



## **FACTUAL HISTORY**

On July 13, 1979 appellant, then an 18-year-old part-time summer forestry aide, stepped in a hole and injured her right knee. OWCP accepted the claim for bilateral localized osteoarthritis, lower leg, bilateral and old bucket handle tear of the right medial meniscus and paid appropriate compensation. Appellant underwent an August 24, 1979 arthroscopy of the right knee with removal of a torn medial meniscus and a bucket handle tear of the medial meniscus. By decision dated November 18, 1981, she received a schedule award for 10 percent permanent impairment of her right lower extremity. The award ran for the period March 11 through September 28, 1981. By decision dated September 20, 2011, OWCP accepted a July 18, 1999 recurrence of disability for medical treatment.

On January 11, 2013 appellant filed a claim for a recurrence of disability for time loss from work for the period July 21, 1999 through December 31, 2011. No evidence was submitted in support of the claim.

In a February 12, 2013 letter, OWCP requested that appellant submit additional factual and medical information, including bridging medical evidence to support disability from 1987 through 1998. Appellant was afforded 30 days to submit the requested information. OWCP noted that appellant had also filed a claim for an increased schedule award.

OWCP received a March 21, 2013 statement from appellant indicating that she had another knee surgery in 1989 and that there would not be a lot of medical records after her 1989 knee surgery as her knee got better for a time. It received medical evidence from March 1997 onward; however, the requested evidence from 1987 through 1998 pertaining to appellant's knees was not received.<sup>2</sup>

In a March 11, 1981 report, Dr. Walter D. Wright, a Board-certified orthopedic surgeon, stated that appellant was seen on March 9, 1981 and was wearing high heels and appeared to be walking without difficulty. He noted that she works as a cashier five days a week. Examination findings revealed that appellant was able to do a deep knee bend without any problem and she could walk on her heels and toes without any problem. The circumference of her knees, measured at the midpatella, was equal bilaterally with no effusion of the knee. There was a minimal drawer sign on the right side, slightly more than on the left. X-rays of the right knee appeared to be normal. Appellant was grossly overweight. Dr. Wright opined that she had five percent impairment of the right lower extremity due to removal of the medial meniscus. He also discharged appellant from medical care.

In a July 1, 1999 report, Dr. Jeffery S. Malka, a Board-certified orthopedic surgeon, indicated that appellant was seen for advanced osteoarthritis of her right knee. He noted that she was extremely overweight and this was significantly aggravating the symptoms in her knee. Because of appellant's age, it was unwise to recommend a total knee arthroplasty. Dr. Malka opined that a better alternative would be for appellant to lose 150 to 200 pounds which would

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<sup>2</sup> Medical evidence from March 24, 1997 through December 30, 1998 pertained to back and shoulder conditions, a March 24, 1997 motor vehicle accident, and bilateral carpal tunnel conditions.

benefit her knees and knee arthritis and improve the odds should she have a knee replacement in the future.

Of record were reports pertaining to appellant's pending schedule award claim. In a March 4, 2013 report, Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon and OWCP referral physician, noted the history of the July 13, 1979 injury and that medical records at that time indicated a two-year history of giving way of the right knee and a weight of approximately 155 pounds. He noted that appellant remained under the care of a Dr. John Nehil and Dr. Wright and was ultimately discharged from active treatment on March 11, 1981 by Dr. Wright. X-rays taken within a couple years of the work incident were positive for degenerative arthritis within the knee consistent with medial compartment arthritis. Dr. Hanley reported that a review of the record and conversation with appellant revealed that she had gained more weight to the point she ultimately had a gastric bypass in 2000 that was complicated by a number of postoperative difficulties. Appellant has not worked since approximately 1999 or 2000 when she was working as a senior technical writer for the Coast Guard. Dr. Hanley noted that appellant's knee problems had gotten to the point where she could no longer work and she went on long-term disability. He further noted that, as early as 2000, it was recommended that she undergo a total knee replacement and that she has been to the emergency room several times for management of her continuing symptoms. Dr. Hanley diagnosed status post bucket handle tear, right medial meniscus excised, and bilateral advancing degenerative joint disease of the knees. He opined that, because appellant has an accelerated degenerative process in the right knee, this represented residuals of the initial injury. Dr. Hanley further opined that appellant would be able to work a sedentary position with permanent restrictions.

By decision dated May 1, 2013, OWCP denied appellant's claim for compensation based on wage loss for the period July 21, 1999 through December 31, 2011. It found that she failed to submit rationalized medical evidence establishing the causal relationship between her claimed disability and the original injury.

By decision also dated May 1, 2013, OWCP granted appellant a schedule award for a 70 percent total impairment of the right lower extremity. It noted that, as 10 percent was previously paid, she was due only 60 percent. The award ran for the period December 31, 1990 through April 23, 1994.

