



## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment; and (2) whether 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 19, 2022 appellant, then a 39-year-old city carrier assistant 1, filed an occupational disease claim (Form CA-2) alleging that she developed a knee condition "after injury to back" due to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment on April 25, 2021. Appellant stopped work on August 28, 2021.

In an April 27, 2022 report, Dr. Charles E. Willis, II, a Board-certified physiatrist, evaluated appellant and noted that, on or about April 25, 2021, she began experiencing pain and discomfort in her knees and reported weakness, numbness, tingling, and swelling when standing or walking. He diagnosed sprains of the knees, noting that examination revealed bilateral knee swelling, tenderness, and reduced range of motion. Dr. Willis opined that the constant and highly repetitive occupational demands of appellant's job, including sweeping mail, pushing, pulling, lifting, carrying and manipulating medium to heavy loads while standing, walking, bending, stooping and reaching, contributed to appellant's occupational bilateral knee injury. He explained that given the absence of other causal factors, appellant's employment duties directly caused and contributed to her injuries from repetitive stresses and highly repetitive work activities, including manipulating trays of mail, pushing, pulling, lifting, and carrying/manipulating medium to heavy loads "along with other occupational demands consistent with being [an employing establishment] employee."

In a duty status report (Form CA-17) dated July 27, 2022, Dr. Willis diagnosed lumbar radiculopathy, sciatica, and lumbar sprain. He reported that appellant could return to work with light-duty restrictions. In a separate July 27, 2022 Form CA-17, he diagnosed bilateral knee sprain and recommended light-duty restrictions.

In a work capacity evaluation (Form OWCP-5c) dated July 27, 2022, Dr. Willis noted light-duty work restrictions for a bilateral wrist sprain.

In a July 28, 2022 development letter, 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 of the same date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding appellant's claim. It afforded both parties 30 days to respond.

In a July 28, 2022 letter, the employing establishment responded to OWCP's questionnaire, stating that appellant had been off work since the date of injury. It noted that, as a city carrier, appellant was instructed to use proper team lifting for parcels that were too heavy. An official position description for a city carrier was provided detailing appellant's employment duties.

Appellant submitted additional evidence in response to OWCP's development letter.

In an undated note, Penelope McClendon, a nurse practitioner, documented treatment on June 7, 2022 and indicated that appellant was incapacitated and unable to work from June 7 through 30, 2022.

In a July 22, 2022 note, Dr. Lauren Brown, a family medicine specialist, reported that appellant was evaluated on that date and was unable to work from July 22 through August 22, 2022.

In a July 27, 2022 medical note, Dr. Willis restricted appellant to light-duty work and further recommended physical therapy for pain management.

In a September 14, 2022 Form CA-17, an individual with an illegible signature diagnosed bilateral knee sprain and recommended work restrictions.

By decision dated September 30, 2022, OWCP denied appellant's occupational disease claim, finding that she had not established the implicated factors of her federal employment. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

Appellant submitted additional evidence in support of her claim. A May 6, 2022 left knee magnetic resonance imaging (MRI) scan showed an impression of anterior cruciate ligament (ACL) low-grade sprain without evidence of tear. A May 6, 2022 right knee MRI scan also showed an impression of ACL low-grade sprain without evidence of tear.

In a September 14, 2022 report, Dr. Robert C. Lowry, physiatrist, reported examination findings noting no significant changes from the previous examination. He indicated that appellant currently was on light-duty status. In a March 1, 2023 report, Dr. Lowry noted that she reported that on or about April 25, 2021 she began experiencing pain and discomfort in her bilateral knees that she attributed to her highly repetitive work duties, which included flipping trays of mail, and pushing, pulling, lifting, carrying, and manipulating heavy loads. He diagnosed knee sprains and restricted appellant to light-duty work. In a March 1, 2023 Form CA-17, Dr. Lowry diagnosed bilateral knee sprain and recommended work restrictions.

On August 29, 2023 appellant requested reconsideration of the September 30, 2022 decision. In a narrative statement submitted on August 30, 2023, she discussed her employment duties, which entailed standing and walking for eight hours per day without breaks or rest. Appellant alleged that these activities caused her bilateral knee injury.

Appellant subsequently submitted a September 6, 2023 report wherein Dr. Lowry again noted that appellant reported that on or about April 25, 2021 she began experiencing pain and discomfort in her bilateral knees that she attributed to her highly repetitive work duties, which included flipping trays of mail, and pushing, pulling, lifting, carrying, and manipulating heavy loads. Dr. Lowry documented her ongoing treatment for bilateral knee sprain and noted her light-duty work status.

By decision dated September 20, 2023, OWCP modified its September 30, 2022 decision to reflect that appellant had established the implicated factors of her federal employment. However, it found that the claim remained denied because the medical evidence of record was

insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On September 21, 2023 appellant requested reconsideration of the September 20, 2023 decision.

On September 22, 2023 OWCP received appellant's August 28, 2023 narrative statement responding to its July 28, 2022 development questionnaire. Appellant described her employment duties, which required standing for 8 to 10 hours per day, five to six days per week, without breaks or rest. She maintained that standing for long periods of time, walking to deliver mail on uneven pavement, and getting in and out of her postal vehicle contributed to her bilateral knee conditions and resulted in pain, swelling, and knee buckling. Appellant reported no outside activities, which would cause her knee injuries.

On September 25, 2023 OWCP received another copy of Dr. Lowry's September 6, 2023 report.

By decision dated October 2, 2023, OWCP denied modification of its September 20, 2023 decision.

On October 10, 2023, appellant requested reconsideration of the October 2, 2023 decision. No additional evidence or argument was received.

