



## ISSUE

The issue is 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 April 18, 2017 appellant, then a 34-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 20, 2016, while in the performance of duty, she injured her left knee when she was struck by a vehicle when delivering mail on foot. She alleged that she sustained persistent back pain and a left knee injury that required surgery. Appellant did not stop work at the time of the claimed injury.

In a medical note dated April 3, 2017, Dr. Michael V. Elman, a Board-certified orthopedic surgeon, noted that appellant was his patient since November 30, 2016 for complaints of left knee pain as well as low back pain subsequent to being hit by a vehicle while walking as a mail carrier. He indicated that a magnetic resonance imaging (MRI) scan of left knee revealed a torn lateral meniscus. Dr. Elman recommended arthroscopic surgery.

In a letter dated April 28, 2017, Postmaster L.K. controverted appellant's claim, noting that while appellant reported the July 20, 2016 incident, she denied any injury and completed her delivery route.

In a development letter dated May 15, 2017, OWCP advised appellant of the deficiencies in her claim and requested that she submit additional evidence. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No additional evidence was received.

By decision dated June 16, 2017, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between the accepted July 20, 2016 employment incident and her left knee injury.

Following the June 16, 2017 decision, OWCP received a physical therapy note dated March 9, 2010, showing that appellant was treated for a previous, separate knee condition, and physical therapy notes dated February 2 through April 28, 2017, showing that appellant was treated for a left knee injury subsequent to the accepted July 20, 2016 employment incident.

On July 12, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Prior to the hearing, OWCP received a police report covering the July 20, 2016 employment incident. The hearing was held telephonically on December 6, 2017. Appellant testified that she was hit by a driver whose vehicle jumped the curb and struck the lower part of her left leg and a utility pole before backing up and driving away. She testified that she got out of the way as the vehicle reversed and backed out. Appellant testified that one of her supervisors and the postmaster came down to the scene before she headed to the police station to file a report. She further testified that she did not finish her route and received initial medical treatment on the same evening.

Following the December 6, 2017 hearing, OWCP received additional evidence.

A December 7, 2016 left knee MRI scan report revealed a torn lateral meniscus as well as medial collateral ligament sprain. A February 26, 2017 lumbar spine MRI scan report revealed a small disc herniation at L5-S1 and no significant nerve root compromise.

In January 2, 2018 appointment notes, Dr. Elman reported that appellant was hit by a vehicle from behind and fell and might have twisted her knee at the time of injury. He diagnosed a left lateral meniscus tear. Dr. Elman noted that being hit by a car and falling could have led to a meniscus tear in the left knee. He again recommended arthroscopic surgery.

By decision dated February 8, 2018, OWCP's hearing representative affirmed the June 16, 2017 decision.

OWCP subsequently received additional copies of appellant's physical therapy records.

In a January 14, 2019 report, Dr. Elman related that appellant was struck by a vehicle at a relatively slow speed while delivering mail on July 20, 2016. He noted that a left knee MRI scan revealed a torn lateral meniscus. Dr. Elman opined that appellant's left knee injury could have been caused by her work accident in being struck by a motor vehicle whether it was a twisting mechanism or fall. He also noted that appellant was previously asymptomatic in her knee and had no arthritic findings.

On January 15, 2019 appellant, through counsel, requested reconsideration. Counsel referenced and attached the January 14, 2019 report from Dr. Elman.

By decision dated January 30, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim.

### **LEGAL PRECEDENT**

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.<sup>3</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>4</sup>

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<sup>3</sup> *Id.* at § 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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

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>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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>7</sup>

### ANALYSIS

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

Appellant's January 15, 2019 timely request for reconsideration failed to show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to a review of the merits based on the first and second requirements pursuant to section 10.606(b)(3).<sup>8</sup>

The Board notes that the underlying issue in this case is whether appellant had met her burden of proof to establish causal relationship between the accepted July 20, 2016 employment incident and her claimed left knee injury. That is a medical issue which, on reconsideration, must be addressed by relevant medical evidence not previously considered.<sup>9</sup>

In support of her January 15, 2019 reconsideration request, appellant, through counsel, submitted a January 14, 2019 report by Dr. Elman. In this report, Dr. Elman noted that appellant was struck by a vehicle while delivering mail. He indicated that an MRI scan of her left knee revealed a torn lateral meniscus and opined that the left knee injury could have been caused by her work accident in being struck by a motor vehicle, whether it was a twisting mechanism or fall. He also noted that appellant was previously asymptomatic in her knee and had no arthritic findings. The Board finds that explanation is new and pertinent relevant evidence, which directly addresses the issue of causal relationship. Reopening a claim for merit review does not require a claimant to submit all evidence that may be necessary to discharge his or her burden of proof.<sup>10</sup> Instead, the requirement pertaining to the submission of evidence in support of reconsideration only

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<sup>5</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 (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.

<sup>6</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</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>8</sup> *T.J.*, Docket No. 19-0053 (issued April 4, 2019); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

<sup>9</sup> *W.N.*, Docket No. 19-0690 (issued August 16, 2019); *G.T.*, Docket No. 18-1506 (issued April 24, 2019); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>10</sup> *P.M.*, Docket No. 19-1253 (issued January 23, 2020); *R.T.*, Docket No. 18-1263 (issued February 7, 2019).

specifies that the evidence be relevant and pertinent and not previously considered by OWCP.<sup>11</sup> Appellant's request for reconsideration, therefore, met the third standard for obtaining merit review of her case under 20 C.F.R. § 10.606(b)(3).<sup>12</sup> Accordingly, she is entitled to a merit review.

The Board will therefore set aside OWCP's January 30, 2019 decision and remand the case for an appropriate merit decision on appellant's claim.

**CONCLUSION**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).<sup>13</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with the decision of the Board.

Issued: February 17, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> *F.E.*, Docket No. 20-0070 (issued August 4, 2020); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>12</sup> *H.D.*, Docket No. 18-0865 (issued February 10, 2020); *M.C.*, Docket No. 17-1983 (issued August 17, 2018); *Helen E. Tschantz*, *id.*

<sup>13</sup> Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board effective January 20, 2021.