



## **FACTUAL HISTORY**

On January 10, 2022 appellant, then a 41-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on December 15, 2021 he heard a pop in his left knee, followed by swelling and limited range of motion, when he stood up from a kneeling position during a weapons qualification course while in the performance of duty. He did not stop work. OWCP assigned the claim OWCP File No. xxxxxx165.<sup>2</sup>

In support of his claim, appellant submitted medical evidence, including a January 19, 2022 narrative report, wherein Dr. Jack A. Conoley, a Board-certified orthopedic surgeon, related that appellant rose from a kneeling position while at the gun range at work and felt something pop in the posterior medial portion of his left knee. Dr. Conoley reported examination findings, including effusion and positive posterior drawer and McMurray's tests of the left knee, and diagnosed left knee internal derangement.

In a January 19, 2022 form report, Dr. Conoley noted that appellant reported his left knee popped when he got up from a kneeling position on December 15, 2021. He indicated examination findings of effusion and positive posterior drawer test of the left knee, diagnosed left knee internal derangement, and opined that the diagnosed condition was "more likely than not caused by work incident." The findings of January 19, 2022 left knee x-rays revealed joint effusion with mild primary osteoarthritis.

In a January 24, 2022 report, Dr. Conoley advised that appellant described an October 2020 incident at the Border Patrol Training Academy when appellant was taken down onto his left knee during force training. Appellant reported that his left knee condition worsened due to a work incident in December 2021 when he, in quick succession, went from a prone position to a kneeling position, and then to a standing position. Dr. Conoley examined appellant and diagnosed a grade 2 rupture of the posterior cruciate ligament (PCL) of the left knee and a left medial femoral condyle chondral lesion.

A January 24, 2022 magnetic resonance imaging scan of the left knee demonstrated a near-complete PCL tear and cartilage loss with subchondral edema on the medial femoral condyle. On January 28, 2022 Dr. Conoley reported that appellant's left knee effusion had decreased.

In duty status reports (Form CA-17) dated January 19, 24, and 28, 2002, Dr. Conoley listed a December 15, 2021 date of injury, diagnosed left knee conditions, and opined that appellant could perform his regular work on a full-time basis.

In a February 7, 2022 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

---

<sup>2</sup> Appellant had previously filed a Form CA-1 for an October 14, 2020 left knee injury. OWCP assigned this prior claim OWCP File No. xxxxxx070, but denied it by short form closure. Appellant's claims have not been administratively combined.

Appellant responded by resubmitting copies of the January 19 and 24, 2022 diagnostic tests.

By decision dated March 11, 2022, OWCP denied appellant's claim for a December 15, 2021 employment injury, finding that the evidence of record was insufficient to establish that the December 15, 2021 employment incident occurred, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted additional evidence, including a March 9, 2022 Form CA-17, wherein Dr. Conoley advised that appellant could perform his regular work on a full-time basis. In a March 11, 2022 narrative report, Dr. Conoley reported examination findings for the left knee and recommended continuing physical therapy.

On March 25, 2022 appellant requested reconsideration. He submitted a March 23, 2022 statement further describing the December 15, 2021 events.

By decision dated April 19, 2022, OWCP modified its March 11, 2022 decision to find that appellant had established December 15, 2021 employment incident occurred as alleged, and that a medical condition was diagnosed in connection with the accepted employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted December 15, 2021 employment incident.

On July 22, 2022 appellant again requested reconsideration. In support of his request, he submitted a narrative statement explaining the events that gave rise to the filing of the present claim. Appellant discussed the medical treatment of his left knee and asserted that the evidence of record showed that his injuries dated back to the original October 2020 employment incident.

By decision dated November 7, 2022, OWCP denied appellant's request for reconsideration of the merits of his 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 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

---

<sup>3</sup> 5 U.S.C. § 8128(a); *see 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).

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 without reopening the case for review on the merits.<sup>7</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>8</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup>

### ANALYSIS

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).

On reconsideration, appellant submitted a narrative statement explaining the events that gave rise to the filing of the present claim. He discussed the medical treatment of his left knee and asserted that the evidence of record showed that his injuries dated back to the original October 2020 employment incident. The underlying issue in this case, however, is medical in nature, *i.e.*, whether appellant has submitted sufficient medical evidence to establish causal relationship between the accepted December 15, 2021 employment incident and a diagnosed medical condition. His statement does not establish that OWCP erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant did not submit any medical evidence. 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).

---

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *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. 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> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>8</sup> *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>9</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

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>10</sup>

**CONCLUSION**

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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2024  
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>10</sup> Upon return of the case record, OWCP may consider administratively combining the present claim with OWCP File No. xxxxxx070.