

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

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| S.P., Appellant                       | ) |                            |
|                                       | ) |                            |
| and                                   | ) | Docket No. 23-0622         |
|                                       | ) | Issued: September 13, 2023 |
| DEPARTMENT OF VETERANS AFFAIRS, VA    | ) |                            |
| MEDICAL CENTER, Jackson, MS, Employer | ) |                            |
|                                       | ) |                            |

*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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 23, 2023 appellant filed a timely appeal from a November 28, 2022 merit decision and a December 14, 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 her burden of proof to establish a recurrence of the need for medical treatment, commencing August 15, 2022, causally related to the accepted

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

<sup>2</sup> The Board notes that, following the issuance of the December 14, 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.*

October 11, 2012 employment injury; 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**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 11, 2012 appellant, then a 26-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained a bruise on both knee caps when she helped a co-employee change a patient while in the performance of duty. On January 14, 2015, OWCP accepted appellant's claim for right knee sprain.

In an October 22, 2018 medical report, Dr. Christopher Kneip, a Board-certified orthopedic surgeon, noted appellant's complaint of moderate bilateral knee pain, right worse than left. He also noted that she experienced swelling, stiffness, limping, clicking, popping, tingling, and giving way, which started after an injury at work. Dr. Kneip reported his findings on physical and x-ray examination. He diagnosed bilateral knee chondromalacia patellae. Dr. Kneip recommended an injection to resolve appellant's symptoms since arthroscopy for chondromalacia was marginally helpful.

In a December 6, 2018 report, Dr. Kneip noted improvement in appellant's bilateral knee symptoms after she received an injection. He reexamined her and reiterated his diagnosis of bilateral knee chondromalacia patellae.

On October 6, 2022 appellant filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of the need for medical treatment, commencing August 15, 2022 due to her accepted October 11, 2012 employment injury. She noted that from time to time she experienced swelling and tightness in her lower extremities. Appellant also noted that she had not been off work because she had sedentary work duties, however, she had to rise after sitting every 10 to 20 minutes because her knees/legs would begin to ache, and when she stretched her legs her knees would pop.

In a development letter dated October 18, 2022, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of additional medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On November 10, 2022 appellant responded to OWCP's development questionnaire. She claimed that her recurrence was due to chronic pain in her knees. Appellant also claimed that her pain worsened while standing/sitting 5 to 10 minutes, exercising, and sometimes when bending. She could not climb into bed with both knees. At rest, appellant experienced cramps and tightness in her legs. She related that, in a September 29, 2014 note, Dr. Anand related to her that her injury would manifest as early arthritis/possible iliotibial band tendinitis. Additionally, appellant

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<sup>3</sup> Docket No. 18-1419 (issued February 27, 2019).

indicated that Dr. Seshadri Raju, a Board-certified thoracic cardiovascular surgeon, noted on November 9, 2022 that she had lymphatic nerve damage due to her injury. She claimed that further medical treatment was needed because she had ongoing pain and she was going to start therapy soon according to Dr. Raju.

Appellant submitted additional medical evidence. In an October 26, 2022 report, Dr. Kneip reexamined appellant and continued to diagnose bilateral patellar chondromalacia. He also performed an injection into her right knee and recommended an injection into her left knee.

In a November 3, 2022 report, Kristen Degelman, a nurse practitioner, provided appellant's physical examination findings. She diagnosed localized edema, new; pain in right and left legs, new; other skin changes, new; peripheral vascular disease, unspecified, new; and paresthesia of skin, new.

In a November 9, 2022 report, Dr. Taimur Saleem, a Board-certified general and vascular surgeon, noted that appellant presented with suspected venous insufficiency of both lower extremities but, no ulcer. Appellant also had splotchy hyperpigmentation of the affected extremity. She reported swelling in the leg below the knee absent a history of cellulitis. Dr. Saleem related a history of the October 11, 2012 employment injury. He provided examination findings. Dr. Saleem diagnosed encounter for observation for other suspected diseases and conditions ruled out, stable; essential (primary) hypertension, not documented; localized edema, stable; pain in right and left legs, stable; other skin changes, stable; peripheral vascular disease, unspecified, stable; paresthesia of skin, stable; compression of vein, new; venous insufficiency (chronic)(peripheral), new; and lymphedema, not elsewhere classified, new. He referred appellant to edema therapy.

A vascular laboratory testing report dated November 9, 2022 was submitted.

By decision dated November 28, 2022, OWCP denied appellant's claim for a recurrence of the need for medical treatment, finding that the medical evidence of record was insufficient to establish a need for medical treatment due to a worsening of the accepted work-related condition, without intervening cause.

On December 7, 2022 appellant requested reconsideration.

OWCP thereafter received additional medical evidence. In a November 9, 2022 report, Dr. Benton C. Parker, a diagnostic radiologist, indicated that a nuclear medicine lymphangiogram was unremarkable.

OWCP also received a December 7, 2022 report by Kimberley Yates, a licensed occupational therapist.

Appellant also resubmitted Ms. Degelman's November 3, 2022 report, Dr. Saleem's November 9, 2022 report, and the November 9, 2022 vascular laboratory testing report.

By decision dated December 14, 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

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.<sup>4</sup>

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.<sup>5</sup> An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.<sup>6</sup>

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.<sup>7</sup> To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.<sup>8</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>9</sup>

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment, commencing August 15, 2022, causally related to the accepted October 11, 2012 employment injury.

