

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

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D.A., Appellant )

and )

DEPARTMENT OF AGRICULTURE, FOREST )  
SERVICE, Albuquerque, NM, Employer )  
\_\_\_\_\_ )

Docket No. 22-0762  
Issued: September 30, 2022

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 19, 2022 appellant filed a timely appeal from a December 20, 2021 merit decision and an April 4, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted October 25, 2021 employment incident; and (2) whether

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the April 4, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 October 26, 2021 appellant, then a 39-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on October 25, 2021 he sustained a left knee strain as a result of taking a pack test when carrying a 45-pound vest while in the performance of duty.

In a hospital note dated October 26, 2021, Dr. Richard Powell, Board-certified in emergency medicine, indicated that appellant injured his left knee while taking a physical fitness test for his job. He diagnosed acute left knee pain.

An x-ray of appellant's left knee obtained on October 26, 2021 demonstrated no acute fracture or suprapatellar effusion with mild medial joint space compartment narrowing.

In a development letter dated November 17, 2021, OWCP informed appellant that additional medical evidence was needed to establish his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence. No response was received.

By decision dated December 20, 2021, OWCP denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On March 31, 2022 appellant requested reconsideration of the December 20, 2021 decision. No additional evidence was received.

By decision dated April 4, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim.

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

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact 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,<sup>4</sup> 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

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<sup>3</sup> *Id.*

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.<sup>5</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>6</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident at the time and place and in the manner alleged.<sup>7</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> 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 specific employment incident identified by the claimant.<sup>10</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 25, 2021 employment incident.

In a hospital note dated October 26, 2021, Dr. Powell indicated that appellant injured his left knee while taking a physical fitness test for his job. He diagnosed acute left knee pain. Under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.<sup>11</sup> As such, this evidence is insufficient to establish the claim.

Appellant also submitted an x-ray report of the left knee obtained on October 26, 2021. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not

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<sup>5</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>6</sup> *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>7</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019). See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>9</sup> *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

provide an opinion on causal relationship between his employment incident and a diagnosed condition.<sup>12</sup> As such, this report is insufficient to establish appellant's claim.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition in connection with the accepted October 25, 2021 employment incident.<sup>13</sup> Appellant, therefore, 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(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 or her own motion or on application.<sup>14</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>15</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>16</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>17</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>18</sup>

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<sup>12</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

<sup>13</sup> *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

<sup>14</sup> 5 U.S.C. § 8128(a); *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).

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

<sup>16</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 (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.

<sup>17</sup> *Id.* at § 10.608(a); *M.S.*, 59 ECAB 231 (2007).

<sup>18</sup> *Id.* at § 10.608(b); *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## **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 March 31, 2022 request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also did not submit any relevant and pertinent new evidence with his March 31, 2022 request for reconsideration, as he did not submit any new evidence with his request. Therefore, he is 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.<sup>19</sup>

## **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 25, 2021 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).

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<sup>19</sup> See *D.S.*, Docket No. 18-0353 (issued February 18, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 20, 2021 and April 4, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 30, 2022  
Washington, DC

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

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

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