United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 17-1740**
	)	**Issued: April 3, 2018**
DEPARTMENT OF THE NAVY, NAVAL STATION GREAT LAKES, Great Lakes, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 8, 2017 appellant, through counsel, filed a timely appeal from a May 3, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The record on appeal, which was provided the Board, includes evidence received after OWCP issued its May 3, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a consequential right knee injury and/or additional lumbar conditions causally related to her February 2, 2011 employment injury; and (2) whether she met her burden of proof to establish a recurrence of disability commencing May 1, 2014 due to her accepted employment injury.

FACTUAL HISTORY

On February 2, 2011 appellant, then a 46-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that, earlier that same date, she slipped and fell while exiting an employing establishment vehicle in the employing establishment parking lot while in the performance of duty. The vehicle running board was covered with ice and when she stepped on it for support, she slipped and fell, landing on her posterior. Appellant claimed to have injured the left side of her back, her left hand/wrist, and her left posterior. She stopped work on February 4, 2011.

Appellant initially sought medical treatment on February 4, 2011 at the Vista Medical Center. She reported that she had fallen on to her left side on an icy street three days earlier and complained of left buttock, left knee, and back pain. Appellant visited the Vista Medical Center for several follow-up appointments, and on March 9, 2011 she returned to her regular work on a full-time basis.

A July 23, 2012 left knee magnetic resonance imaging (MRI) scan revealed mild osteoarthritis of the medial knee joint compartment, chondral fractures of the articular cartilage of the medial facet of the patella, chondromalacia of the medial femoral condyle, and severe grade degeneration of the posterior horn of the medial meniscus. The findings of August 3, 2012 x-ray testing of both knees revealed degenerative changes.

In August 2012, OWCP initially accepted appellant's claim for left knee (ligamentous) sprain, left gluteus (buttock) contusion, and left medial meniscus tear.

Appellant stopped work on September 4, 2012. On that date, Dr. Christ J. Pavlatos, an attending Board-certified orthopedic surgeon, performed OWCP-approved left knee arthroscopy, partial medial meniscectomy, and chondroplasty of the patella and medial femoral condyle. Appellant received disability compensation on the daily rolls beginning September 4, 2012.[4]

In an October 12, 2012 report, Dr. Pavlatos indicated that appellant continued to complain of right knee and back pain. Appellant reported that her right knee had been injured during the original February 2, 2011 fall, and that she had been favoring her right knee quite a bit due to the pain that she was experiencing in her left knee postoperatively. Dr. Pavlatos expressed his belief that appellant's back pain was contributing to her knee pain due to her abnormal gait. In an October 13, 2012 report, he indicated that she was totally disabled.

[4] Appellant received disability compensation on the periodic rolls beginning March 10, 2013.

In a November 13, 2012 report, Dr. Pavlatos posited that the chondromalacia of appellant's left knee was aggravated partly because of her gait pattern. He indicated that this condition was affected by her back and right knee conditions. Dr. Pavlatos noted that appellant's right knee condition likely was aggravated by her February 2, 2011 fall. He indicated, "I do feel this is related … to the injury that she suffered either at the time of the injury or possibly related to her ambulatory activity post fall which has resulted in aggravation of this right knee."

OWCP referred appellant's case to Dr. Christopher Gross, a Board-certified orthopedic surgeon and OWCP medical adviser. It requested that Dr. Gross review the case record and provide an opinion regarding whether appellant sustained a consequential right knee injury due to the conditions accepted in connection with her February 2, 2011 employment injury. In a report dated December 10, 2012, Dr. Gross indicated that appellant sustained a left ligamentous knee sprain, left medial meniscus tear, and left gluteal contusion (resolved) due to the February 2, 2011 fall. He opined that appellant's right knee condition was due to underlying degenerative disease and was not work related.

In a February 1, 2013 report, Dr. Pavlatos noted that appellant reported increased left knee pain. He felt that this pain was due to an aggravation of chondromalacia and opined that appellant's back and right knee complaints were most likely related to her left knee condition, which resulted from the February 2, 2011 fall.

