

On October 16, 2019 appellant, through her then-counsel, requested reconsideration. Then-counsel argued that OWCP had not reviewed a previously submitted note from the employing establishment stating that appellant reported the incident immediately after the injury, and that OWCP had not reviewed an attached June 27, 2018 treatment note indicating that she sustained a fracture of her right femur and a lateral meniscus tear of her right knee as a result of the claimed March 15, 2018 work injury. He further argued that, despite appellant having preexisting osteonecrosis, the evidence supported that the intervening fall at work was the direct cause. Then-counsel also argued that a district medical adviser should have reviewed the case to determine if the early onset of osteonecrosis could have caused a broken femur and a torn meniscus without the intervening traumatic event. He concluded that the claim should be accepted for an aggravation of a preexisting condition.

OWCP received a copy of a March 15, 2018 report from a nurse indicating that appellant presented with a wrenched right knee. It also received a copy of a June 27, 2018 magnetic resonance imaging (MRI) scan which revealed a closed nondisplaced fracture of the condyle of the right femur, with routing healing, subsequent encounter; tear of the lateral meniscus of the right knee, current, unspecified tear type, subsequent encounter; and primary osteoarthritis of the right knee.

By decision dated October 17, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

The Board finds that this case is not in posture for decision.

Section 8124(a) of FECA provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation. Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.²

In the October 17, 2019 decision, OWCP did not reference or discuss the argument or evidence submitted after the October 17, 2018 merit decision.³ In its decision, it did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, why the argument and evidence had not met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.⁴ This case must therefore be remanded to OWCP for an appropriate decision on appellant's reconsideration request that describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

³ See *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *T.M.*, Docket No. 17-1609 (issued December 4, 2017).

⁴ See *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

Accordingly, the Board will set aside OWCP's October 17, 2019 decision and remand the case for OWCP to review the evidence and argument in support of appellant's reconsideration request and make findings of fact and provide a statement of reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it shall issue an appropriate decision.

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

Issued: November 13, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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