



The issue is 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 June 28, 2017 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral knee osteoarthritis due to the repetitive factors of her federal employment, including sorting mail, pushing and pulling mail carts, and climbing stairs. She noted that she first became aware of her condition on June 1, 2017 and realized its relation to her federal employment on June 15, 2017. Appellant did not stop work.

By decision dated December 1, 2017, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that the events occurred as alleged.

On February 15, 2018 appellant requested reconsideration.

By decision dated March 15, 2018, OWCP modified the December 1, 2017 decision to find that the employment factors occurred as alleged and that appellant had established a diagnosed medical condition. However, the claim remained denied because the medical evidence of record was insufficient to establish that her bilateral knee osteoarthritis was causally related to the accepted factors of her federal employment.

On April 6, 2018 appellant requested reconsideration.

By decision dated October 11, 2018, OWCP denied modification of its March 15, 2018 decision.

On January 31, 2019 appellant requested reconsideration.

On February 15, 2019 OWCP referred appellant, along with a statement of accepted facts, the medical record and a set of questions to Dr. Carolyn Yang, a Board-certified orthopedic surgeon, for a second opinion evaluation. In her March 1, 2019 report, Dr. Yang noted that based on her review of the medical record appellant had right knee osteoarthritis, but opined that appellant's condition was not causally related to the accepted factors of her federal employment.

By decision dated March 29, 2019, OWCP denied modification of its October 11, 2018 decision.

In an August 6, 2019 narrative report, Dr. Paul Puziss, a Board-certified orthopedist, disagreed with Dr. Yang's assessment, asserting that she did not provide a complete and accurate factual analysis of appellant's case. He noted that appellant was working light duty, inside daily, and that she has had right knee pain over a long period of time. On physical examination Dr. Puziss found a reasonable gait, but no full extension of the knee with stance phase. He also found 90 degrees of active flexion while seated, and that she lacks 15 degrees of knee extension while seated. Appellant's quadriceps strength was good. Dr. Puziss diagnosed previous degenerative arthritis, right medial knee compartment and patellofemoral compartment; status post right total knee replacement as of December 15, 2016; postoperative right knee adhesive capsulitis, somewhat

improved; postmanipulation under anesthesia, right knee as of March 31, 2017; history of remote likely partial right medial meniscectomy, circa 1989; possibly femoral prosthesis is too large, and that appellant's official duties as a letter carrier caused or accelerated her right knee arthritis. He opined that "[appellant's] arthritis is characterized by progressive and degenerative change in the articular cartilage and joint tissues, and in the course of her work as a letter carrier, her knee joints, especially the right, were subjected to huge numbers of cycles of loading resulting in forces even up to seven times body weight passing through the joints of the knee. Additionally, the altered gait while carrying a weighted satchel increased the joint stress upon the knee. Additionally, the abnormal joint forces came from years of pivoting and twisting while sorting and delivering mail, especially while casing. This led to increased shear forces and alterations of the articular cartilage leading to progressive and highly accelerated degenerative arthritis, then leading ultimately to the total knee replacement. [Appellant] had the mounted route for all but seven months of her career. Plus, the mounted route, she was climbing in and out of a truck hundreds of times a day putting greater stresses on the knee. The post[-]traumatic effects of the meniscal surgery and additional weight amplify the effects of her decades of performing the strenuous repetitive duties." Dr. Puziss concluded that the material cause of appellant's right knee arthritis was a worsening of her degenerative arthritis after meniscectomy, the worsening being caused by her years of excessive stresses on the knee.

On March 27, 2020 appellant, through her representative, requested reconsideration, and submitted an April 10, 2019 medical report, wherein Dr. Puziss noted that she had preexisting degenerative arthritis. Dr. Puziss again opined that her official duties caused and/or contributed to the right knee arthritis, and that any preexisting condition was aggravated by her duties as a letter carrier.

By decision dated April 24, 2020, OWCP denied modification of its March 29, 2019 decision.

On April 26, 2021 appellant, through her representative, timely requested reconsideration and submitted additional evidence, including previously-submitted copies of Dr. Puziss' April 10 and August 6, 2019 medical reports.

Appellant also submitted an April 27, 2021 addendum, wherein Dr. Puziss again opined that the extent of her arthritis, particularly in her right knee, was caused by thousands of hours of performing her official duties as a letter carrier. However, Dr. Puziss added a differentiation between any underlying preexisting arthritis, and the arthritic changes caused by overuse due to her letter carrier duties. He noted that, one would expect to find some preexisting arthritis in appellant's knees given her age; however, the extent of her arthritis, particularly in her right knee, is explained by the tens of thousands of hours that she performed the previously described repetitive letter carrier duties. Dr. Puziss concluded that, absent the documented workplace activities and their biomechanical effects on appellant's knees, he would expect her to have a much milder case of osteoarthritis.

By decision dated April 29, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

## LEGAL PRECEDENT

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>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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>4</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>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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.<sup>7</sup>

## ANALYSIS

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

On reconsideration, appellant submitted an April 27, 2021 addendum report by Dr. Puziss, which provided further explanation differentiating between any underlying preexisting arthritis, and the arthritic changes caused by overuse due to her letter carrier duties. Dr. Puziss noted that, one would expect to find some preexisting arthritis in her knees given her age; however, the extent of her arthritis, particularly in her right knee, is explained by the tens of thousands of hours that she performed the previously described repetitive letter carrier duties. He concluded that, absent the documented workplace activities and their biomechanical effects on appellant's knees, he would expect her to have a much milder case of osteoarthritis. Dr. Puziss' April 27, 2021 report, therefore, constitutes relevant and pertinent new evidence that was not previously considered.

---

<sup>3</sup> *Id.* at § 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).

<sup>4</sup> 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).

<sup>5</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>6</sup> *Supra* note 3 at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Supra* note 3 at § 10.608(b); *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Therefore, the Board finds that the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).<sup>8</sup>

Consequently, the Board will set aside OWCP's April 29, 2021 decision and remand the case for an appropriate merit decision on appellant's claim.<sup>9</sup>

**CONCLUSION**

The Board finds that OWCP improperly 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 29, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 7, 2023  
Washington, DC

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

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

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

---

<sup>8</sup> *Supra* note 3; *S.C.*, Docket No. 20-1661 (issued May 6, 2022); *see also J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).

<sup>9</sup> *S.C., id.*; *F.K.*, Docket No. 21-0998 (issued December 29, 2021).