In February 2013, OWCP referred appellant for a second opinion examination with Dr. Theodore Suchy, a Board-certified orthopedic surgeon. It requested that Dr. Suchy provide an opinion regarding the medical conditions appellant sustained due to her February 2, 2011 work-related fall, including an opinion regarding whether appellant sustained a consequential right knee injury.[5]

In a March 28, 2013 report, Dr. Suchy detailed appellant's factual and medical history and reported the findings of his physical examination on that date. He found that appellant suffered a left knee contusion and strain, left medial meniscus tear, and buttock contusion on February 2, 2011. Dr. Suchy opined that there was no significant injury to appellant's back due to the February 2, 2011 work injury and that the evidence did not support that she suffered a right knee injury on that date. He referenced a February 5, 2011 medical report from Vista Medical Center which indicated that appellant fell on to her left side and which did not refer to any right knee injury. Dr. Suchy believed that appellant's left buttock contusion had resolved and that she had reached maximum medical improvement (MMI) with regard to her left knee condition. He indicated that there was no evidence to support a claim that appellant sustained a consequential right knee or back injury. Dr. Suchy found that appellant had no need for further medical treatment and that there was no continuing injury-related disability. He released appellant to work without restrictions.

OWCP found that there was a conflict in the medical opinion regarding the nature and extent of appellant's work-related medical conditions. It referred appellant to Dr. Roger B. Collins, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion

[5] In January 2013, appellant advised OWCP that she believed that her back and right knee conditions were related to the February 2, 2011 employment injury.

regarding whether she sustained consequential a right knee and/or back condition, whether she continued to suffer residuals of the accepted employment conditions, and whether she continued to have work-related disability as the result of the February 2, 2011 employment injury.

In a report dated August 8, 2013, Dr. Collins described appellant's factual and medical history and reported the findings of the physical examination he performed on that date.[6] He expressed his opinion that appellant suffered a left hip contusion, low back strain, gluteus contusion, and left knee strain on February 2, 2011. Dr. Collins noted that appellant had been released to full-duty work on March 9, 2011 and that he felt that her work-related conditions had resolved as of that date. He noted that appellant sought treatment again on April 23, 2012 due to left leg pain, but indicated that the etiology of these symptoms was uncertain. Dr. Collins posited that appellant's left knee arthritis and meniscal tear were not the result of the work injury. He noted, in support of this opinion, that appellant was pain free for a period of time (11 months) without any knee or back complaints. Dr. Collins opined that appellant had no continuing injury-related residuals of the February 2, 2011 employment injury. Although appellant complained of left knee pain, Dr. Collins believed that these symptoms were due to her arthritis which was not work related. He also believed that her right knee complaints were related to her underlying degenerative condition. Dr. Collins indicated that appellant's back pain warranted further work-up, but posited that this condition was unrelated to the February 2, 2011 employment injury as he suspected that it was degenerative in nature. He provided an opinion that she did not sustain a consequential right knee or back condition related to the accepted February 2, 2011 employment conditions. Dr. Collins noted that, given the fact that appellant had a pain-free period without any evidence of knee or lower back complaints, it was reasonable to conclude that the knee and lumbar complaints (including radicular complaints) were unrelated to the February 2, 2011 fall. He advised that she could not return to her date-of-injury job, but opined that this circumstance was attributable to her multiple, nonoccupational conditions. Dr. Collins noted that, without seeing appellant's left knee MRI scan from the September 4, 2012 left knee surgery, and Polaroid photographs from that surgery, it was hard for him to comment on appellant's left knee pathology.

By letter dated October 3, 2013, OWCP requested that appellant arrange for the submission of actual films from her MRI scan and Polaroid photographs from her September 4, 2012 left knee surgery. Appellant subsequently arranged for these items to be submitted to OWCP.