On April 7, 2014 OWCP received a March 28, 2014 request for reconsideration from appellant's counsel who argued that the medical evidence established that appellant suffered a recurrence of disability beginning July 21, 1999. Counsel noted that OWCP failed to obtain clarifying information from Dr. Hanley, OWCP's second opinion physician, relative to periods of disability or ask whether appellant suffered a recurrence of injury beginning July 21, 1999. He further presented some arguments with respect to the schedule award determination.<sup>3</sup> Copies of medical evidence previously of record were received along with new medical evidence.

In progress reports dated October 2 and November 6, 2013, Dr. Michael A. Franchetti, a Board-certified orthopedic surgeon, provided an impression of severe advanced osteoarthritis,

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<sup>3</sup> OWCP addressed the schedule award arguments in its November 4, 2014 decision, which was issued after appellant had appealed to the Board.

both knees, right worse than left, and exacerbation of chronic left ankle sprain and opined that all the impressions were causally related to the July 13, 1979 injury. In a December 18, 2013 report, he stated that the injuries and conditions related to appellant's on-the-job injury of July 13, 1979 included severe advanced osteoarthritis of both knees, right worse than left, and right knee old bucket-handle tear of the medial meniscus. Due to her significant knee injuries sustained at work on July 13, 1979, Dr. Franchetti opined that appellant developed progressive post-traumatic arthritis that was now severe and advanced in both knees, right worse than left. He noted that she has undergone multiple arthroscopic surgeries of her injured right knee with excision of a bucket handle tear of her right medial meniscus and additional surgical intervention. Dr. Franchetti opined that the progressive biomechanical alterations due to these multiple surgeries resulted in appellant's progressive post-traumatic osteoarthritis in her right knee. As for her left knee, he indicated that she developed overuse condition due to persistent and progressive biomechanical alterations and pain in the right knee and the continual favoring of her injured right knee. Dr. Franchetti advised that the post-traumatic arthritis in appellant's left knee was causally related to her July 13, 1979 work injury.

In January 15, April 3 and 16, 2014 reports, Dr. Kevin E. McGovern, a Board-certified orthopedic surgeon, noted the history of the July 14, 1979 injury and provided an impression of right knee severe degenerative arthritis and left knee moderately severe arthritis as a result of the July 13, 1979 injury.

CA-7 forms dated January 14 and 21, 2014 were received.

In a March 19, 2008 report, Dr. Philip Bobrow, a Board-certified orthopedic surgeon, noted that appellant injured her knee 20 years ago on August 19, 1979 working a summer job. Appellant's symptoms have been present for 10 years and the pain was severe and had been worsening. Dr. Bobrow diagnosed advanced osteoarthritis right and left knee. In an August 31, 2010 report, he noted the history of the June 1979 injury and that there were no prior work injuries to the same area of the body. Dr. Bobrow noted that, since the onset, appellant's symptoms had been worsening and that the symptoms had been present for over 10 years. An impression of advanced osteoarthritis both knees was provided and bilateral total knee replacements were recommended. In a January 9, 2011 discharge application, Dr. Bobrow noted that appellant had advanced osteoarthritis right knee secondary to old injury August 1979 and that she has been unable to work since April 25, 1999.

In an April 5, 2000 report, Dr. Joseph K. Jamaris, a Board-certified neurosurgeon, noted that appellant had considerable knee problems and pain for quite some time before March 23, 1999 when her right knee locked at work, while she was a senior technical writer at the Coast Guard. He noted that appellant also had three surgeries of the right knee. A diagnosis of advanced degenerative changes of both knees, especially the right, and lumbar discomfort were provided. Dr. Jamaris stated that both syndromes have undergone significant exacerbation in the last year and are progressively deteriorating. He opined that both syndromes' intensity and progressive deterioration were a consequence of her morbid obesity. Dr. Jamaris also opined that appellant's lumbar and right shoulder complaints were secondary to the degeneration of both knees and her morbid obesity.

An attending physician's statement by a Dr. Ajrawap dated May 12, 1999 noted conditions of herniated lumbar disc, severe degenerative arthritis both knees, and osteoarthritis right shoulder.

In a February 18, 1999 report, Dr. Malka noted that appellant had advanced osteoarthritis of the knees with the additional problem of weighing 320 pounds. He opined that she was physically disabled because she could not walk very far. Dr. Malka indicated that at her age, knee replacements were not the best option and that it was preferable for her to lose weight, with a recommended weight loss of 150 to 200 pounds. Progress notes of February 17 and March 24, 1999 were provided.

