

**United States Department of Labor
Employees’ Compensation Appeals Board**

D.B., Appellant)	
)	
and)	Docket No. 22-0518
)	Issued: November 28, 2022
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Dallas, TX,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 18, 2022 appellant filed a timely appeal from an August 30, 2021¹ merit decision and an October 21, 2021 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant’s wage-loss compensation, effective August 30, 2021, as he no longer had disability causally related to his

¹ The Board notes that, during the pendency of this appeal, OWCP issued a May 24, 2022 merit decision denying modification of the August 30, 2021 merit decision currently on appeal. OWCP’s May 24, 2022 decision is null and void as the Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s) in a case on appeal. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see e.g., M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Lawrence Sherman*, 55 ECAB 359, 360n.4 (2004); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. § 8101 *et seq.*

accepted April 21, 2015 employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 16, 2016 appellant, then a 23-year-old mail handler assistant, filed an occupational disease claim (Form CA-2) alleging that he developed right knee conditions due to the accepted factors of his federal employment, including prolonged periods of standing, loading and unloading mail, and sorting heavy containers and parcels. He noted that his work duties caused swelling and severe pain in his right knee. Appellant indicated that he first became aware of his condition on April 21, 2015 and first realized that it was caused by his federal employment on June 16, 2016. He stopped work on June 20, 2016. OWCP accepted the claim for loose body in the right knee.³ It paid wage-loss compensation on the supplemental rolls beginning June 21, 2016 and on the periodic rolls beginning June 25, 2017.

On November 1, 2016 appellant underwent an OWCP-authorized arthroscopy of the right knee with partial lateral meniscectomy, removal of loose bodies and partial synovectomy. He returned to work on November 10, 2018 in a full-time limited-duty position.

OWCP paid wage-loss compensation on the periodic rolls beginning on July 20, 2019.

On July 24, 2019 appellant underwent an arthrotomy of the right knee with arthroscopic removal of loose bodies, partial synovectomy, and percutaneous chondroplasty of the knee with bone graft to fill voids and defects. On December 8, 2020 Dr. Karim A. Meijer, a Board-certified orthopedic surgeon, performed an OWCP-authorized right knee diagnostic arthroscopy with loose body removal and right knee open osteochondral allograft transplantation.

In a report dated December 22, 2020, Dr. Javaria Jabeen, an osteopath specializing in family medicine, described appellant's employment duties and his accepted employment injuries. She prescribed a regimen of physical therapy, which began on January 5, 2021.

In a March 11, 2021 letter of even date, OWCP requested a medical report from Dr. Jabeen regarding appellant's continuing disability due to the accepted condition, including medical reasons and objective findings in support of additional disability. Dr. Jabeen did not respond.

In a June 3, 2021 report, Dr. Meijer determined that appellant was cleared for all work activities and opined that he could return to football in the fall.

OWCP continued to receive physical therapy notes dated April 6 through July 1, 2021. These notes were cosigned by an unidentifiable physician.

In a notice dated July 22, 2021, OWCP proposed to terminate appellant's wage-loss compensation as the weight of the medical evidence established that he no longer had continuing disability causally related to the accepted April 21, 2015 employment injury. It found that the weight of the medical evidence rested with Dr. Meijer who found that appellant no longer had any

³ OWCP excluded the additional diagnosed conditions of right lateral trochlear osteochondral lesion, right medial meniscus lesion, and right knee chondromalacia patella.

disability causally related to his accepted employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument in writing, if he disagreed with the proposed termination.

Appellant continued to provide physical therapy notes dated July 13 through August 24, 2021. These notes were cosigned by an unidentifiable physician.

By decision dated August 30, 2021, OWCP terminated appellant's wage-loss compensation, effective that date, as he no longer had disability from work as a result of the April 21, 2015 employment injury.

OWCP continued to receive additional evidence. Appellant provided physical therapy notes dated August 26 through 30, 2021. These notes were cosigned by an unidentifiable physician.

Appellant requested reconsideration on September 9, 2021. He provided a copy of his December 8, 2020 surgical report and physical therapy notes dated October 7 through 19, 2021. These notes were cosigned by an unidentifiable physician.

By decision dated October 21, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim for wage-loss compensation on and after August 30, 2021.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective August 30, 2021, as he no longer had disability causally related to his accepted April 21, 2015 employment injury.

OWCP relied upon the report from appellant's surgeon, Dr. Meijer, who on June 3, 2021 cleared appellant for all work activities and noted that he could return to football in the fall. No evidence with a contrary opinion was received.⁶

⁴ See *D.W.*, Docket No. 22-0109 (issued May 17, 2022); *M.E.*, Docket No. 20-0877 (issued August 2, 2021); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ See *D.W.*, *id.*; *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ See *D.W.*, *id.*

As Dr. Meijer's report is based on examination and an accurate history of the employment injury, the Board finds that his report constitutes the weight of the medical evidence.⁷ OWCP therefore has met its burden of proof.

Appellant submitted a series of physical therapy notes dated January through August 2021 signed by an unidentifiable physician. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.⁸

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective August 30, 2021, as he no longer had disability causally related to his accepted April 21, 2015 employment injury.

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 compensation at any time on his own motion or on application.⁹

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.¹⁰

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹¹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹² If the request is timely, but fails to meet at least one of the

⁷ See *D.W., id.; B.B.*, Docket No. 20-1187 (issued November 18, 2021).

⁸ See *G.W.*, Docket No. 20-0057 (issued March 4, 2021); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁹ 5 U.S.C. § 8128(a); see *S.B.*, Docket No. 20-0708 (issued February 11, 2022); *P.M.*, Docket No. 20-0780 (issued November 24, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁰ 20 C.F.R. § 10.606(b)(3); see *P.M., id., J.W.*, Docket No. 19-1795 (issued March 13, 2010); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹¹ *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, *Causal Relationship*, 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.

¹² *Id.* at § 10.608(a); see also *M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹³

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).

In his timely request for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, the Board finds that he 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).¹⁴

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of his September 9, 2021 request for reconsideration. The underlying issue is whether the medical evidence of record is sufficient to establish that appellant had continuing disability causally related to his accepted April 21, 2015 employment injury. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁵

On reconsideration appellant submitted provided additional physical therapy notes dated October 7 through 19, 2021. While this evidence is new, it is not relevant as it did not address whether the accepted condition of loose bodies of the right knee resulted in disability on or after August 30, 2021. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶ As such, this evidence is insufficient to warrant merit review.

Appellant also resubmitted a copy of his December 8, 2020 surgical report from Dr. Meijer. The Board finds that submission of this evidence does not require reopening of his case for merit review, as it had already been considered by OWCP and therefore does not constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁷ Therefore, this report is insufficient to require OWCP to reopen the claim for consideration of the merits.

As appellant did not provide relevant and pertinent new evidence, he is not entitled to a merit based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁸

¹³ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁴ *Id.* at § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁵ *See J.H.*, Docket No. 18-0932 (issued March 24, 2020); *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

¹⁶ *See F.R.*, Docket No. 20-1406 (issued March 2, 2021); *J.R.*, Docket No. 19-1280 (issued December 4, 2019); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁷ *F.R.*, *id.*; *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁸ *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, *supra* note 16.

Accordingly, the Board 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.¹⁹

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective August 30, 2021, as he no longer had disability causally related to his accepted April 21, 2015 employment injury. 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 October 21 and August 30, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 28, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ See *S.B.*, *supra* note 9; *R.G.*, Docket No. 21-0098 (issued May 19, 2021); *D.S.*, Docket No. 18-0353 (issued February 18, 2020).