



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 December 4, 2018 appellant, then a 56-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging a left knee injury due to factors of her federal employment including prolonged standing on hardwood floors, and kneeling and bending. She noted that she first became aware of the conditions on August 4, 2018 and first realized that her conditions had been caused or aggravated by factors of her federal employment on August 11, 2018. Appellant stopped work on December 6, 2018.

In support of her claim, appellant submitted a December 2, 2018 statement describing her injury. She noted that she cased mail for the box section, approximately three hours per day for the week of August 11, 2018, and noticed that her left knee was swollen and hurting with a burning sensation. Appellant explained that "the more she walked, the worse it felt." She noted that she worked "another hour or so" and decided to go to the emergency room where x-rays of her foot were read as normal. Appellant noted that her injury occurred at work while assisting in the box section which required kneeling, bending, and prolonged standing on a hard floor without supporting mats.

In a December 14, 2018 attending physician's report (Form CA-20), Dr. Richard Lucie, a Board-certified orthopedic surgeon, noted that appellant "had not described a work-related injury." He indicated that a magnetic resonance imaging (MRI) scan of appellant's left knee revealed a partial anterior cruciate ligament tear, a tear of the medial and internal meniscus, and chondromalacia. Dr. Lucie proposed a left knee arthroscopy, medial and lateral meniscectomy, partial chondroplasty, and a medial femoral condyle and multiple compartment synovectomy. He indicated that appellant was totally disabled from December 7, 2018 to February 1, 2019.

In a development letter dated December 26, 2018, OWCP advised appellant of the factual and medical deficiencies of her claim. It informed her of the evidence necessary to establish her claim and provided a questionnaire for her completion regarding the circumstances of the injury. OWCP afforded appellant 30 days to respond. It also sent a development letter of even date to the employing establishment requesting information regarding appellant's employment duties in relation to her claim.

In a letter dated January 11, 2019, C.B., an employing establishment human resources specialist, controverted the claim. She asserted that appellant failed to provide medical rationale to demonstrate that the claimed condition was causally related to factors of her employment. OWCP also received responses to questions from the employing establishment on January 14, 2019 which in part indicated that appellant had foot surgery on March 1, 2018, was off work for five months, and returned to work on August 8, 2018. The responses also indicated that appellant complained of swelling in her knee three days after she returned to work. OWCP reported that appellant only stood for 2.5 hours consecutively, and that her duties were primarily administrative and required minimal physical activity.

OWCP received a copy of appellant's job description along with physical therapy reports dated December 10, 2018 and January 23, 2019. It also received a December 7, 2018 operative report from Dr. Lucie, documenting the arthroscopic procedures performed on that date.

A December 10, 2019 MRI scan of the left knee was a report to reveal a partial thickness tear of the distal anterior cruciate ligament, complex tearing of the body and posterior horn of the medial meniscus, oblique tear of the body of the lateral meniscus with a small to moderate effusion, and a partial thickness chondromalacia of the medial compartment.

In a September 14, 2018 report, Dr. Lucie noted that appellant had a left toe bunionectomy on May 23, 2018, and was out of work until August 7, 2018. He indicated that appellant worked for a week and then her left knee became swollen. Dr. Lucie diagnosed left knee effusion. In an October 8, 2018 report, he diagnosed left knee synovitis and left knee synovitis with effusion. In an October 17, 2018 report, Dr. Lucie noted that appellant was examined for follow up of her left knee and diagnosed a medial and lateral meniscus tear of the left knee. He recommended a left knee arthroscopy. Dr. Lucie also saw appellant for follow-up appointments on December 18, 2018, and January 8 and 14, 2019.

In a January 8, 2019 report, Dr. Lucie noted appellant's history of a left toe bunionectomy on May 23, 2018, and her return to work on August 7, 2018. He indicated that, after a week of work, her left knee became swollen. Dr. Lucie opined "there was no history that appellant sustained an injury at work, but that her return to work seemed to flare up her knee, but he could not directly relate the flare up to something in her job."

By decision dated February 13, 2019, OWCP denied appellant's claim finding that the medical evidence submitted did not establish that the claimed left knee conditions were causally related to her work events or factors of employment.

