

FACTUAL HISTORY

On December 3, 2020 appellant, then a 67-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed worsening left knee pain due to the factors of her federal employment. She explained that she had a previously-approved right knee condition from 2014 that presented with similar symptoms.² Appellant noted that she first became aware of her condition on April 17, 2020 and realized its relation to her federal employment on October 17, 2020. She did not stop work.

In an accompanying undated statement received by OWCP on December 3, 2020, appellant detailed her work duties as a city carrier, including loading packages and sorting hundreds of parcels, repetitive lifting, standing, walking, and bending of the knees. She further explained that she is required to walk 5 to 10 miles while carrying approximately 30 pounds of mail for five or more hours per day. Appellant underwent right knee replacement surgery on October 13, 2014. She asserted that she developed chronic pain in her left knee similar to the pain she had previously experienced in her right knee prior to surgery, which was especially noticeable when working. Appellant related that the left knee required surgery.

In a development letter dated December 9, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In an undated response to OWCP's development questionnaire, the employing establishment noted that appellant had been a mail carrier for over 20 years and her work duties included lifting, pushing, bending, and stooping. It asserted that she did not notify management that she had an injury or needed an accommodation until the day she filed her Form CA-2, and that her actual work duties had not varied. The employing establishment further noted that appellant had recently been out of work intermittently due to foot surgery.

In a report dated August 27, 2020, Dr. Raymond Jong Park, a Board-certified family physician, related appellant's complaints of left knee pain which had worsened over the last two weeks. He noted that her job duties involved extended periods of walking and that she had a history of preexisting bilateral knee conditions. Dr. Park performed a physical examination and reviewed left knee x-rays of even date, which demonstrated marked narrowing and sclerosis at the patellofemoral joint space. He diagnosed pain in the left knee joint and low back.

By decision dated February 17, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical

² The Board notes that appellant previously filed a Form CA-2 on February 12, 2015 under OWCP File No. xxxxxx876 where she noted the nature of her disease or illness as "knee surgery." Appellant's claims have not been administratively combined by OWCP.

condition in connection with the accepted factors of her federal employment. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On March 2, 2021 appellant requested reconsideration of OWCP's February 17, 2021 decision. In support of her request, she submitted a November 17, 2020 progress note by Dr. William Gow, a Board-certified orthopedic surgeon, who noted that she received an injection to the left knee.

In further support of her request, appellant submitted reports dated December 3, 2020 by Dr. David Shaw, a Board-certified family medicine specialist, who indicated that an x-ray revealed extensive degenerative joint disease. Dr. Shaw performed a physical examination and documented diffuse swelling. He diagnosed osteoarthritis of the left knee and recommended a total knee replacement.

By decision dated April 5, 2021, OWCP modified its February 17, 2021 decision, finding that appellant established a medical diagnosis. However, the claim remained denied as the medical evidence of record was insufficient to establish that her diagnosed left knee condition was causally related to the accepted factors of her federal employment.

On April 16, 2021 appellant requested reconsideration of OWCP's April 5, 2021 decision. In support of her request, she resubmitted copies of her undated statement and the December 3, 2020 medical note by Dr. Shaw.

By decision dated May 5, 2021, 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

An employee seeking benefits under FECA³ 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,⁴ 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 employment injury.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors

³ *Id.*

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based upon a complete factual and medical background, 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 factors.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In his August 27, 2020 medical report, Dr. Park noted appellant's physical examination and x-ray findings and that her job duties included extended periods of walking. He did not, however, provide an opinion on causal relationship between her diagnosed condition and the accepted employment factors. The Board has held that a medical report lacking an opinion on causal relationship is of no probative value.¹⁰ Therefore, the Board finds that Dr. Park's August 27, 2020 report is insufficient to establish the claim.

In his November 17, 2020 report, Dr. Gow documented a left knee injection, but did not provide a diagnosis or an opinion on causal relationship. Dr. Shaw, in his December 3, 2020 report, diagnosed left knee osteoarthritis, but did not provide an opinion on causal relationship. As noted above, the Board has held that a medical report lacking an opinion on causal relationship is of no probative value.¹¹ Therefore, these reports are also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment factors, 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.

⁷ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Dolores C. Ellyett, id.*

⁸ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁰ *L.B., id.*; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.¹² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁴

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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 When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁶

ANALYSIS -- ISSUE 2

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 has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her request for reconsideration, appellant also did not submit any relevant and pertinent new medical evidence. The underlying issue on reconsideration is whether she has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment. This is a medical issue which can only be addressed by submission of rationalized medical evidence not previously considered.¹⁷ As noted above, appellant's reconsideration request included duplicate copies of her undated statement and Dr. Shaw's medical

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.607.

¹⁴ *Id.* at § 10.607(a). 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.

¹⁵ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

¹⁶ *Id.* at § 10.608.

¹⁷ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

note dated December 3, 2020. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹⁸ Thus, appellant is not entitled to further review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, 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 her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment. 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).

ORDER

IT IS HEREBY ORDERED THAT the April 5 and May 5, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 27, 2023
Washington, DC

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

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

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

¹⁸ *Id.*; *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler, id.*