

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

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N.L., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
San Francisco, CA, Employer )

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**Docket No. 13-1763  
Issued: April 9, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 22, 2013 appellant filed a timely appeal from a May 2, 2013 merit decision and a June 12, 2013 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 met her burden of proof to establish a left knee condition in the performance of duty; and (2) whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

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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 June 12, 2013 OWCP decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On November 29, 2012 appellant, then a 60-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a left knee injury due to factors of her federal employment, including repetitive movements of lifting, carrying, standing, walking, climbing, kneeling and going up and down stairs. In a narrative statement, she indicated that she had been employed as a city carrier since 1986. On November 5, 2012 appellant's left knee began to hurt and on November 24, 2012 she realized that her left knee injury was caused by her federal employment and further aggravated by working overtime. She also indicated that she had undergone arthroscopic surgery in 2001 and 2008. Appellant worked full-time, modified duty with restrictions beginning December 22, 2012.

In reports dated November 28, 2012, Dr. Stasia Muhlner, a Board-certified occupational medicine specialist, diagnosed knee joint pain and provided the following restrictions: limit standing/walking to no more than three hours continuously; no climbing; no pivoting, kneeling or squatting. She advised that these restrictions were to be applied for two weeks.

By letter dated December 10, 2012, OWCP requested additional factual and medical information from appellant. It allotted her 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted reports dated November 28, December 12 and 27, 2012 from Dr. Muhlner who diagnosed knee sprain/strain and reiterated her work restrictions. Dr. Muhlner indicated that appellant was walking down a hill and felt swelling in the knee. Later that day, appellant felt pain and burning. She had to continue walking and felt burning in the knee joint, as well as a pulling sensation coming from the calf.

By decision dated January 24, 2013, OWCP denied the claim on the basis that the medical evidence failed to establish a causal relationship between the diagnosed conditions and the implicated employment factors.

On January 30, 2013 appellant requested reconsideration and submitted reports dated January 14 and 28, 2013 from Dr. Muhlner who reiterated her diagnoses and restrictions. In a second January 14, 2013 report, Dr. Muhlner indicated that appellant continued to have a significant amount of anterior knee pain, worse with stairs. Appellant also had medial knee pain and felt like it gave way when she stepped on a tiny rock. She noted that her knee became stiff or locked up if she sat for over 10 minutes and had to extend the knee before she got up. Dr. Muhlner indicated that appellant had a meniscal repair to the right knee seven years ago.

By decision dated May 2, 2013, OWCP denied modification of the January 24, 2013 decision.

On May 16, 2013 appellant requested reconsideration and submitted a May 13, 2013 report from Dr. Muhlner indicating that in her November 28, 2012 report she cited "walking down the hill" as the mechanism of injury, not repetitive strain, and did not change it throughout her time seeing appellant. Dr. Muhlner also submitted a January 28, 2013 report and indicated that she provided an orthopedic specialist opinion on appellant's diagnosis, which included a

possible meniscus or chondral injury which was likely a result of her mechanism of injury. She stated that because appellant was walking down a hill carrying a heavy bag when she got injured, and x-rays did not show any significant degenerative disease that could account for the pain, her possible meniscal tear was likely a result of her work injury.

On June 3, 2013 an OWCP medical adviser reviewed the medical evidence and indicated that there appeared to be a left knee sprain and found no diagnostic testing in the record or diagnostic signs upon physical examination that would lead to another specific diagnosis. The medical adviser indicated that an acute knee sprain was possible from the traumatic incident described, especially if there was underlying degenerative disease.

By decision dated June 12, 2013, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

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

An employee seeking benefits under FECA<sup>3</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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, and that an injury<sup>4</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>5</sup> See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>7</sup>

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

The Board finds that appellant did not meet her burden of proof to establish a claim that federal employment factors caused or aggravated her left knee condition. While appellant submitted a statement in which she identified the factors of employment that she believed caused the condition, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical condition was caused or aggravated by the implicated employment factors.<sup>8</sup>

In her reports, Dr. Muhlner diagnosed left knee sprain/strain and joint pain. She indicated that appellant was walking down a hill and felt swelling in the knee. Later that day, appellant felt pain and burning. She had to continue walking and felt burning in the knee joint, as well as a pulling sensation coming from the calf. On January 14, 2013 Dr. Muhlner indicated that appellant continued to have a significant amount of anterior knee pain, worse with stairs. Appellant also had medial knee pain and felt like it gave way when she stepped on a tiny rock. She noted that her knee became stiff or locked up if she sat for over 10 minutes and had to extend the knee before she got up. Dr. Muhlner provided the following restrictions: limit standing/walking to no more than three hours continuously; no climbing; no pivoting, kneeling or squatting. She failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as repetitive movements of lifting, carrying, standing, walking, climbing, kneeling and going up and down stairs, caused or aggravated her left knee condition. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.<sup>9</sup> Lacking thorough medical rationale on the issue of causal relationship, Dr. Muhlner's reports are insufficient to establish that appellant sustained an employment-related injury.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

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.

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<sup>7</sup> See *O.W.*, *supra* note 5.

<sup>8</sup> *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right, it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>10</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>11</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, its regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by it; or (3) constitute relevant and pertinent new evidence not previously considered by it.<sup>12</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>13</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>14</sup>

## ANALYSIS -- ISSUE 2

In support of her May 16, 2013 reconsideration request, appellant submitted new medical reports dated January 28 and May 13, 2013 from Dr. Muhlner who diagnosed possible meniscus or chondral injury which was likely a result of her mechanism of injury. Dr. Muhlner stated that because appellant was walking down a hill carrying a heavy bag when she got injured, and x-rays did not show any significant degenerative disease that could account for the pain, her possible meniscal tear was likely a result of her work injury. Her opinions directly addressed the grounds upon which OWCP denied appellant's claim as it addressed the issue of causal relationship.

Moreover, an OWCP medical adviser reviewed the medical evidence on June 3, 2013 and indicated that there appeared to be a left knee sprain. Although she found no diagnostic testing in the record or diagnostic signs upon physical examination that would lead to another specific diagnosis, the medical adviser indicated that an acute knee sprain was possible from the traumatic incident described, especially if there was underlying degenerative disease.

The Board has held that 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. He or she need only submit relevant and pertinent evidence not previously considered by

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<sup>10</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>11</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>12</sup> 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>13</sup> *Id.* at § 10.607(a).

<sup>14</sup> *Id.* at § 10.608(b).

OWCP.<sup>15</sup> For these reasons, the Board finds that Dr. Muhlner's reports constitute relevant and pertinent new evidence not previously considered by OWCP. As it meets one of the standards for obtaining a merit review of her case, the Board finds that OWCP improperly denied appellant's request. Appellant is entitled to a merit review.

The Board will remand the case for a review of the merits. After such further development of the evidence as might be necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a left knee condition in the performance of duty causally related to factors of her federal employment. The Board further finds that OWCP improperly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed and the June 12, 2013 decision is remanded for further action consistent with this decision of the Board.

Issued: April 9, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *Helen E. Tschantz*, 39 ECAB 1382 (1988).