In a November 18, 2013 report, Dr. Pavlatos noted that appellant was doing well and indicated that she had left knee complaints due to her chondromalacia, but was having more problems with her right knee and back. He opined that appellant's right knee and back condition were related to her February 2, 2011 fall. Dr. Pavlatos released appellant to work in a sedentary capacity on a full-time basis effective February 10, 2014.

On December 3, 2013 OWCP provided Dr. Collins the documents relating to appellant's diagnostic testing and the Polaroid photographs which were taken during the September 4, 2012 left knee surgery. In a December 5, 2013 letter, it explained to Dr. Collins that the case had already been approved for a left medial meniscus tear and that surgery had been authorized for this

[6] Dr. Collins acknowledged his receipt of the additional documents, noting that he already had a copy of the September 4, 2012 surgery report.

condition. OWCP requested that Dr. Collins provide a supplemental report which took this information into consideration.

In a January 12, 2014 report, Dr. Collins opined that appellant had a very small partial thickness tear of the left medial meniscus and indicated that the September 4, 2012 left knee surgery left the majority of the meniscus and its weight-bearing function intact. He indicated that the surgery also confirmed the presence of left knee chondromalacia, but posited that this condition was likely age related and not something that would be attributable to trauma. Dr. Collins opined that appellant would have fully recovered from the September 4, 2012 left knee surgery within six to eight weeks. Given that the left knee tear involved a minimal amount of the weight bearing function of the meniscus, he did not feel that it would have left any residual or potential for future symptoms. Dr. Collins concluded that the opinions expressed in his original August 8, 2013 report regarding the conditions related to the February 2, 2011 fall and regarding work-related residuals/disability remained unchanged.

On April 8, 2014 OWCP advised appellant that it had expanded her accepted conditions to include left hip contusion and lumbar strain.

In a separate letter, also dated April 8, 2014, OWCP advised appellant that it proposed to terminate her wage-loss compensation and entitlement to medical benefits based on Dr. Collins' opinion.

In a May 15, 2014 decision, OWCP terminated appellant's entitlement to future wage-loss compensation and medical benefits effective May 15, 2014.

Appellant, through her then counsel, requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review, which was held on December 20, 2014.

By decision dated February 24, 2015, OWCP's hearing representative affirmed OWCP's May 15, 2014 decision, noting that Dr. Collins' opinion represented the special weight of the medical opinion evidence with respect to disability and consequential injuries.

On January 4, 2016 appellant filed a notice of recurrence (Form CA-2a) in which she listed the date of the recurrence of disability as May 1, 2014. She asserted that she could not sit or stand for extended periods of time and alleged that her original February 2, 2011 work injury had never fully resolved. Appellant noted, "The pain associated with the original injury has only gotten worse. I consciously compensate by carrying my weight on my right leg and my gait has been adversely affected from this injury. I live in constant discomfort and pain as a result of this injury."

In a January 5, 2016 report, Dr. Pavlatos noted that appellant reported that her improvement had plateaued as it related to her back and bilateral knees and that her right knee pain was worse because she was compensating for her left knee. Appellant also reported that her right knee hurt soon after the February 2, 2011 work injury, although her left knee was much worse. Dr. Pavlatos provided diagnoses of bilateral knee pain after a work injury and degenerative osteoarthritis of the medial compartment of both knees. He opined that appellant's February 2, 2011 fall caused her bilateral knee pain and the subsequent flare-up of her degenerative arthritis and meniscus tears, notably of the left knee. Dr. Pavlatos found that the aggravation of the

osteoarthritis in appellant's bilateral knees could be treated conservatively, but might eventually require total knee arthroplasties given her young age and activity level.

In a January 11, 2016 report, Dr. Stanford Tack, a Board-certified orthopedic surgeon, indicated that appellant reported continued back pain radiating to her right lower extremity. Appellant reported that she had been referred for physical therapy and an epidural injection; however, she had not done either because she had not received approval. Dr. Tack noted that appellant's back pain and right lumbar radicular symptoms appeared to be related to lumbar spondylosis with mild spinal stenosis. He indicated that, if appellant did not pursue treatment, he would consider her at MMI.

