



accepted her claim for a right anterior cruciate ligament tear, a right medial meniscus tear, and a right rotator cuff strain. It also accepted right intersubstance tears of the rotator cuff tendon.

Appellant underwent authorized right knee surgery on February 25, 2010. OWCP issued appellant a schedule award on December 20, 2011 for an eight percent impairment of her right lower extremity and a four percent impairment of her right upper extremity.

On July 10, 2013 appellant asked OWCP to expand her claim to include her left knee condition as a consequential injury resulting from favoring her injured right side. She explained that she returned to work at another post office on March 1, 2013. After approximately eight weeks of fulfilling her assigned clerk duties, appellant began to have sharp pains in both knees with burning sensations, swelling, and charley horse pains in her legs and thighs. She relied heavily on her left knee to be a stabilizing force to help her accomplish her work.

An imaging study obtained on July 3, 2013 revealed a complete oblique tear through the posterior horn of the left medial meniscus, as well as periarticular soft-tissue swelling and edema. On July 5, 2013 Dr. Ian Lin, the attending Board-certified orthopedic surgeon, recommended a diagnostic left knee arthroscopy and medial meniscectomy. He observed: "With the history that she didn't have any pain in her knee until she began work in March and the fact that she does a lot of twisting and turning on that left knee and trying to be overprotective of the right knee, I think this is a work-related condition."

An OWCP medical adviser reviewed appellant's medical record and noted that if a consequential left knee condition had developed, it seemed medically improbable that no care provider had even discussed a left knee complaint since the 2009 employment injury. As recently as June 24, 2013, Dr. Lin did not mention, even in passing, that appellant had any left knee pain.

OWCP later received a May 24, 2013 report from Dr. Philip D. Sundquist, Board-certified in family medicine, who noted that appellant returned to work in March "and since then her knees have been hurting again."

In a decision dated February 27, 2014, OWCP denied appellant's consequential injury claim. It found that medical evidence did not support that any left knee condition was related to the December 2009 employment injury or to any overcompensation due to her right knee condition. OWCP advised appellant that if she felt that she sustained a left knee condition due to work factors after the December 2009 injury, she should file the appropriate claim form.

During a telephonic hearing on March 12, 2014, appellant testified that on May 27, 2013 she was waiting on a customer at the front line counter. As she pulled a package across the counter to the scale, she felt a painful pop and her left knee locked, causing her to stumble and nearly fall. An OWCP hearing representative observed that appellant appeared to be describing a new traumatic workplace injury. Asked whether that made sense, appellant's representative stated, "Yes, it does."

Dr. Peter D. Wirtz, a Board-certified orthopedic surgeon and second opinion physician, evaluated appellant and reviewed her medical record on April 8, 2014. Appellant informed him that she returned to employment activity on March 1, 2013 and was okay for 10 weeks. Then, on

May 1, 2013 both her knees developed pain. Appellant also noticed that slipping and twisting produced symptoms. An imaging study showed cartilage tear. Dr. Wirtz commented: “This recent symptomatology to the left knee relates by her history, May 1, 2013 to current.” It was Dr. Wirtz’s opinion that the etiology of appellant’s left knee symptomatology, as noted in Dr. Lin’s examination just prior to the July 3, 2013 imaging study, was indicative of a natural degenerative process in the knee joint. He noted no specific traumatic history of initiation of these symptoms. As for using the left lower extremity in favor of her symptomatic right lower extremity, Dr. Wirtz observed that the left lower extremity was free of symptoms for an extended period of time to become symptomatic in May 2013.

In a decision dated December 2, 2014, an OWCP hearing representative affirmed the February 27, 2014 denial of appellant’s consequential injury claim.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from a personal injury sustained while in the performance of duty.<sup>2</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>3</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>4</sup>

Causal relationship is a medical issue,<sup>5</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>8</sup>

It is an accepted principle of workers’ compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

independent, intervening cause attributable to the employee's own intentional conduct.<sup>9</sup> Disability resulting from surgery or treatment authorized by OWCP is compensable.<sup>10</sup>

### ANALYSIS

Appellant has asked OWCP to expand its acceptance of her December 10, 2009 injury claim to include her left knee condition, diagnosed as a complete oblique tear through the posterior horn of the left medial meniscus. She therefore has the burden to establish that her left knee condition was causally related to her December 2009 employment injury.

However, appellant does not attribute her left knee condition to the December 2009 work injury. She explained that she returned to work in March 2013, and after approximately eight weeks of fulfilling her assigned clerk duties, she began to have sharp pains in both knees. Appellant stated that she relied heavily on her left knee to be a stabilizing force to help her accomplish her work.

Appellant told Dr. Lin, her orthopedic surgeon, that she did not have any pain in her left knee until she began to work again in March 2013 and did a lot of twisting and turning on her left knee trying to be overprotective of her right knee. She told Dr. Sundquist, the family physician, that she started back to work in March 2013, and since then, her knees began hurting.

At the March 12, 2014 hearing, appellant described a traumatic left knee injury. After returning to work, she was waiting on a customer at the front line counter on May 27, 2013. As she pulled a package across the counter to the scale, she felt a painful pop and her left knee locked, causing her to stumble and nearly fall. Appellant's counsel agreed that appellant appeared to be describing a new traumatic workplace injury.

Thus, when Dr. Lin noted that appellant's left knee condition was work related, he was not attributing her left knee condition to the December 2009 work injury. It appears to the Board that he was referring instead to appellant's history of not having any left knee pain until she returned to work in March 2013. Dr. Lin was supporting a new work injury.

An OWCP medical adviser found it medically improbable that a consequential left knee injury had arisen when no care provider had even mentioned a left knee complaint since the 2009 employment injury. Dr. Wirtz, the second opinion orthopedic surgeon, was of the opinion that appellant's left knee symptomatology beginning May 1, 2013 was indicative of a natural degenerative process. He noted no specific traumatic history that began these symptoms. Dr. Wirtz cast doubt on the possibility that appellant developed her symptoms from favoring the right leg because the left leg had been free of symptoms for an extended a period of time.

The Board finds that appellant has not met her burden to establish that her left knee condition was causally related to her December 10, 2009 employment injury. Appellant has not

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<sup>9</sup> *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

<sup>10</sup> *Carmen Dickerson*, 36 ECAB 409 (1985) (this is so even though the surgery or treatment was not for an employment-related condition).

submitted a well-rationalized medical opinion to establish that her left knee condition was a natural consequence flowing from the December 10, 2009 work injury. The Board will therefore affirm OWCP's December 2, 2014 decision denying her consequential injury claim.

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.

**CONCLUSION**

The Board finds that appellant has not met her burden to establish that her left knee condition was causally related to her December 10, 2009 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2015  
Washington, DC

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

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

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