

On December 31, 2005 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that on December 29, 2005 he injured his right knee while delivering mail. The Office accepted the claim for right knee lateral and medial meniscus tears and authorized surgery, which was performed on March 2, 2006. Appellant worked light duty from the date of the incident until the date of surgery. On May 30, 2006 appellant returned to limited-duty work.

In an August 13, 2007 report, Dr. Thomas B. Wheeler, a treating Board-certified orthopedic surgeon, noted that appellant sustained an injury at work on December 29, 2005, which caused pain and swelling. A review of the magnetic resonance imaging (MRI) scan and x-ray interpretations revealed right knee degenerative changes more advanced on the medial than the lateral side. Dr. Wheeler concluded that appellant's preexisting degenerative right knee condition had been aggravated and accelerated by his injury. Specifically, he concluded that the December 29, 2005 employment injury exacerbated appellant's knee arthritis, which resulted in the meniscus tearing and resultant surgery. Dr. Wheeler also noted that appellant's limping had increased following his employment injury, which resulted in a gait disturbance and herniated disc.

On August 22, 2007 appellant filed a claim for a recurrence of disability (Form CA-2a) claiming medical treatment only. He stated that due to the injury he required a total knee replacement.

In an October 30, 2007 report, Dr. Robert A. Smith, a second opinion Board-certified orthopedic surgeon, diagnosed right knee arthritis based on a review of the medical records and physical examination. He concluded that the arthritis was unrelated to his accepted employment injury as appellant "has had a long history of right knee pain due to arthritis" and the "natural progression of this condition would account for his current symptoms. Dr. Smith opined that appellant needed a total knee replacement, but this was unrelated to the accepted December 29, 2005 employment injury.

By decision dated August 28, 2008, the Office denied appellant's recurrence on the grounds that his condition had not worsened such that total knee surgery was required.

On May 27, 2009 appellant requested reconsideration. In support of his request, he submitted medical and factual evidence including a December 15, 2008 report and progress notes for the period January 21 to February 4, 2009 from Dr. Robert P. Boran, Jr., a treating Board-certified orthopedic surgeon. On December 15, 2008 Dr. Boran performed a physical evaluation and review of medical evidence. Diagnoses included right knee pain, right knee synovitis and effusion and moderately severe-to-severe right knee degenerative arthritis. Dr. Boran concluded that it was highly probable that his right knee medial compartment problems were due to a previous 1993 injury and were certainly exacerbated by the 2005 injury. He stated that he wanted to treat appellant with Synvisc to see if he responds before trying the total knee arthroplasty recommended by Dr. Wheeler. Dr. Boran noted that appellant would eventually need a total knee arthroplasty.

By decision dated August 21, 2009, the Office denied modification of the August 28, 2008 decision.

LEGAL PRECEDENT

A recurrence of a medical condition is defined in the Office's regulations and procedure manual as the documented need for further treatment of the accepted condition when there has

been no work stoppage.¹ When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, an employee is responsible for submitting a medical report that contains a description of objective findings and supports causal relationship between the employee's current condition and the previous work injury.² In order to establish that a claimed recurrence of medical condition was caused by the accepted injury, medical evidence bridging the symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.³

ANALYSIS

The Office accepted that appellant sustained right knee lateral and medial meniscus tears as a result of the December 29, 2005 injury and authorized knee surgery. The issue is whether he sustained a recurrence of a medical condition on August 22, 2007, causally related to the employment injury.

In support of his claim, appellant submitted an August 13, 2007 report from Dr. Wheeler, a treating Board-certified orthopedic surgeon, who opined that appellant's December 29, 2005 employment injury aggravated his preexisting knee arthritis resulting in a torn meniscus. He opined that appellant's knee arthritis had been exacerbated by his December 29, 2005 employment injury.

The Office obtained a second opinion from Dr. Smith, a Board-certified orthopedic surgeon. In an October 30, 2007 report, Dr. Smith opined that appellant did not sustain a recurrence of disability, as his condition was not related to his work injury. The Office denied appellant's claim for recurrence of disability by an August 21, 2009 decision, based on Dr. Smith as the weight of the medical evidence.

The Board finds that there is a conflict of medical opinion between Dr. Wheeler, for appellant, and Dr. Smith, for the government, regarding whether appellant's accepted condition worsened such that he sustained a recurrence of a medical condition and that a total knee replacement was required. Section 8123 of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.⁴ The case will be remanded to the Office to refer appellant, a statement of accepted facts and the medical record to an appropriate specialist or specialists to resolve the conflict of opinion regarding whether appellant sustained a recurrence of a medical condition causally related to the December 29, 2005 employment injury thereby necessitating surgery in

¹ *J.F.*, 58 ECAB 124 (2006); *Mary A. Ceglia*, 55 ECAB 626 (2004); 20 C.F.R. § 10.5(y); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (May 1997).

² *J.F.*, *id.*; Federal (FECA) Procedure Manual, *id.* at Chapter 2.1500.5(b) (May 2003).

³ *See Ricky S. Storms*, 52 ECAB 349 (2001).

⁴ 5 U.S.C. § 8123(a); *see C.M.*, 61 ECAB ____ (Docket No. 09-1268, issued January 22, 2010); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Charles S. Hamilton*, 52 ECAB 110 (2000).

the form of a total knee replacement. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.⁵

CONCLUSION

The Board finds that the case is not in posture for a decision due to a conflict of medical evidence. The case will be remanded to the Office for appropriate further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2009 be set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: August 18, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ On appeal appellant's counsel contends the Office failed to consider the evidence submitted with his reconsideration request. In view of the Board's disposition of the case, it need not address this contention.