By development letter dated February 10, 2016, OWCP advised appellant of the type of factual and medical evidence needed to establish her recurrence claim. It provided her 30 days to submit the requested evidence.

Appellant submitted a March 14, 2016 report from Dr. Pavlatos who diagnosed bilateral knee degenerative arthritis, left worse than right. He noted that appellant's February 2, 2011 employment-related left knee injury resulted in progressive arthritis. This was due to the partial meniscectomy, as well as the February 2, 2011 employment injury itself. Dr. Pavlatos indicated that appellant had a right knee medial meniscus tear that might have been related to the initial February 2, 2011 employment injury and which had progressed to arthritic changes. He asserted that appellant's knee problems were work related and that she would ultimately require a knee replacement.

In March 2016, appellant received a schedule award for four percent permanent impairment of her left lower extremity and one percent permanent impairment of her left upper extremity.

By letter dated March 16, 2016, counsel requested that appellant's claim be expanded to include additional diagnoses based upon the March 14, 2016 report from Dr. Pavlatos.

By decision dated July 19, 2016, OWCP denied appellant's claim for recurrence of disability commencing May 1, 2014 due to her February 2, 2011 employment injury, noting that she had not submitted medical evidence establishing such disability. It found that appellant had failed to submit evidence showing that her work-related conditions had worsened to the extent that she could not work on or after May 1, 2014. OWCP also referenced its May 15, 2014 termination decision, which indicated that appellant's work-related condition had resolved and that she should have returned to work in a full-duty capacity.

Appellant submitted a July 1, 2016 report from Dr. Tack, who noted that she continued to have chronic back pain and radicular symptoms. Dr. Tack indicated that appellant underwent an epidural injection three months earlier but noted that this was marginally helpful. He reviewed diagnostic testing from 2014 which he found was significant for facet arthropathy at L4- 5, very subtle spondylolisthesis, and minimal spinal stenosis. Dr. Tack recommended physical therapy.

In a July 12, 2016 report, Dr. Pavlatos noted that appellant presented with bilateral knee complaints. He advised that appellant reported that she injured her right knee on February 2, 2011 and that her right knee showed grade IV changes in the medial compartment. Dr. Pavlatos

indicated that appellant had undergone a partial meniscectomy on September 4, 2012 for a work-related left knee injury and that she experienced progressive degenerative changes since then.

Appellant, through her then counsel, requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review. During the hearing held on March 14, 2017, counsel argued that she sustained a classic recurrence as she was relatively pain free until she needed new medical treatment due to her limping and favoring one leg over the other. She further asserted that the evidence of record showed that appellant sustained a consequential right knee condition.

By decision dated May 3, 2017, OWCP's hearing representative affirmed OWCP's July 19, 2016 decision. She determined that appellant had not met her burden of proof to establish a recurrence of disability on or after May 1, 2014 due to her February 2, 2011 employment injury. In reaching this decision, the hearing representative found that appellant had not met her burden of proof to establish a consequential right knee injury or other additional condition due to the conditions accepted in connection with her February 2, 2011 employment injury.[7] She found that appellant failed to submit evidence showing that her work-related conditions had worsened to the extent that she could not work on or after May 1, 2014 or showing that she sustained a condition other than those already accepted.

LEGAL PRECEDENT -- ISSUE 1

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.[8] Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[9] A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, the claimant must present rationalized medical opinion evidence.[10]

Causal relationship is a medical issue 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, 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 identified by the claimant.[11]

[7] The hearing representative noted that appellant had not shown that her right knee condition was directly caused by the February 2, 2011 fall or that it was suffered as a consequence of her accepted left knee condition. She also found that appellant had not established a work-related back injury other than the accepted lumbar strain.

[8] *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* 10-1 (2006).

[9] *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

[10] *Charles W. Downey*, 54 ECAB 421 (2003).

