United States Department of Labor
Employees' Compensation Appeals Board

D.F., Appellant	)	
and	)	**Docket No. 20-0773**
	)	**Issued: December 8, 2020**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Buffalo, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 20, 2020 appellant filed a timely appeal from a September 23, 2019 merit decision and a January 14, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted June 19, 2017 employment incident; and (2) whether

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the January 14, 2020 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.*

OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 14, 2017 appellant, then a 55-year-old program evaluation and risk analyst, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2017 she sustained a knee injury when she stepped onto a curb while walking into the parking lot of her building while in the performance of duty. She did not immediately stop work.

A July 5, 2017 magnetic resonance imaging (MRI) scan of the right knee revealed a fairly extensive degenerative tear involving the lateral meniscus, mild degenerative changes in the medial meniscus, grade two degenerative change in the medial compartment of the medial femoral condyle, grade three degenerative change in the patellofemoral compartment, grade two degenerative change in the lateral compartment, associated joint effusion, and a Baker's cyst.

On July 10, 2017 Dr. John C. Karpie, a Board-certified orthopedist, treated appellant for right knee pain that developed after a twisting injury on her way into work on June 19, 2017. Examination of the right knee revealed slightly antalgic gait, mild effusion, and tenderness to palpation over the medial and lateral joint line and medial patellar facet. Dr. Karpie reviewed the MRI scan of the right knee and diagnosed right knee conditions of chondromalacia patellae, other meniscal derangements and unspecified lateral meniscus, and other meniscus derangements. On July 20, 2017 he performed a right knee arthroscopic partial lateral meniscectomy and right knee arthroscopic extensive synovectomy. Dr. Karpie diagnosed right knee lateral meniscal tear and right knee synovitis. On July 28, 2017 he evaluated appellant eight days status post right knee surgery and noted the incisions were clean and dry with mild swelling. Dr. Karpie diagnosed other tear of lateral meniscus, right knee, synovial hypertrophy, right lower leg, and chondromalacia patellae, right knee. He removed sutures and recommended physical therapy and sedentary work beginning July 31, 2017. In a July 28, 2017 work restriction note, Dr. Karpie treated appellant in follow up and released her to work without restrictions on July 31, 2017.[3]

In a development letter dated September 13, 2017, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter dated September 25, 2017, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to submit the necessary evidence.

In response to OWCP's development letter, appellant submitted a statement and indicated that on the morning of June 19, 2017 she walked approximately seven feet inside the fence surrounding the perimeter of the federal building where she worked and stepped onto a curb twisting her right knee. She immediately experienced right knee pain and swelling and on June 30, 2017 she sought treatment from Dr. Alexandra C. D'Angelo, an osteopath. Appellant had not experienced a similar injury prior to this time. She indicated that at the time of her injury she was on the premises of the employing establishment.

[3] Appellant attended physical therapy treatment from August 3 through 30, 2017.

In a work restriction note dated July 11, 2017, Dr. Karpie indicated that appellant was scheduled for right knee surgery on July 20, 2017 and would be totally disabled from July 20 to 28, 2017. In reports dated September 1, October 6, and November 17, 2017, he noted that appellant was progressing well after surgery and could return to full-duty work. In the October 6 and November 17, 2017 reports, Dr. Karpie checked a box marked "Yes" indicating that the employment incident was the competent medical cause of her injury. In an attending physician's report (Form CA-20) dated October 12, 2017, he advised that appellant twisted her right knee?on June 19, 2017 while going into work. Dr. Karpie diagnosed right knee medial meniscus tear and status post arthroscopy meniscectomy and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. He noted that appellant was disabled from July 11 to 30, 2017 and could resume regular duty on July 31, 2017.

By decision dated December 15, 2017, OWCP denied the claim, finding that the June 9, 2017 employment incident occurred, as alleged, but that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed condition and the accepted June 19, 2017 employment incident.