In a February 29, 2000 report, Dr. Errol L. Bennett, a Board-certified orthopedic surgeon, noted that appellant's medical history started 20 years ago when she injured her knees during a fall at school and approximately 17 years ago she fell in a park and "pulled ligaments in her knee," which resulted in two surgical procedures. He noted that approximately 10 years ago, she had arthroscopy of her right knee for popping and giving away. Dr. Bennett noted that she was recently seen by a physician who recommended total knee replacement arthroplasty but because of her weight had recommended weight reduction and deferred surgery until a more normal body weight was achieved. He reviewed medical records and presented examination findings. Dr. Bennett diagnosed obesity, degenerative arthritis of both knees, right worse than left, chronic intermittent low back pain secondary to degenerative disc disease, and chronic right shoulder pain. He opined that appellant has definitive restrictions and limitations in her physical abilities which would make it difficult for her to perform her regular occupation in terms of activity within an office environment. Dr. Bennett opined that appellant was not a good candidate for a knee replacement arthroplasty given her young age and significant obesity. He opined that appellant's progressive degenerative arthritis primarily of the right knee, associated with degenerative changes in her lumbosacral spine and her right shoulder, resulted in physical impairment.

In a July 23, 2012 report, Dr. William Launder, a Board-certified orthopedic surgeon, provided an impairment determination.

By decision dated June 30, 2014, OWCP denied modification of the May 1, 2013 recurrence decision.

### **LEGAL PRECEDENT**

FECA pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>5</sup>

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> 20 C.F.R. § 10.5(f).

A recurrence of disability means an inability to work, after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed her established physical limitations.<sup>6</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>7</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>8</sup>

In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.<sup>9</sup>

### ANALYSIS

OWCP accepted that, as a result of the July 13 1979 work injury, appellant sustained bilateral localized osteoarthritis, bilateral lower leg, and old bucket handle tear of right medial meniscus. Dr. Wright discharged appellant from medical care for her knees on March 9, 1981. OWCP subsequently accepted a July 18, 1999 recurrence of disability for medical treatment. Appellant filed a recurrence of disability claim for the period July 21, 1999 to December 31, 2011. In the instant case, she has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed recurrence of disability for work as of July 21, 1999 and continuing to her accepted July 13, 1979 work injury. For this reason, appellant has not met her burden of proof to establish her claim that she sustained a recurrence of disability for the claimed period as a result of her accepted employment conditions.

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence was causally related to the accepted injury.<sup>10</sup> There is no bridging medical evidence of record to support wage loss for total disability for the period July 21, 1999 through December 21, 2011.

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<sup>6</sup> *Id.* at § 10.5(x).

<sup>7</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

<sup>8</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1957).

<sup>9</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>10</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

In his 1999 reports, Dr. Malka opined that appellant has advanced osteoarthritis of the knees with the additional problem of being extremely overweight. He stated, in his July 1, 1999 report, that her weight significantly aggravates the symptoms in her knee. While Dr. Malka recommended a total knee arthroplasty, he opined that a better alternative would be for appellant to lose weight of 150 to 200 pounds to relieve her symptoms and improve the odds should she have a knee replacement at a later date. With regard to appellant's diagnosis of advanced osteoarthritis of her right knee, Dr. Malka did not, in either of his reports, provide an explanation which included a history of bridging symptoms from the 1979 injury or offer an opinion on causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup>

In his March 4, 2013 report, Dr. Hanley, an OWCP referral physician, noted the history of the July 13, 1979 injury, appellant's medical treatment, and that she was overweight at the time of the incident and had gained significant weight to the point that she had a gastric bypass in 2000. He noted that she had stopped working in 1999 or 2000 as a senior writer for the Coast Guard and that her knee problems had worsened to the point where she could no longer work and she went on long-term disability. Dr. Hanley also noted that a total knee replacement was recommended in 2000. He opined that, because appellant had accelerated degenerative process in the right knee, this represented residuals of the initial injury. However, Dr. Hanley did not provide an explanation which included a history of bridging symptoms from the 1979 injury or provide a rationalized, probative medical opinion indicating that appellant sustained a recurrence of disability from July 21, 1999 onwards causally related to the accepted conditions. His opinion on causal relationship is of limited probative value as he did not provide adequate medical rationale in support of his conclusions.<sup>12</sup> Dr. Hanley did not explain why appellant's current condition and alleged disability were causally related to the accepted injury. He further offered no opinion as to the effect or consequence of her weight on the accelerated degenerative process in the right knee. While appellant argued that OWCP should have obtained clarifying information from Dr. Hanley regarding whether she suffered a recurrence of injury beginning July 21, 1999, the Board notes that Dr. Hanley was serving as an OWCP referral physician with regard to the amount of impairment of the right lower extremity and thus had no obligation to request clarification with regard to the recurrence issue. For the reasons offered above, Dr. Hanley's opinion is insufficient to establish appellant's claim.