[11] *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[12] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[13] Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.[14]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left knee sprain, left gluteus contusion, left medial meniscus tear, left hip contusion, and lumbar strain due to a fall at work on February 2, 2011.

By decision dated May 3, 2017, an OWCP hearing representative determined that appellant failed to meet her burden of proof to establish a recurrence of disability on or after May 1, 2014 due to her February 2, 2011 employment injury. In reaching this decision, she found that appellant failed to meet her burden of proof to establish a consequential right knee injury or other additional conditions related to the February 2, 2011 employment injury.[15]

The Board finds that appellant has not met her burden of proof to establish a consequential right knee injury or other additional condition causally related to the February 2, 2011 employment injury.

OWCP had determined that there was a conflict in the medical opinion between Dr. Pavlatos, an attending physician, and Dr. Suchy, OWCP's referral physician, on the issue of whether appellant sustained a consequential right knee injury or other additional condition related to the February 2, 2011 employment injury.[16] In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Collins for an impartial medical examination and an opinion on the matter.[17]

[12] 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[13] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[14] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[15] The hearing representative affirmed OWCP's July 19, 2016 decision. She found that appellant had not shown that her right knee condition was directly caused by the February 2, 2011 fall or that it was suffered as a consequence of her accepted left knee condition. The hearing representative also found that appellant had not established a work-related back injury other than the accepted lumbar strain.

[16] In a November 13, 2012 report, Dr. Pavlatos indicated that appellant likely sustained a consequential right knee condition. In contrast, Dr. Suchy noted in a March 28, 2013 report that appellant did not sustain a consequential right knee condition or any other work-related condition which had not already been accepted.

[17] *See supra* notes 12 and 13.

The Board finds that the weight of the medical opinion evidence with respect to whether appellant sustained a consequential right knee injury or other additional condition related to the February 2, 2011 employment injury rests with the opinion of Dr. Collins.[18]

In reports dated August 8, 2013 and January 12, 2014, Dr. Collins provided a well-rationalized opinion that appellant did not sustain a consequential right knee condition or any other work-related condition which had not already been accepted. He provided an extensive account of appellant's factual and medical history, including the findings on diagnostic testing and physical examination. In particular, Dr. Collins provided medical rationale for his opinion by explaining that appellant's right knee condition could be accounted for by the natural progression of her underlying, nonwork-related degenerative right knee condition. He also explained that the medical evidence showed that appellant's back condition was degenerative in nature and was not caused or aggravated by the February 2, 2011 fall.

Appellant submitted several reports of attending physicians which discussed her right knee condition and other conditions that had not been accepted by OWCP, but none of these reports contains a clear, rationalized opinion that she sustained a consequential right knee condition or any other work-related condition which had not already been accepted.

In a January 5, 2016 report, Dr. Pavlatos noted that appellant reported that her improvement had plateaued as it related to her back and bilateral knees and that her right knee pain was worse because she was compensating for her left knee. He opined that appellant's February 2, 2011 fall caused her bilateral knee pain and the subsequent flare-up of her degenerative arthritis and meniscus tears, notably of the left knee. Dr. Pavlatos had previously indicated that appellant's right knee condition was sustained as a consequence of her accepted left knee condition, but now he was positing that her right knee condition was a direct result of the February 2, 2011 fall. The Board notes that this report is of limited probative value in establishing an additional employment condition because Dr. Pavlatos did not provide any medical rationale in support of his opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[19] In a March 14, 2016 report, Dr. Pavlatos diagnosed degenerative arthritis of the bilateral knees, left worse than right, and indicated that these conditions were work related. He noted that appellant had a medial meniscus tear in her right knee that might have been related to the initial February 2, 2011 employment injury and which had progressed to arthritic changes. However, the Board notes that this report is of limited probative value because Dr. Pavlatos did not provide a clear opinion, supported by medical rationale, explaining how appellant sustained a work-related condition other than those already accepted.[20]

[18] *See supra* note 14.