In attending physician's reports (Form CA-20) dated November 21, 2017 and March 27, 2018, Dr. Karpie indicated that appellant twisted her right knee? on June 19, 2017, while going to work. He diagnosed right knee lateral meniscus tear and synovitis of the right knee and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. Dr. Karpie noted that appellant had been working full duty since September 1, 2017. In reports dated March 16 and July 27, 2018, he noted that appellant was status post right knee arthroscopic partial lateral meniscectomy and synovectomy and reported 90 percent improvement overall. Dr. Karpie noted that appellant had retired.

On January 10, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on June 14, 2018.

By decision dated September 4, 2018, OWCP's hearing representative affirmed the December 15, 2017 decision.

In an attending physician's report (Form CA-20) dated August 8, 2018, Dr. Karpie diagnosed right knee lateral meniscus tear and synovitis of the right knee and checked a box marked "Yes," indicating that appellant's condition had been caused or aggravated by an employment activity.

On October 16, 2018 appellant requested reconsideration. In support of her request, she submitted a September 20, 2018 note from Dr. Karpie, who indicated that appellant sustained a twisting injury to her right knee on June 19, 2017 and experienced medial and anterior knee pain, which has continued. He indicated that appellant did not have pain or dysfunction prior to her twisting injury. Dr. Karpie concluded that the twisting injury on June 19, 2017 caused her meniscal tears resulting in pain, dysfunction, and surgery.

By decision dated January 8, 2019, OWCP denied modification of the September 4, 2018 decision.

On March 8, 2019 appellant requested reconsideration. She submitted a June 30, 2017 report from Dr. D'Angelo, who treated her for right knee pain which began on June 19, 2017. Appellant reported walking through a parking lot and stepping on a curb and twisting her right knee. Examination of the right knee revealed no instability, intact strength, normal muscle tone, full range of motion, and negative anterior drawer and posterior drawer test. Dr. D'Angelo diagnosed pain in the right knee.

By decision dated April 30, 2019, OWCP denied modification of the January 8, 2019 decision.

On June 25, 2019 appellant requested reconsideration. She submitted documents which provided definitions of knee sprains, strains, and tears.

By decision dated September 23, 2019, OWCP denied modification of the April 30, 2019 decision.

On January 10, 2020 appellant requested reconsideration. In support thereof, she submitted a statement dated January 6, 2020 in which she reiterated that she had injured her right knee on June 19, 2017 while walking into work. Appellant indicated that she was also carrying a computer bag weighing approximately 22 pounds that contained her computer, cords, and file folders. She attached a photograph of the computer bag. Appellant noted no prior injuries to her knee. She also resubmitted a report from Dr. Karpie dated September 20, 2018, previously of record.

By decision dated January 14, 2020, 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

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6] 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.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There

[4] *Id.*

[5] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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 the relationship between the diagnosed condition and specific employment factors identified by the employee.[10]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted June 19, 2017 employment incident.

Dr. Karpie, in a note dated September 20, 2018, indicated that on June 19, 2017 appellant sustained a twisting injury to her right knee and experienced medial and anterior knee pain. He noted that appellant did not have pain or dysfunction prior to her twisting injury. Dr. Karpie concluded that the twisting injury on June 19, 2017 caused her meniscal tears resulting in pain and dysfunction and surgery. Although Dr. Karpie supported causal relationship, he did not provide medical rationale supporting his conclusory opinion. The Board has held that a medical opinion is of limited value if it is conclusory in nature.[11] A medical opinion must explain how the implicated employment incident physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[12] Dr. Karpie did not explain how appellant's act of twisting had resulted in the conditions he had diagnosed and considered work related. Without this explanation, his report is insufficient to meet appellant's burden of proof to establish her claim.[13]

In support of her claim, appellant submitted additional medical records authored by Dr. Karpie, including a July 10, 2017 report in which he diagnosed right knee conditions, a July 20, 2017 surgical report, a July 28, 2017 report in which he noted the prior surgery and diagnosed right knee conditions, and work restriction notes dated from July 28 to November 17, 2017 in which he reported treating appellant. However, in none of these reports did Dr. Karpie provide an opinion

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *B.H.*, Docket No. 18-1219 (issued January 25, 2019).

