



when she tripped on a return bin wheel and fell to the floor. She submitted coworker witness statements corroborating her account of events. Appellant stopped work on the date of injury.

In a March 21, 2007 form report, Dr. Ulf Knothe, an attending orthopedic surgeon, diagnosed preexisting advanced osteoarthritis of the left knee. He noted that appellant had a total left knee arthroplasty scheduled for April 12, 2007. Dr. Knothe estimated that appellant would be totally disabled for work from March 5 to July 16, 2007. He checked a box “no” indicating that he did not believe the diagnosed osteoarthritis was caused or aggravated by appellant’s employment. Dr. Knothe did not provide a date or history of injury.

In an April 6, 2007 letter, the Office advised appellant of the additional evidence needed to establish her claim. It emphasized the need for a rationalized statement from her attending physician explaining how and why the March 12, 2007 incident would cause the claimed injuries. Appellant was afforded 30 days to submit such evidence. There is no additional evidence of record submitted prior to May 15, 2007.

By decision dated May 15, 2007, the Office denied appellant’s claim on the grounds that causal relationship was not established. It accepted that the March 12, 2007 trip and fall occurred at the time, place and in the manner alleged. The Office found that appellant submitted insufficient medical evidence to establish that the March 12, 2007 incident caused the claimed injuries.

In a letter postmarked October 31, 2007 and received by the Office on November 2, 2007, appellant requested reconsideration. She stated that she still had a “knee injury from fall at work” with significant pain. Appellant asserted that she had witnesses and that the incident was not her fault. She noted that she received no wages for eight weeks, causing financial hardship. Appellant also submitted an appeal request form with the “reconsideration” line marked with an “X.” The remainder of the form was blank. She submitted additional evidence.

In a June 29, 2007 letter, Dr. Knothe stated that appellant underwent a total right knee arthroplasty on October 26, 2006. “On March 7, 2007 she fell on her left knee at work, aggravating her preexisting osteoarthritis necessitating moving up her surgery to an earlier date.”

In an October 10, 2007 form report, Dr. Knothe noted a March 12, 2007 date of injury. He explained that appellant was scheduled for a left knee arthroplasty before she fell at work on March 12, 2007. Appellant saw Dr. Knothe on March 14, 2007. Surgery was rescheduled to an earlier date. Dr. Knothe checked a box “yes” indicating his support for causal relationship.

In a November 7, 2007 letter, the Office stated that it reviewed the evidence submitted. However, it could not render a decision as the appeal request form was incomplete. The Office returned the form to appellant for completion and resubmission within 30 days. Otherwise, it would issue a decision based on the evidence of record.

On November 15, 2007 appellant completed the signature block on the appeal form. In the space for “Decision Date,” she wrote “November 2, 2007.” Appellant also submitted a November 15, 2007 note describing her continuing knee symptoms after a fall at work.

By decision dated November 27, 2007, the Office denied appellant's request for reconsideration on the grounds that it was invalid. It found that appellant requested reconsideration of a November 2, 2007 decision but the Office had not issued a decision on that date. The Office did not note that appellant submitted evidence on reconsideration or mention any of the documents provided.

### **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 filed within the applicable time limitation; that an injury was sustained while 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 on a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>4</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup>

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

The Office accepted that, on March 15, 2007, appellant tripped on a bin wheel and fell to the floor. It denied appellant's claim on the grounds that the medical evidence submitted did not establish that the March 15, 2007 incident caused any injury.

Dr. Knothe, an attending orthopedic surgeon, submitted a March 21, 2007 form report diagnosing advanced osteoarthritis of the left knee. He checked a box "no" indicating that he did not believe appellant's osteoarthritis was caused or aggravated by her employment. Dr. Knothe's opinion thus negates causal relationship. Appellant has not submitted medical evidence establishing that the accepted March 15, 2007 incident caused any injury. Therefore, she has failed to meet her burden of proof.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

## LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>6</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> Section 10.608(b) provides that when an application for review of the merits of a claim 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>8</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>9</sup> The claimant need only submit relevant, pertinent evidence not previously considered by the Office.<sup>10</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>11</sup>

## ANALYSIS -- ISSUE 2

The Office denied appellant's traumatic injury claim by May 15, 2007 decision. Appellant requested reconsideration in a letter postmarked October 31, 2007, accompanied by an appeal request form with the "Reconsideration" line checked but no date of decision specified. The letter referred to the Office's denial of a knee injury due to a fall at work. The Office then asked appellant for the date of the decision for which she requested reconsideration. Appellant completed the form on November 15, 2007, noting a decision date of "November 2, 2007." She also submitted a note describing continued knee symptoms after a fall at work. The Office denied reconsideration by November 27, 2007 decision as appellant provided an erroneous decision date. The Board finds that the Office's denial was improper.

The Office's procedures provide that, while "no special form" is required to request reconsideration, "the request must be in writing, identify the decision and the specific issue[s] for which reconsideration is being requested and be accompanied by relevant new evidence or argument not previously considered."<sup>12</sup> Appellant's October 31, 2007 letter mentions a "knee injury from fall at work" and that there were witnesses to the incident. This letter clearly

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<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2) (2003).

<sup>8</sup> 20 C.F.R. § 10.608(b) (2003).

<sup>9</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>10</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also* *Mark H. Dever*, 53 ECAB 710 (2002).

<sup>11</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2(a) (October 2005).

referred to the claimed March 15, 2007 knee injury and accepted fall, corroborated by witness statements. The only decision adjudicating this claim was issued on May 15, 2007. Therefore, appellant's letter and appeal form were sufficient to identify the specific issue and decision involved.

Rather than develop appellant's request for reconsideration of the May 15, 2007 decision, the Office requested clarification regarding the decision date. The Office's procedures provide, in pertinent part, that "*if the contested decision or issue cannot be reasonably determined from the claimant's request*, the [Office] should return a copy of the application to the claimant for clarification."<sup>13</sup> (Emphasis added.) The Board finds that the contested decision and issue could be determined from a reasonable examination of appellant's October 31, 2007 letter and the appeal request form. The request for clarification was therefore unnecessary. Additionally, appellant submitted a November 15, 2007 note describing knee symptoms after a fall at work, again implicating the March 15, 2007 injury and May 15, 2007 denial.

A reasonable review of the correspondence appellant submitted on reconsideration would reveal that the November 2, 2007 date on the appeal form was merely a clerical error. Appellant's letters identified the issue involved and implicated the only decision rendered on that issue. Under these circumstances, the Board finds that the Office improperly found that appellant failed to identify the decision for which she claimed reconsideration. The case will be remanded to the Office for additional development, including appropriate consideration of the evidence submitted on reconsideration. Following this and all other development deemed necessary, the Office shall issue an appropriate decision in the case.

### CONCLUSION

The Board finds that appellant has not established that she sustained left knee or upper extremity injuries in the performance of duty. The Board further finds that the Office improperly denied appellant's request for a merit review.

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<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(a) (October 2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 27, 2007 is set aside and the case remanded for further development. The decision of the Office dated May 15, 2007 is affirmed.

Issued: July 2, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board