[19] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[20] *See D.R.*, Docket No. 16-0528 (issued August 24, 2016) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining the relationship between an employment activity and a diagnosed medical condition). In a July 12, 2016 report, Dr. Pavlatos noted that appellant presented with bilateral knee complaints, but he did not provide any opinion on the cause of her condition.

In a January 11, 2016 report, Dr. Tack indicated that appellant reported continued back pain radiating to her right lower extremity. He noted that appellant's back pain and right lumbar radicular symptoms appeared to be related to lumbar spondylosis with mild spinal stenosis. The Board notes that this report is of limited probative value in establishing an additional work-related condition because Dr. Tack did not provide an opinion on the cause of the observed medical conditions/symptoms. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[21]

LEGAL PRECEDENT -- ISSUE 2

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.[22] Recurrence of disability 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 his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[23] Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.[24] A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties or other downsizing or where a loss of wage-earning capacity determination is in place.[25]

Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[26]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence is causally related to the original injury.[27] This burden includes the necessity of furnishing evidence from a qualified physician who

[21] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988). Appellant submitted a July 1, 2016 report from Dr. Tack, who noted that she continued to have chronic back pain and radicular symptoms. However, he did not provide any opinion on the cause of appellant's condition.

[22] 20 C.F.R. § 10.5(x).

[23] *Id.*

[24] *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

[25] 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013).

[26] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

[27] 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

concludes that the condition is causally related to the employment injury.[28] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[29]

ANALYSIS -- ISSUE 2

OWCP had determined that there was a conflict in the medical opinion evidence between Dr. Pavlatos, an attending physician, and Dr. Suchy, OWCP's referral physician, on the issue of whether appellant continued to have residuals of her February 2, 2011 employment injury.[30] In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Collins for an impartial medical examination and an opinion on the matter.[31] The Board finds that the special weight of the medical opinion evidence with respect to whether appellant had work-related disability on or after May 1, 2014 rests with the opinion of Dr. Collins, the impartial medical examiner.[32]

In reports dated August 8, 2013 and January 12, 2014, Dr. Collins provided a well-rationalized opinion that appellant ceased to have residuals/disability related to her February 2, 2011 employment injury. In reaching this conclusion, he provided a complete and accurate description of appellant's factual and medical history. Dr. Collins explained that appellant had been released to full-duty work on March 9, 2011 and that he felt that her work-related conditions had resolved as of that date. He noted, in support of his opinion that appellant's work-related residuals had ceased, that she was pain free for a period of time (11 months) without any knee or back complaints. Dr. Collins further explained that, although appellant complained of left knee pain and other symptoms after this symptom-free period, these symptoms were due to nonwork-related conditions such as arthritis.

Appellant submitted additional medical evidence, including January 5, March 14, and July 12, 2016 reports of Dr. Pavlatos, and January 11 and July 1, 2016 reports of Dr. Tack. In some of these reports, Dr. Pavlatos and Dr. Tack suggested that appellant continued to have disability due to her February 2, 2011 employment injury. However, neither Dr. Pavlatos nor Dr. Tack provided a clear, rationalized opinion on this matter, and their reports do not establish appellant's claim for a work-related recurrence of disability on or after May 1, 2014. As noted, the Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition/disability is of no probative value on the issue of causal relationship.[33]

[28] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[29] *Id.* at 319.

[30] In an October 13, 2012 report, Dr. Pavlatos indicated that appellant continued to have disability due to the February 2, 2011 employment injury. In contrast, Dr. Suchy noted in a March 28, 2013 report that appellant ceased to have work-related disability.

[31] *See supra* notes 12 and 13.

[32] *See supra* note 14.

[33] *See supra* note 21.

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 of proof to establish a consequential right knee injury and/or additional lumbar conditions related to her February 2, 2011 employment injury. The Board further finds that she has not met her burden of proof to establish a recurrence of disability commencing May 1, 2014 due to her February 2, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2018
Washington, DC

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

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

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