



## ISSUE

The issue is whether 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 February 8, 2017 appellant, then a 56-year-old medical technician, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2017 she injured her right knee while in the performance of duty. She explained that, when she stepped down from a stool she was sitting on, her knee popped and then began to swell a few minutes later. On the reverse side of the claim form the employing establishment indicated that appellant was injured in the performance of duty.

February 16, 2017 progress notes by Dr. Joseph Dougherty, an osteopathic physician Board-certified in family medicine, indicated that appellant presented with right knee pain and swelling that started when she stepped down from a stool at work and heard her knee pop. Appellant's physical examination revealed right knee joint line tenderness. Dr. Dougherty diagnosed a right knee effusion. In a March 2, 2017 report, he diagnosed a right knee effusion and meniscus tear. An April 5, 2017 work status note from Dr. Dougherty related a diagnosis of right knee effusion.

A March 15, 2017 duty status report (Form CA-17) containing an illegible signature indicated that appellant injured her right knee when she rolled from a chair while standing up. Clinical findings included a right knee effusion and meniscus tear and light-duty restrictions were provided. On March 17, 2017 appellant accepted a light-duty assignment.<sup>3</sup>

An April 6, 2017 medical report by Dr. Brianna Bayer, Board-certified in family medicine, indicated that appellant wore a right knee brace due to a work injury. Appellant had related that on April 1, 2017 she was getting into her car when she "overcompensated" and felt a pop in her left knee. Physical examination of appellant's right knee revealed normal results.

April 26, 2017 progress notes by Dr. Brian Mosier, Board-certified in orthopedic surgery, indicated that appellant presented with right knee pain following a February 3, 2017 work injury. Appellant's physical examination of the right knee revealed effusion, tenderness in the medial joint line and patella, and positive patellofemoral grind. Dr. Mosier indicated that a magnetic resonance imaging (MRI) scan of appellant's right knee revealed a meniscus tear and edema, areas of high-grade chondrosis, an effusion, and degeneration. He opined that appellant's pain was likely contributed to her underlying osteoarthritis of the medial and patellofemoral compartment. Appellant followed up with Dr. Mosier on June 30, 2017, at which time he conducted a physical examination, reviewed radiology studies, and diagnosed a right knee medial meniscal tear and osteoarthritis. Dr. Mosier repeated that appellant's pain was likely contributed to by her underlying osteoarthritis of the medial and patellofemoral compartment. Appellant continued to follow up with Dr. Mosier, who continued to diagnose a right medial meniscus tear.

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<sup>3</sup> OWCP received medical evidence regarding an alleged consequential injury to appellant's left knee.

A June 22, 2017 report of work status (Form CA-3) from the employing establishment indicated that appellant returned to full-time regular-duty work on April 6, 2017.

In an August 17, 2017 development letter, OWCP informed appellant that additional evidence was required to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

August 17, 2017 progress notes by Dr. Brian Moore, a Board-certified orthopedic surgeon, indicated that appellant presented with right knee pain. A right knee examination revealed trace effusion, joint-line tenderness, limited range of motion, a right knee x-ray revealed joint space narrowing of the medial compartment, and Dr. Moore additionally reviewed the results of appellant's previous right knee MRI scan. Dr. Moore diagnosed right knee medial meniscal tear and degenerative disc disease and opined that appellant's achiness and pain may be due to her arthritis, and her meniscus tear may be exacerbating her symptoms. He referred appellant for physical therapy.

By decision dated September 29, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that her diagnosed conditions were causally related to her accepted February 3, 2017 employment incident.

On October 16, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant continued to follow up with Dr. Moore, who continued to diagnose a right medial meniscus tear and underlying arthritis in his medical reports and a right medial meniscus tear in his work status notes.

In a March 21, 2018 letter, Dr. Dougherty indicated that on February 3, 2017 appellant felt her knee buckle and pop when she got up off a stool, which could directly lead to a medial meniscus tear. He additionally stated that her current right knee symptoms were directly related to her employment injury.

By decision dated November 20, 2018, an OWCP hearing representative affirmed the September 29, 2017 OWCP decision.

On November 21, 2019 appellant, through then-counsel, requested reconsideration. In an attached letter, then-counsel indicated that there was an enclosed affidavit. No affidavit was received.

By decision dated December 21, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## 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.<sup>4</sup>

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.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</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>8</sup>

## 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 November 21, 2019. The Board finds, however, that she did not show that OWCP erroneously applied or interpreted a specific point of law, 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).<sup>9</sup>

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<sup>4</sup> 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see C.C.*, Docket No. 19-1622 (issued May 28, 2020); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *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 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.

<sup>7</sup> *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *see C.L.*, Docket No. 20-0385 (issued August 5, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *Supra* note 4.

Appellant also failed to submit relevant and pertinent new evidence in support of her November 21, 2019 request for reconsideration. The underlying issue is whether the medical evidence of record is sufficient 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.<sup>10</sup> 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).<sup>11</sup>

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).

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<sup>10</sup> See *J.H.*, Docket No. 18-0932 (issued March 24, 2020); *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

<sup>11</sup> 20 C.F.R. § 10.606(b)(3)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2021  
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