In his 2013 reports, Dr. Franchetti provided an impression of severe advanced osteoarthritis, both knees, right worse than left, and exacerbation of chronic left ankle sprain, which he opined were causally related to the July 13, 1979 injury. In his December 18, 2013 report, he opined that, due to the significant knee injuries sustained at work on July 13, 1979, appellant developed progressive post-traumatic arthritis in both knees, which was now severe, and that the progressive biomechanical alterations due to her surgical procedures also resulted in her progressive post-traumatic osteoarthritis in her right knee. Dr. Franchetti further opined that she developed overuse condition in her left knee due to biomechanical alterations and pain in her right knee and the continual favoring of her injured right knee. He, however, did not provide an explanation which included a history of bridging symptoms from the 1979 injury or provide a

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<sup>11</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>12</sup> *William C. Thomas*, 45 ECAB 591 (1994).

rationalized, probative medical opinion indicating that appellant sustained a recurrence of disability from July 21, 1999 onward causally related to the accepted conditions. Dr. Franchetti's opinion on causal relationship is of limited probative value as he did not provide adequate medical rationale in support of his conclusions.<sup>13</sup> His statements are broad and vague as they do not explain whether appellant's accepted work conditions contributed to her claimed condition and/or disability as of July 21, 1999. Thus, this report is insufficient to establish appellant's claim.

Dr. McGovern provided an impression of right knee severe degenerative arthritis and left knee moderately severe arthritis as a result of the July 13, 1979 injury. However, he did not provide a rationalized, probative medical opinion indicating that appellant sustained a recurrence of disability on July 21, 1999 causally related to her accepted work conditions or provide any medical rationale as to how the diagnosed conditions related to the July 13, 1979 work injury. Thus, this report is insufficient to establish appellant's claim.

The reports from Dr. Bobrow, Dr. Bennett, and Dr. Launder fail to contain a rationalized, probative opinion on the issue of whether appellant sustained a recurrence of disability causally related to her accepted work conditions. Dr. Bobrow and Dr. Bennett noted the history of the work injury. Dr. Bobrow provides an impression of advanced osteoarthritis in both knees and recommends bilateral total knee replacements. Dr. Launder provided an impairment determination. Neither Dr. Bobrow nor Dr. Launder provide an explanation which included a history of bridging symptoms from the July 13, 1979 injury or offer an opinion as to whether appellant sustained a recurrence of disability causally related to her accepted work conditions. Dr. Bennett diagnosed obesity, degenerative arthritis in both knees, chronic intermittent low back pain, secondary to degenerative disc disease and chronic right shoulder pain and opined that her progressive degenerative arthritis of the right knee, associated with degenerative changes in her lumbosacral spine and her right shoulder, resulted in physical impairment which make it difficult for her to perform her regular activity within an office environment. However, he provided no medical explanation of whether appellant's accepted conditions contributed to her claimed condition and/or disability as of July 21, 1999. Thus, these reports are insufficient to establish appellant's claim.

OWCP also received Dr. Ajrawap's statement of May 12, 1999 which noted conditions of herniated lumbar disc, severe degenerative arthritis both knees, and osteoarthritis right shoulder. However, the medical report did not offer any opinion regarding the cause of the diagnosed conditions or whether appellant was disabled as of July 21, 1999 as a result of her accepted conditions.

Dr. Jamaris, in his April 5, 2000 report, noted that appellant had advanced degenerative changes in both knees and lumbar discomfort. While he stated that both syndromes underwent significant exacerbation in the last year and were progressively deteriorating, he related the syndromes intensity and progressive deterioration as a consequence of appellant's morbid obesity.

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<sup>13</sup> *Id.*

Accordingly, the Board finds that appellant has not met her burden of proof in this case as she has not submitted a sufficiently reasoned medical opinion explaining why her recurrence of disability beginning July 21, 1999 was caused or aggravated by the July 13, 1979 injury.

On appeal, appellant's counsel contends that appellant submitted *prima facie* evidence that she suffered a recurrence of her work injury on July 21, 1999 onward. However, as noted above, the medical evidence does not establish that appellant was disabled from work for the period July 21, 1999 through December 21, 2011 due to her accepted work injury.<sup>14</sup> Appellant may submit new evidence or argument as part of a formal 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.

### **CONCLUSION**

The Board finds that appellant failed to establish a recurrence of disability causally related to her July 13, 1979 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated June 30, 2014 is affirmed.

Issued: February 13, 2015  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> Counsel also offered arguments pertaining to OWCP's schedule award determination. These arguments, however, are not relevant to the current appeal.