On March 15, 2019 appellant requested reconsideration. She argued that she had not been aware of her knee conditions until the MRI scan was performed and revealed a torn meniscus, that her physician incorrectly wanted her to file a traumatic injury claim and not an occupational disease claim despite his noting her repetitive work on hard floors and lifting heavy packages would cause injury, and she disagreed with the date of injury and explained that she was not at work on August 4, 2018, and had not returned until August 7, 2018.

OWCP also received a February 14, 2019 return to work note from Dr. Lucie, who indicated that appellant was able to return to work on February 11, 2019, with restrictions.

By decision dated May 15, 2019, OWCP denied appellant's request for reconsideration of the merits of her 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 of FECA,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the employee.<sup>8</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup>

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>10</sup>

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

The Board finds that appellant has not met her burden of proof to establish left knee conditions causally related to the accepted factors of her federal employment.

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *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).

<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *I.D.*, Docket No. 18-1118 (issued December 31, 2018); *R.B.*, Docket No. 18-0720 (issued November 13, 2018).

<sup>7</sup> *K.L.*, Docket No. 18-0937 (issued December 28, 2018).

<sup>8</sup> *See supra* notes 4 and 5.

<sup>9</sup> *See supra* note 5; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *See N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

In support of her claim, appellant submitted several reports from her treating physician, Dr. Lucie. However, Dr. Lucie consistently indicated that there had been no employment-related injury. In his December 14, 2018 Form CA-20, he noted that appellant “had not described a work-related injury.” Additionally, in his January 8, 2019 report, Dr. Lucie noted appellant’s history of a left toe surgery and opined “there was no history that she injured herself at work, but her knee seemed to flare up when she returned to work, however, he could not directly relate the flare up to something in her job.” As appellant’s treating physician, Dr. Lucie, has indicated that her injury was not work related, his reports do not support appellant’s claim. As his reports are unresponsive to appellant’s claim, they are therefore insufficient to meet her burden of proof.<sup>11</sup>

Appellant also submitted an MRI scan report. However, the Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant’s employment duties and a diagnosed condition.<sup>12</sup>

As appellant has not submitted rationalized medical opinion evidence which supports that the left knee conditions are causally related to the accepted factors of her federal employment, she has not met her burden of proof to establish her 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(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 payment of compensation at any time on his own motion or on application.<sup>13</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.<sup>14</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP’s decision for which review is sought.<sup>15</sup> If OWCP chooses to grant reconsideration, it

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<sup>11</sup> See *L.W.*, Docket No. 19-0698 (issued September 3, 2019).

<sup>12</sup> See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

<sup>13</sup> 5 U.S.C. § 8128(a).

<sup>14</sup> 20 C.F.R. § 10.606(b)(3); see also *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>15</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 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.

reopens and reviews the case on its merits.<sup>16</sup> 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.<sup>17</sup>

### **ANALYSIS – ISSUE 2**

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).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>18</sup>

The Board further finds that appellant has not submitted relevant and pertinent new evidence not previously considered relative to the issue of whether she has established left knee conditions causally related to the accepted factors of her federal employment. With her reconsideration request, she submitted a statement regarding her disagreement with her physician’s handling of her claim. Appellant’s statement in opposition to her physician is not relevant to the underlying issue in this case, which is whether the medical evidence establishes that she sustained employment-related left knee conditions. As the Board has held, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>19</sup> This is a medical issue that must be addressed by relevant medical evidence, including the rationalized opinion of a physician.<sup>20</sup> Appellant also submitted a February 14, 2019 return to work note by Dr. Lucie, but that report did not address causal relationship. As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under section 10.606(b)(3).<sup>21</sup>

Accordingly, appellant did not meet 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 her burden of proof to establish left knee conditions causally related to the accepted factors of her federal employment. The Board further

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<sup>16</sup> *Id.* at § 10.608(a); *see also A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>17</sup> *Id.* at § 10.608(b); *A.G.*, Docket No. 19-0113 (issued July 12, 2019).

<sup>18</sup> *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>19</sup> *See J.R.*, Docket No. 19-1280 (issued December 4, 2019); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>20</sup> *M.C.*, Docket No. 18-0841 (issued September 13, 2019).

<sup>21</sup> *R.L.*, Docket No. 18-0175 (issued September 5, 2018).

finds that OWCP properly denied her request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 15 and February 13, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 29, 2020  
Washington, DC

Christopher J. Godfrey, 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