

FACTUAL HISTORY

On October 16, 2023 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right knee pain due to factors of her federal employment. She noted that she had to climb two-foot trenches to deliver mail during road construction on her mail route. Appellant noted that she first became aware of her condition on October 2, 2023, and realized its relation to her employment on October 4, 2023. She did not stop work.

In a work status note dated October 5, 2023, from Amanda Schraeger, a certified family nurse practitioner, provided work restrictions.

In a development letter dated October 17, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical information needed, including a detailed factual description of the alleged employment incident, and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

On October 5, 2023 appellant was treated by Dr. Niles Schwartz, a Board-certified orthopedic surgeon. He recounted that appellant related that she was walking up and down curbs at work more frequently, and on October 2, 2023 she felt a sharp pain on the inside of her right knee and a clicking on the outside. Physical examination revealed tenderness and pain at medial femoral condyle and medial proximal and intermittent sharp shooting pain while walking at the medial knee. X-ray reports of the right knee and right tibia/fibula were reviewed and revealed no acute identifiable fractures or malalignments. Dr. Schwartz diagnosed right medial knee pain and prescribed a knee brace. In a note of even date, Ms. Schraeger also diagnosed right medial knee pain.

On October 25, 2023 appellant was examined by Dr. Matthew Snyder, a Board-certified orthopedic surgeon. He related that she believed that she may have twisted her right knee while walking at work on October 2, 2023. On examination he observed tenderness over the diffuse medial aspect of the knee, particularly at the joint line. Dr. Snyder diagnosed right knee pain and suspected a medial meniscus tear. He opined that, based on appellant's description of the injury, her condition was "likely" work related.

In a follow-up letter dated November 16, 2023, OWCP advised appellant that it had conducted an interim review and found that the evidence remained insufficient to establish her claim. It noted that she had 60 days from the October 17, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP subsequently received a report dated November 15, 2023, wherein Dr. Snyder noted his review of a magnetic resonance imaging (MRI) scan, which demonstrated a low-grade impaction fracture. He opined that this was consistent with a stress reaction or fracture of the medial compartment. Dr. Snyder diagnosed right femur stress fracture.

On November 15, 2023 Dr. Snyder released appellant to work with restrictions.

In a follow-up report dated December 13, 2023, Dr. Snyder reiterated his diagnoses of right femur fracture, right medial knee pain, and right knee lateral meniscus tear. He noted that x-rays of the right knee showed no evidence of significant sclerosis or collapse of the medial femoral condyle.

By decision dated December 18, 2023, OWCP denied appellant's occupational disease claim, finding that she had not established that her diagnosed lower extremity conditions were causally related to the accepted employment factors.

On January 2, 2024 appellant requested reconsideration. No additional argument or evidence was received.

By decision dated January 4, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On April 10, 2024 appellant again requested reconsideration. In support of her request, she resubmitted Dr. Snyder's December 13, 2023 report.

By decision dated April 16, 2024, 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 FECA² 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, 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.³ 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.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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

² *Id.*

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors by the claimant.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ The opinion of the physician must be based on a complete factual and medical background, 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 the specific employment factors.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

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 factors of her federal employment.

On October 5, 2023 Dr. Schwartz noted that appellant described injuring her right knee at work on October 2, 2023. He diagnosed right medial knee pain and prescribed a knee brace. However, Dr. Schwartz did not provide an opinion on causal relationship. The Board has held that a report that offers no opinion on causal relationship is of no probative value on the issue of causal relationship.⁹ As such, Dr. Schwartz' October 5, 2023 report is insufficient to meet appellant's burden of proof.

On October 25, 2023 Dr. Snyder diagnosed right knee pain and suspected a medial meniscus tear. He opined that, based on appellant's description of the injury, her condition was "likely" work related. While Dr. Snyder attributed her diagnosed right knee conditions as likely related to her employment, the Board has held that medical opinions that are speculative or equivocal are of diminished probative value.¹⁰ Therefore, this October 25, 2023 report by Dr. Snyder is also insufficient to establish appellant's claim.

In his reports dated November 15 and December 13, 2023, Dr. Snyder referenced an MRI scan and x-ray reports, provided work restrictions, and diagnosed right femur fracture, right medial knee pain, right knee lateral meniscus tear and possible stress reaction or fracture of the

⁵ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

⁶ *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *D.S. id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

⁸ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

⁹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *L.H.*, Docket No. 24-0326 (issued May 7, 2024); *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

medial compartment. However, he did not provide an opinion regarding the cause of appellant's medical condition. The Board has held that a report that offers no opinion on causal relationship is of no probative value on the issue of causal relationship.¹¹ For this reason, Dr. Snyder's reports are insufficient to establish the claim.

The remaining evidence of record consists of notes dated October 5, 2023 from Ms. Schraeger, a nurse practitioner. However, the Board has held that certain healthcare providers such as nurse practitioners are not considered physicians as defined under FECA.¹² Therefore, Ms. Schraeger's October 5, 2023 notes are of no probative value and are insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and her accepted employment factors, the Board finds that she 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 does not entitle a claimant to review of an OWCP decision as a matter of right.¹³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁵ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not

¹¹ *Supra* note 9.

¹² 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); 20 C.F.R. § 10.5(t). *See also* 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).

¹³ This section provides in pertinent part: [t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application. 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.607.

¹⁵ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. 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.

previously considered by OWCP.¹⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's requests for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her April 10, 2024 request for reconsideration, she resubmitted Dr. Snyder's December 13, 2023 report which was previously reviewed by OWCP. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a claim.¹⁸ Thus, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied appellant's requests for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹⁶ *Id.* at § 10.606(b)(3).

¹⁷ *Id.* at § 10.608(a), (b).

¹⁸ *J.R.*, Docket No. 23-0980 (issued January 23, 2024); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *see also S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2023, and January 4 and April 16, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 17, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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