

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

_____)	
K.D., Appellant)	
)	Docket No. 22-0756
and)	Issued: November 29, 2022
)	
DEPARTMENT OF VETERANS AFFAIRS, VA)	
MEDICAL CLINIC, Montgomery, AL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 18, 2022 appellant filed a timely appeal from a March 16, 2022 merit decision and an April 4, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional bilateral knee and shoulder conditions; and (2) 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 August 9, 2021 appellant, then a 39-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 3, 2021 she injured her right shoulder, arm, elbow,

¹ 5 U.S.C. § 8101 *et seq.*

back, fingers and wrist; left shoulder, upper arm, fingers, and great toe; and both ankles and legs when she slipped and fell down a flight of stairs while in the performance of duty. She stopped work on August 4, 2021.

Appellant submitted unsigned medical notes dated August 15 and 19, 2021. Her diagnoses were listed as status post bilateral ankle pain and pain in unspecified shoulder, right wrist, unspecified ankle and joints of unspecified foot, unspecified knee, low back, and unspecified finger(s). Appellant was initially placed off work through August 18, 2021 and subsequently released to return to sedentary work only on August 20, 2021.

Appellant also submitted a series of diagnostic test reports dated August 16, 2021 from Dr. Jason Hoover, a Board-certified diagnostic radiologist. In his right and left ankle x-ray reports dated August 16, 2021, Dr. Hoover provided impressions of mild soft tissue swelling and contour deformity along the dorsum of the neck of the talus that appeared to be similar to the contralateral ankle and may represent congenital variant. He also provided an impression of correlation for point tenderness over the dorsum of the neck of the talus if clinically indicated and recommended a magnetic resonance imaging (MRI) scan for further evaluation. In additional reports of even date, Dr. Hoover noted that x-rays of the right and left shoulders and right wrist x-ray were normal. In a sacrum and coccyx x-ray report of even date, he provided impressions of Type III coccyx with anterior angulation, and no fracture or dislocation.

By development letter dated August 25, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary to establish the claim. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP received copies of Dr. Hoover's August 16, 2021 diagnostic test reports that were previously of record.

By development letter dated September 8, 2021, OWCP advised appellant that the medical records submitted referenced pain, which is a symptom, not a valid diagnosis under FECA and were not signed by a physician as defined under FECA. It further advised her that the submitted diagnostic testing reports could not be used to establish a diagnosis under FECA. OWCP requested that appellant submit a report from her physician containing an acceptable medical diagnosis.

OWCP received a report dated August 19, 2021 from Danny Perry, a physician assistant, in which he reiterated diagnoses of pain in unspecified shoulder, right wrist, ankle and joints of unspecified foot, unspecified knee, low back, and unspecified finger(s), and opinion that appellant could return to sit down work only as of August 20, 2021. He also diagnosed contusion of unspecified shoulder, initial encounter; unspecified sprain of right wrist, initial encounter; contusion of unspecified knee, initial encounter; contusion of unspecified ankle, initial encounter; sprain of unspecified parts of lumbar spine and pelvis, initial encounter; and unspecified sprain of unspecified finger, initial encounter. Mr. Perry referred appellant to physical therapy.

By decision dated October 4, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed condition in connection with the accepted August 3, 2021 employment incident.

OWCP subsequently received a September 21, 2021 report from Dr. Trenton Wilson, a Board-certified orthopedic surgeon. Dr. Wilson noted a history of the accepted August 3, 2021

employment incident and appellant's medical treatment. He diagnosed other specified injuries of right shoulder and upper arm, initial encounter; other specified injuries of left shoulder and upper arm, initial encounter; other specified injuries of right lower leg, initial encounter; other specified injuries of left lower leg, initial encounter; other specified injuries of right ankle, initial encounter; other specified injuries of left ankle, initial encounter; other specified injuries of right wrist, hand and finger(s), initial encounter; and other specified injuries of left foot, initial encounter. In a patient work capacity evaluation of even date, Dr. Wilson released appellant to return to work with no restrictions.

On November 1, 2021 appellant requested reconsideration regarding the October 4, 2021 decision and resubmitted medical evidence previously of record.

OWCP, by decision dated November 8, 2021, denied modification of its October 4, 2021 decision, finding that the medical evidence submitted was insufficient to establish a medical diagnosis in connection with the August 3, 2021 employment incident.

On December 22, 2021 appellant requested reconsideration and submitted additional medical evidence. In notes dated August 4 through December 14, 2021, Dr. R. Jason Newsom, a physician specializing in public health and preventive medicine, related a history of the August 3, 2021 employment incident, reported examination findings, and diagnosed bruises/hematoma of the left and right shins, and left upper arm. He released appellant to return to work.