By decision dated October 12, 2023, 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<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</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>7</sup>

To establish that an injury was sustained in the performance of duty in 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

---

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

<sup>5</sup> *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

<sup>6</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

<sup>7</sup> *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

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>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>10</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>11</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.<sup>12</sup>

In support of her claim, appellant submitted an April 27, 2022 report from Dr. Willis wherein he noted that appellant complained of increased stiffness, pain, weakness, numbness, tingling, and swelling in her knees beginning in April 2021. Dr. Willis described appellant's employment duties as a city carrier, which entailed standing and walking for long periods of time, and lifting mail weighing 40 to 65 pounds. He opined that appellant's constant and highly repetitive occupational demands, including sweeping mail, pushing, pulling, lifting, and carrying/manipulating medium to heavy loads while standing, walking, bending, stooping, and reaching, had caused and contributed to her bilateral knee sprain. However, Dr. Willis' statement that appellant's employment duties caused her bilateral knee conditions is generalized in the absence of medical rationale explaining how the specific movements caused or contributed to the diagnosed condition.<sup>13</sup> The Board has held that without explaining how appellant's employment duties caused or aggravated her condition, an opinion on causal relationship is of limited probative value.<sup>14</sup> Thus, this report is insufficient to establish appellant's work-related occupational disease claim.<sup>15</sup>

In a September 14, 2022 report, Dr. Lowry indicated that appellant currently was on light-duty status, but he did provide a medical diagnosis. In the March 1 and September 6, 2023 reports,

---

<sup>8</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>11</sup> *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, *supra* note 8.

<sup>12</sup> *C.J.*, Docket No. 22-1015 (issued March 31, 2023); *J.D.*, Docket No. 21-0470 (issued December 2, 2022).

<sup>13</sup> *R.T.*, Docket No. 18-0581 (issued October 3, 2018).

<sup>14</sup> See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>15</sup> *M.M.*, Docket No. 20-1649 (issued January 4, 2023).

he diagnosed bilateral knee sprain, but he did not provide his own opinion on the cause of the diagnosed medical condition. 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.<sup>16</sup> Thus, these reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence is also insufficient to establish appellant's occupational disease claim. In form reports dated July 27, 2022, Dr. Willis provided medical diagnoses and recommended light-duty restrictions. In a form report dated March 1, 2022, Dr. Lowry provided a medical diagnosis and recommended light-duty restrictions. Appellant also submitted a July 22, 2022 note in which Dr. Brown excused appellant from work for the period July 22 through August 22, 2022, and a July 27, 2022 note in which Dr. Willis discussed her work restrictions. However, these reports also do not contain an opinion on the cause of appellant's conditions. As noted above, 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.<sup>17</sup> Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted an undated note wherein Ms. McClendon, a nurse practitioner, documented treatment on June 7, 2022. The Board has held, however, that nurses, physician assistants, and physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.<sup>18</sup> Consequently, their medical findings or opinions are insufficient to meet appellant's burden of proof.

Appellant submitted a September 14, 2022 Form CA-17 from an individual with an illegible signature. The Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they do not provide an indication that the person completing the report qualifies as a physician under FECA.<sup>19</sup> Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

Appellant also submitted diagnostic test results, including the May 6, 2022 right and left knee MRI scans. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused any of the diagnosed conditions.<sup>20</sup> Such reports are therefore insufficient to establish appellant's claim.

---

<sup>16</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>17</sup> *Id.*

<sup>18</sup> Section 8101(2) 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); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(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). See also *R.S.*, Docket No. 21-0803 (issued February 23, 2023) (nurse practitioners and physical therapists are not considered physicians under FECA).

<sup>19</sup> *B.S.*, Docket No. 22-0918 (issued August 29, 2022); see *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>20</sup> *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted factors of federal employment, the Board finds that appellant has not met her burden of proof.<sup>21</sup>

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 or her own motion or on application.<sup>22</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 OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>23</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>24</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>25</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>26</sup>

### **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).<sup>27</sup>

---

<sup>21</sup> *LD.*, Docket No. 22-0848 (issued September 2, 2022); *T.G.*, Docket No. 14-751 (issued October 20, 2014).

<sup>22</sup> 5 U.S.C. § 8128(a); *see R.C.*, Docket No. 22-0612 (issued October 24, 2022); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *LD.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>23</sup> 20 C.F.R. § 10.606(b)(3); *see R.C.*, *id.*; *LD.*, *id.*

<sup>24</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>25</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>26</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>27</sup> *T.R.*, Docket No. 23-0287 (issued June 23, 2023).

In connection with her October 10, 2023 reconsideration request, appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law.<sup>28</sup> Moreover, she did not advance a relevant legal argument not previously considered by OWCP. 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).<sup>29</sup>

Appellant did not submit any evidence to support her October 10, 2022 reconsideration request.<sup>30</sup> Because she has not provided relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>31</sup>

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>32</sup>

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment. 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).

---

<sup>28</sup> *K.G.*, Docket No. 22-1358 (issued June 27, 2023).

<sup>29</sup> *See L.W.*, Docket No. 21-0607 (issued October 18, 2022).

<sup>30</sup> *D.B.*, Docket No. 23-0392 (issued September 1, 2023); *L.K.*, Docket No. 22-0793 (issued August 26, 2022).

<sup>31</sup> *See M.H.*, Docket No. 23-0779 (issued October 16, 2023); *D.H.*, Docket No. 22-0875 (issued December 5, 2022); *see also D.J.*, Docket No. 21-0371 (issued November 24, 2021).

<sup>32</sup> *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).



**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20 and October 2 and 12, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 24, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board