



## **FACTUAL HISTORY**

On February 23, 2022 appellant, then a 39-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on February 19, 2022 he injured his knees, right shoulder, and left arm when trying to apprehend a group of individuals while in the performance of duty. He further explained that he sustained left and right knee scrapes and bruises, as well as pain in the left knee and right shoulder. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In a development letter dated March 1, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed to establish his claim and afforded him 30 days to respond.

OWCP received a work capacity evaluation (Form OWCP-5c) dated March 17, 2022 signed by Dr. Michael Lenihan, a Board-certified orthopedic surgeon. Dr. Lenihan indicated that appellant could work with no restrictions and that appellant had not reached maximum medical improvement. Appellant submitted a work status note of even date from Dr. Lenihan which also allowed appellant to return to work with no restrictions. OWCP received a physical therapy order of even date from Dr. Lenihan recommending treatment of appellant's right shoulder, left elbow, and left knee.

Appellant additionally submitted two magnetic resonance imaging (MRI) scan referral forms from Dr. Lenihan dated March 17, 2022, requesting a right shoulder MRI scan to rule out a labral tear and a left knee MRI scan to rule out chondral defect or chondral flap tear.

By decision dated April 5, 2022, OWCP found that the February 19, 2022 incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 21, 2022 appellant requested reconsideration. No additional evidence or argument was submitted.

By decision dated July 12, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

## **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA, 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

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<sup>2</sup> *Id.*

employment injury.<sup>3</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>4</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can generally be established only by medical evidence.<sup>5</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.<sup>7</sup>

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

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted February 19, 2022 employment incident.

In support of his claim, appellant submitted several reports from Dr. Lenihan dated March 17, 2022. In a work status note and a Form OWCP-5c dated March 17, 2022, Dr. Lenihan related that appellant could return to work without restriction. In a physical therapy order of even date, he referred appellant for physical therapy for unspecified diagnoses related to appellant's right shoulder, left elbow, and left knee. Similarly, in the MRI scan referral forms dated March 17, 2022, Dr. Lenihan referred appellant for MRI scans to rule out medical diagnoses. None of the reports from him, dated March 17, 2022, provided a firm diagnosis or a rationalized medical opinion on causal relationship. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative

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<sup>3</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>4</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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>5</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>6</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>7</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

value.<sup>8</sup> As these reports did not provide a firm diagnosis in connection with the accepted employment incident, they are insufficient to establish appellant's claim.<sup>9</sup>

As the medical evidence of record does not contain a medical diagnosis in connection with the accepted February 19, 2022 employment incident, the Board finds that appellant has not met his burden of proof.

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 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>10</sup>

Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>11</sup> This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence 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>12</sup> Section 10.608(b) provides that, when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

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

Appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered

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<sup>8</sup> *K.H.*, Docket No. 22-0489 (issued August 2, 2022); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>9</sup> *M.O.*, Docket No. 21-1068 (issued March 1, 2022).

<sup>10</sup> 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.608(a).

<sup>12</sup> *Id.* at § 10.606(b)(3); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019).

<sup>13</sup> *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

by OWCP. Consequently, he is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also has not provided relevant and pertinent new evidence not previously considered by OWCP.<sup>14</sup> Therefore, he is also not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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 appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted February 19, 2022 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 5 and July 12, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 20, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> See *S.L.*, Docket No. 21-0201 (issued June 10, 2022); *P.C.*, Docket No. 18-1703 (issued March 22, 2019).