Thereafter, OWCP continued to receive medical evidence. In a December 16, 2021 right lower extremity MRI scan report, Dr. Matthew D. Dobbs, a Board-certified diagnostic radiologist, provided impressions of moderate joint effusion; small tears involving the body/posterior horn of the medial meniscus and posterior horn of the lateral meniscus; grade 2 injury of the medial collateral ligament; and Baker's cyst.

Dr. Stephen W. Samelson, a Board-certified orthopedic surgeon, in reports dated January 6 and February 16, 2022, related a history of the August 3, 2021 employment incident and discussed findings on examination. He diagnosed unilateral primary osteoarthritis, right and left knee; peripheral tear of medial meniscus, current injury, right knee, initial and subsequent encounters; peripheral tear of lateral meniscus, current injury, right knee, initial and subsequent encounters; and bursitis of right and left shoulder. Dr. Samelson initially provided impressions of moderate left knee osteoarthritis; right knee osteoarthritis; and right subacromial bursitis. Subsequently, he provided an impression of mild right knee osteoarthritis with degenerative meniscal tears.

In a January 27, 2022 left knee MRI scan report, Dr. Ross Barnett, a diagnostic radiologist, provided impressions of severe degenerative arthropathy, worst at the patella; grade II tear of the medial collateral ligament; joint effusion; and no meniscal injury.

In a December 2, 2021 report, Dr. Ashley McIntyre, a Board-certified family practitioner, diagnosed medical conditions unrelated to appellant's claim. She also noted that appellant had unspecified knee and unspecified shoulder pain.

A report dated January 25, 2022 and daily notes dated February 1 and 3, 2022 from appellant's physical therapist addressed the treatment of her lumbar spine, pelvis, and bilateral ankle conditions.

In a February 3, 2022 certificate to return to work, Dr. Kenneth Taylor, an orthopedic surgeon, indicated that appellant was unable to return to work.

By decision dated March 16, 2022, OWCP modified the November 8, 2021 decision in part, finding that appellant had established a causal relationship between her diagnosed bilateral shin and left upper arm contusions and the accepted August 3, 2021 employment incident. However, it further found that the medical evidence of record was insufficient to establish that her diagnosed bilateral knee osteoarthritis, peripheral tears of the medial and lateral menisci of the right knee, degenerative meniscal tears, and bilateral shoulder subacromial bursitis were causally related to the accepted August 3, 2021 employment incident.

By separate decision of even date, OWCP formally accepted appellant's claim for contusion of the right and left shins and left upper arm.

OWCP received additional reports dated January 25 through March 8, 2022 from appellant's physical therapist, which continued to address the treatment of appellant's lumbar spine, pelvis, and bilateral ankle conditions.

On April 2, 2022 appellant requested reconsideration of the March 16, 2022 decision and submitted additional medical evidence.

An unsigned report dated December 20, 2019 noted appellant's history of injury and provided diagnoses of back, knee, and shoulder pain.

A January 9, 2020 right knee MRI scan report cosigned by Dr. Barry Smith, a diagnostic radiologist, and Dr. Barnett provided impressions of small amount of intraarticular fluid medial and lateral compartment with a small bursal effusion; very mild stretching of the lateral collateral ligament; some very mild degenerative joint disease; no overt evidence that suggested a well-defined meniscal tear in the medial or lateral compartment; and no other significant abnormality appeared to be demonstrated.

In a lumbar spine MRI scan report of even date, Dr. Smith and Dr. Barnett provided impressions of annular bulging of discs with neural foraminal stenosis; nerve effacement bilaterally at L3-4, L4-5, and L5-S1; small central protrusions at L4 and L5 with questionable small annular tear centrally at L5-S1; and significant herniation, stenosis, or extrusion was not noted.

Dr. Wendy Kriegel, a Board-certified diagnostic radiologist, in a December 4, 2021 left knee x-ray report, provided impressions of mild degenerative change and no acute fracture or subluxation. In a right knee x-ray report of even date, she found tiny posterior patella marginal osteophytes, and no acute fracture or subluxation. Additionally, on December 2, 2021 Dr. Kriegel reported that a right shoulder x-ray was unremarkable. In a left shoulder x-ray report of even date, she provided impressions of mild acromioclavicular joint arthropathy and no acute fracture or subluxation. Dr. Kriegel's Venus doppler of the bilateral lower extremity performed on even date revealed no evidence of a deep venous thrombosis on the right popliteal fossa cyst. In a left ankle x-ray report of even date, she provided an impression of no acute fracture or subluxation. On December 2, 2021 she also reported that a right ankle x-ray demonstrated soft tissue edema surrounding the ankle joint, no acute fracture or subluxation, and calcaneal spurs.

By decision dated April 4, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.²

To establish causal relationship, the employee must submit rationalized medical opinion evidence.³ 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 accepted employment injury.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional bilateral knee and shoulder conditions.