[12] *C.M.*, *id.*; *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

[13] *Id.*

on the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] These reports, therefore, are insufficient to establish appellant's claim.

In reports dated October 6, and 12, November 17 and 21, 2017, and August 8, 2018, Dr. Karpie checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. However, the Board has held that an opinion on causal relationship that consists only of an affirmative check mark on a form report, without more by way of medical rationale, is of limited probative value.[15] As such, these reports are insufficient to establish appellant's claim.

Appellant also submitted reports signed by a physical therapist. Certain healthcare providers such as physical therapists,[16] however, are not considered physicians as defined under FECA.[17] Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.[18]

Appellant further submitted a right knee MRI scan report. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused the diagnosed conditions.[19] The MRI scan is thus insufficient to establish the claim.

Appellant also submitted excerpts from a publication which provided definitions of knee sprains, strains, and tears. The Board has long held that medical texts and excerpts from publications lack probative value in establishing the causal relationship between a claimed condition and an employment incident as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[20] This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on the causal relationship between a

[14] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

[16] *V.W.*, Docket No. 16-1444 (issued March 14, 2017) (where the Board found that physical therapy reports do not constitute competent medical evidence because a physical therapist is not a "physician" as defined under FECA).

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[18] Section 8101(2) of FECA provides that 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). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(a)(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians as defined under FECA).

[19] *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *J.P.*, Docket No. 19-0216 (issued December 13, 2019).

[20] *L.C.*, Docket No. 17-1811 (issued March 23, 2018); *N.B.*, Docket No. 14-1702 (issued December 29, 2014); *S.A.*, Docket No. 13-1551 (issued December 17, 2013); *Gloria J. McPherson*, 51 ECAB 441 (2000); *William C. Bush*, 40 ECAB 1064, 1075 (1989).

condition and specified employment injury.[21] As these publications were not interpreted and cited by appellant's physicians in offering a rationalized medical opinion as to how appellant's specific employment factors caused her diagnosed conditions, these publications are insufficient to establish causal relationship.

On appeal appellant asserts that she submitted sufficient medical evidence in support of her claim for compensation. However, as explained above, there was no rationalized medical evidence by a physician of record at the time OWCP issued its September 23, 2019 decision. As such, the Board finds that appellant 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.[22]

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.[23]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[24] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[25] If the request is timely, but fails to meet at least one of the

[21] *L.C., id.*; *C.S.*, Docket No. 12-1169 (issued November 5, 2012); *Harlan L. Soeten*, 38 ECAB 566, 567 (1987).

[22] 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

[23] 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.; B.W.*, Docket No. 18-1259 (issued January 25, 2019).

[24] *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 (February 2016). 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.

[25] *Id.* at § 10.608(a); *see also Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[26]

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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).[27]

Further, appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. The underlying issue is whether a diagnosed condition was causally related to the accepted June 9, 2017 employment incident. This is a medical issue which must be determined by rationalized medical evidence.[28] On reconsideration appellant submitted a picture of a computer bag that she was carrying on June 19, 2017. However, as this is not medical evidence it is irrelevant to the underlying issue on reconsideration, whether appellant had met her burden of proof to establish that her right knee condition was causally related to the accepted work incident.[29] Therefore, this photograph is insufficient to warrant a merit review. Appellant also resubmitted a copy of Dr. Karpie's September 20, 2018 report. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case and thus, this report is also insufficient to warrant a merit review.[30]

As appellant failed to provide relevant and pertinent new evidence related to the underlying issue of causal relationship, she was not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

[26] *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

[27] *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

[28] *See J.B.*, Docket No. 18-1531 (issued April 11, 2019); *E.D.*, Docket No. 18-0138 (issued May 14, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[29] *B.O.*, Docket No. 20-0156 (issued May 13, 2020); *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

[30] *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018).

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.[31]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the June 19, 2017 employment incident. 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 January 14, 2020 and September 23, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[31] *D.M., id.*; *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).