In reports dated October 22 and December 6, 2018 and October 26, 2022, Dr. Kneip noted appellant's bilateral knee symptoms following a work injury. He discussed his examination findings and diagnosed bilateral knee chondromalacia patellae. Dr. Kneip performed injections into appellant's knees to treat her diagnosed bilateral knee condition. He indicated that appellant experienced bilateral knee symptoms following a work-related injury. Dr. Kneip failed to explain with rationale, how appellant's accepted conditions worsened such that it caused a need for

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<sup>4</sup> 5 U.S.C. § 8103(a).

<sup>5</sup> 20 C.F.R. § 10.5(y).

<sup>6</sup> See *K.H.*, Docket No. 22-0579 (issued September 15, 2022); *B.B.*, Docket No. 21-1359 (issued May 11, 2022); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018); *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

<sup>7</sup> Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); see also *S.W.*, Docket No. 21-1094 (issued April 18, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

<sup>8</sup> *S.W., id.*; *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

<sup>9</sup> *S.W., id.*; *M.P.*, *supra* note 5; *Michael Stockert*, 39 ECAB 1186 (1988).

medical treatment as of August 15, 2022.<sup>10</sup> This evidence is, therefore, insufficient to establish appellant's recurrence claim.<sup>11</sup>

Dr. Saleem's November 9, 2022 report noted a history of the October 11, 2012 employment injury and appellant's bilateral knee complaints. He diagnosed encounter for observation for other suspected diseases and conditions ruled out, stable; essential (primary) hypertension, not documented; localized edema, stable; pain in right and left legs, stable; other skin changes, stable; peripheral vascular disease, unspecified, stable; paresthesia of skin, stable; compression of vein, new; venous insufficiency (chronic)(peripheral), new; and lymphedema, not elsewhere classified, new. Dr. Saleem referred appellant to edema therapy. However, he did not offer an opinion addressing whether the need for medical treatment was causally related to the accepted employment injury. Dr. Saleem's report is of no probative value as he failed to offer an opinion regarding causal relationship. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.<sup>12</sup> Thus, this report is insufficient to establish appellant's recurrence claim.

Similarly, the November 9, 2022 vascular laboratory testing report is insufficient to establish appellant's claim for a recurrence of the need for medical treatment. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion as to whether the accepted employment factors caused the diagnosed condition.<sup>13</sup> Thus this evidence is insufficient to establish appellant's recurrence claim.

Appellant also submitted a report by a nurse practitioner. The Board has held that certain healthcare providers such as nurse practitioners, physical/occupational therapists, and social workers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion. Therefore, this evidence is insufficient to establish appellant's recurrence claim.<sup>14</sup>

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<sup>10</sup> See *R.B.*, Docket No. 22-0980 (issued October 18, 2022); *S.W.*, *id.*; *B.R.*, Docket No. 21-1109 (issued December 28, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> See *K.H.*, Docket No. 22-0579 (issued September 15, 2022); *M.F.*, Docket No. 21-1221 (issued March 28, 2022); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>13</sup> *W.T.*, Docket No. 23-0323 (issued August 15, 2023); *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>14</sup> Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See 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 nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA); see also *L.S.*, Docket No. 19-1768 (issued March 24, 2020) (nurse practitioners and physical therapists are not considered physicians under FECA).

As the medical evidence of record is insufficient to establish a recurrence of the need for medical treatment causally related to her accepted October 11, 2012 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.<sup>15</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>16</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>17</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>18</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>19</sup>

### **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).

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<sup>15</sup> *Id.* at § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also 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>16</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>17</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>18</sup> *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

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

Appellant's December 7, 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 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).

Appellant also did not submit any relevant and pertinent new evidence with her December 7, 2022 request for reconsideration. The underlying issue on reconsideration is whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment commencing August 15, 2022 causally related to her accepted October 11, 2012 employment injury. On reconsideration, appellant submitted a November 9, 2022 report by Dr. Parker, which addressed his unremarkable findings on a nuclear medicine lymphangiogram. He did not, however, provide an opinion on causal relationship. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>20</sup> Therefore, this report does not constitute new, relevant medical evidence warranting a review of the merits of appellant's claim.<sup>21</sup> Additionally, appellant submitted a December 7, 2022 report by Ms. Yates, a licensed occupational therapist. As noted above, the Board has held that physical/occupational therapists are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion under FECA.<sup>22</sup> Therefore, given their lack of probative value on medical matters, this report is not relevant to the underlying medical issue of the present case. As noted above, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>23</sup> Appellant also resubmitted Ms. Degelman's November 3, 2022 report, Dr. Saleem's November 9, 2022 report, and the November 9, 2022 vascular laboratory report. However, the Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a case.<sup>24</sup>

As appellant has not submitted pertinent new and relevant evidence in connection with her reconsideration request, she is not entitled to a review of the merits of her 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.

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<sup>20</sup> *M.N.*, Docket No. 15-1868 (issued February 4, 2016); *Nina Corazon Pelejo*, Docket No. 05-1063 (issued August 9, 2005); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>21</sup> *Id.*

<sup>22</sup> *Supra* note 14.

<sup>23</sup> *Supra* note 20.

<sup>24</sup> *J.L.*, Docket No. 21-1373 (issued March 27, 2023); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment, commencing August 15, 2022, causally related to the accepted October 11, 2012 employment injury. 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 November 28 and December 14, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 13, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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