The September 21, 2021 report of Dr. Wilson and January 6 and February 16, 2022 reports of Dr. Samelson discussed appellant's history of injury on August 3, 2021 and noted diagnoses, including bilateral shoulder and upper arm, leg, ankles, right wrist hand and finger, and left foot. However, neither physician provided an opinion that the diagnosed conditions were causally related to the accepted August 3, 2021 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁶ Therefore, these reports are insufficient to meet appellant's burden of proof regarding expansion of the claim.

Appellant submitted x-ray and MRI scan reports from Dr. Hoover, Dr. Dobbs, and Dr. Barnett, which addressed appellant's bilateral ankle and shoulder, right wrist, right lower extremity, and left knee conditions. However, diagnostic studies, standing alone, lack probative

² *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *see T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

³ *D.T.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁴ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *J.H.*, Docket No. 21-1255 (issued April 28, 2022); *D.T.*, Docket No. 22-0031 (issued May 24, 2022); *T.T.*, Docket No. 20-0687 (issued December 11, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

value on the issue of causal relationship as they do not address whether an employment incident caused the diagnosed condition.⁷

Dr. McIntyre, in her December 2, 2021 report, diagnosed pain in unspecified knee and unspecified shoulder. However, the Board has held that a diagnosis of pain does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.⁸ Thus, the Board finds that his report is insufficient to meet appellant's burden of proof.

Dr. Taylor, in his February 3, 2022 return-to-work certificate, failed to provide an opinion on causal relationship. The Board has held that a medical report lacking a rationalized medical opinion regarding causal relationship is of no probative value.⁹ Her report, therefore, is insufficient to meet appellant's burden of proof.¹⁰

OWCP also received unsigned work status notes dated August 15 and 19, 2021. The Board has previously held that a medical note, which is unsigned or contains an illegible signature, lacks probative value, as it is not established that the author is a physician.¹¹

In addition, OWCP received evidence from a physician assistant and a physical therapist. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical/occupational therapists, and social workers are not considered physicians as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³

As appellant has not submitted rationalized medical evidence establishing that the acceptance of her claim should be expanded to include additional conditions as causally related to

⁷ *C.M.*, Docket No. 21-0004 (issued May 24, 2021); *K.R.*, Docket No. 20-1103 (issued January 5, 2021); *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

⁸ *See S.D.*, Docket No. 21-0085 (issued August 9, 2021); *D.M.*, Docket No. 20-1347 (issued January 29, 2021).

⁹ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *M.B.*, Docket No. 19-0828 (issued September 17, 2019); *P.C.*, Docket No. 18-0167 (issued May 7, 2019); *see C.T.*, Docket No. 10-2354 (issued April 21, 2011); *see Brad Bolton*, Docket No. 94-2298 (issued August 26, 1996).

¹⁰ *See T.T.*, *id.*; *Y.C.*, Docket No. 17-1938 (issued January 7, 2019).

¹¹ *See Z.G.*, 19-0967 (issued October 21, 2019); *see R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in FECA).

¹² 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *S.S.*, Docket No. 21-0837 (issued November 23, 2021) (a physician assistant is not considered a physician under FECA); *E.T.*, Docket No. 19-0948 (issued July 27, 2020) (a physical therapist is not considered a physician under FECA).

¹³ *S.S.*, *id.*; *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *id.*

the accepted August 3, 2021 employment injury, the Board finds that she has not met her 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(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.¹⁴

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.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ 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.¹⁸

ANALYSIS -- ISSUE 2

The Board further 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's timely April 2, 2022 request for reconsideration does not demonstrate that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered by OWCP. Consequently, appellant is not

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

¹⁵ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *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 (September 2020). 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.

¹⁷ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁸ *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁹

On reconsideration appellant submitted an MRI scan reports dated January 9, 2020, and x-ray reports and a Venus doppler report dated December 4, 2021. However, as noted, diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether an employment incident caused the diagnosed condition.²⁰ These reports are therefore irrelevant and do not constitute a basis for reopening the claim as they do not address the particular issue involved.²¹ Appellant also submitted an unsigned report dated December 20, 2019, which related a history of the August 3, 2021 employment injury and provided diagnoses of back, knee, and shoulder pain. As previously noted, a medical note containing an illegible signature or which is unsigned lacks probative value, as it is not established that the author is a physician.²² As such, this document is irrelevant to the underlying medical issue involved in this case.²³ As appellant did not provide relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁴

The Board, accordingly, finds that 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.²⁵

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional bilateral knee and shoulder conditions. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹⁹ 20 C.F.R. § 10.606(b)(3); *see L.D., supra* note 15; *see also L.G. and C.N., supra* note 15.

²⁰ *Supra* note 7.

²¹ *K.B.*, Docket No. 18-1392 (issued January 15, 2019).

²² *Supra* note 12.

²³ *A.A.*, Docket No. 21-0774 (issued January 11, 2022); *A.W.*, Docket No. 21-0298 (issued August 26, 2021); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁴ *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

²⁵ *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 16 and April 4, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 29, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board