted employment incident and a diagnosed medical condition. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ However, appellant did not submit any additional evidence with her request for reconsideration. Because she did not provide any relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

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

⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit 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.

⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *Supra* note 4; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

⁸ *Supra* note 3.

⁹ *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

¹⁰ 20 C.F.R. § 10.606(b)(3)(iii).

On appeal appellant contends that her claim was originally denied because she did not prove her injury occurred at work and that OWCP erred because the medical evidence of record all states that her injury occurred while she was at work. However, in its July 31, 2018 decision, OWCP found that she failed to submit rationalized medical evidence from her treating physician explaining how and why the accepted November 27, 2017 employment incident caused or contributed to her diagnosed conditions.

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 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 February 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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