

FACTUAL HISTORY

On October 4, 2018 appellant, then a 50-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2018 he reaggravated a left knee condition when a patient he was helping stand up fell to the ground while in the performance of duty. He did not stop work.

In an October 15, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an October 29, 2018 letter, Dr. Michael Cecilio, a Board-certified family practitioner, noted that appellant had been experiencing left knee pain after supporting a patient that collapsed when unable to stand on his own on September 17, 2018. In an accompanying after-visit summary, Dr. Cecilio diagnosed left knee joint pain and referred appellant to an orthopedics department.

An October 31, 2018 after-visit summary indicated that appellant saw Dr. Joseph Carney, a Board-certified orthopedic surgeon, for left knee joint pain.

By decision dated November 26, 2018, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a valid medical diagnosis causally related to the accepted September 17, 2018 employment incident.

On December 18, 2018 appellant requested reconsideration.

April 28 and November 20, 2018 magnetic resonance imaging (MRI) scans of appellant's left knee were submitted to the record and demonstrated mild *versus* complex medial meniscus tearing.

In a December 6, 2018 report, Dr. Carney noted that appellant's left knee pain had not improved since his last visit. He reviewed left knee MRI scans and diagnosed symptomatic left knee complex meniscal tear with potential insufficiency injury to the overlying medial femoral condyle. Dr. Carney opined that when comparing the November MRI scan findings to April MRI scan findings, the acute worsening of appellant's symptoms may have been due to the employment incident in September.

By decision dated March 14, 2019, OWCP modified its November 26, 2018 decision finding that the medical evidence of record provided a valid medical diagnosis, but was insufficient to establish that the diagnosed condition was causally related to the accepted September 17, 2018 employment incident.

On April 22, 2019 appellant requested reconsideration.

In a March 21, 2019 letter, Dr. Carney indicated that appellant had a preexisting degenerative meniscus tear and left knee osteoarthritis that was aggravated by the employment incident. He opined that after reviewing MRI scans of appellant's left knee, it was likely on a

more probable than not basis, that the employment incident was responsible for appellant's worsening left knee conditions.

By decision dated May 17, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It noted that he had not submitted anything in support of his 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 or her 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 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 improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered. Accordingly, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

However, with respect to the third above-noted requirement under 20 C.F.R. § 10.606(b)(3), appellant submitted a March 21, 2019 letter authored by Dr. Carney. The letter

² 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.606(b)(3); *see J.M.*, Docket No. 19-1169 (issued February 7, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁴ *Id.* at § 10.607(a); *see Y.H.*, Docket No. 18-1618 (issued January 21, 2020).

⁵ *Id.* at § 10.608(a); *see S.B.*, Docket No. 19-1320 (issued January 17, 2020); *M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *see N.C.*, Docket No. 19-1378 (issued February 13, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

indicated that appellant had a preexisting degenerative meniscus tear and left knee osteoarthritis that was aggravated by the employment incident.

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.⁷ Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision,⁸ it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,⁹ it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.¹⁰

The Board finds that OWCP improperly failed to consider all the relevant evidence submitted by appellant in denying his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).¹¹ Therefore, the case is remanded to OWCP for consideration of the evidence he submitted in connection with his reconsideration request, to be followed by the issuance of an appropriate decision regarding his reconsideration request.

CONCLUSION

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

⁷ 5 U.S.C. § 8124(a); 20 C.F.R. § 10.126; *see J.J.*, Docket No. 19-0448 (issued December 30, 2019); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁸ *R.P.*, Docket No. 19-0301 (issued August 21, 2019); *K.L.*, Docket No. 16-1341 (issued December 20, 2016); *E.Z.*, Docket No. 14-0274 (issued March 16, 2015); *Linda Johnson*, 45 ECAB 439 (1994).

⁹ *Id.*

¹⁰ *LL*, Docket No. 17-0684 (issued July 18, 2017); *see E.P.*, Docket No. 14-0278 (issued February 26, 2014); *see also William A. Couch*, 41 ECAB 548, 553 (1990).

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 1, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board