



pains around the kneecap region. She advised that she had a workers' compensation claim on her right knee and attributed her left knee condition to the extra pressure exerted on it by walking with a cane and a prosthetic brace. Appellant did not stop work and did not submit any medical documentation with her claim.

On November 21, 2003 the Office advised appellant of the need for additional factual and medical evidence and afforded her 30 days within which to submit the requested information.

In a decision dated January 20, 2004, the Office denied appellant's claim on the basis that she failed to establish fact of injury. The Office explained that the record was insufficient to establish that the employment incident occurred as alleged. Additionally, the Office noted that the record was devoid of any medical evidence that provided a diagnosis attributable to the claimed event.

On February 18, 2004 appellant requested reconsideration. She acknowledged that she had not provided the necessary evidence as her appointment with her physician was past the 30-day time frame. Appellant indicated that she had since seen her physician and that a medical note was attached. The Office, however, did not receive any medical evidence.

By decision dated May 12, 2004, the Office denied appellant's request for reconsideration without conducting a merit review, finding that the request neither raised substantive legal questions nor included new and relevant evidence.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</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>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

In her October 23, 2003 claim form, appellant noted that she used a cane and wore a prosthetic brace on her right knee. She alleged that her left knee was troublesome due to the extra pressure put on it by walking and compensating for her right knee. It is not disputed that appellant walked at work; thus appellant has provided a factual statement identifying employment factors alleged to have caused or contributed to her condition. However, she submitted no medical evidence from which a diagnosis could be ascertained or which showed that walking at work caused the claimed injury. She was advised of the necessity for providing such factual and medical information in the Office's letter of November 21, 2003, but failed to provide such evidence after the Office gave her an opportunity to submit such evidence. As there is no medical evidence explaining how walking at work caused or aggravated a particular condition, the Board finds that appellant did not meet her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's February 18, 2004 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>7</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> 20 C.F.R. § 10.608(b)(2)(i) and (ii).

With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, appellant advised that she had attached a medical note by her physician. However, the record is devoid of any such medical evidence or receipt thereof. Inasmuch as appellant did not submit any “relevant and pertinent new evidence,” she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).<sup>8</sup>

**CONCLUSION**

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on October 17, 2003. The Board further finds that the Office properly denied her February 18, 2004 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2004 decision is affirmed and the January 20, 2004 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: November 19, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>8</sup> 20 C.F.R. § 10.608(b)(2)(iii).