# United States Department of Labor
# Employees' Compensation Appeals Board

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| **F.L., Appellant** | ) | |
| **and** | ) | **Docket No. 17-1613** |
| | ) | **Issued: August 15, 2018** |
| **U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*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
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On July 19, 2017 appellant filed a timely appeal from an April 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 the claim.[3]

[1] Appellant timely requested an oral argument before the Board pursuant to 20 C.F.R. § 501.5(b). By order dated June 13, 2018, the Board exercised its discretion and denied her request for oral argument as the issues on appeal could be properly adjudicated by a review of the evidence of record. *Order Denying Request for Oral Argument,* Docket No. 17-1613 (issued June 13, 2018).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The record provided to the Board includes evidence received after OWCP issued its April 21, 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 reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## ***ISSUE***

The issue is whether appellant has met her burden of proof to establish that her left knee synovitis and tear of the medial meniscus were causally related to or consequential to her accepted employment injuries.

## ***FACTUAL HISTORY***

This case has previously been before the Board.[4] The facts and circumstances of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 24, 2000 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee that day when she stepped on a curb while in the performance of duty. She did not stop work. OWCP accepted the claim for left knee strain. The present claim was assigned OWCP File No. xxxxxx566. Appellant later filed a traumatic injury claim under OWCP File No. xxxxxx062, for which OWCP accepted that she sustained a left foot sprain, closed fracture of calcaneus, and left tibialis tendinitis on December 10, 2002 when she stepped off of an employing establishment vehicle. On February 18, 2003 OWCP administratively File Nos. xxxxxx566 and xxxxxx062, with xxxxxx566 serving as the master file.[5]

On June 12, 2003 appellant underwent OWCP authorized left posterior tibial tendon reconstruction with subtalar joint fusion and proximal tibial bone graft. On November 3, 2003 surgical implant screws were removed from her heel.

By decision dated August 27, 2004, OWCP granted appellant a schedule award for 27 percent permanent impairment of the left lower extremity. On June 29, 2005 appellant appealed to the Board. By decision dated November 15, 2005, the Board affirmed OWCP's August 27, 2004 and April 12, 2005 decisions, finding that she was not entitled to more than 27 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.[6] On September 7, 2010 appellant underwent additional authorized surgery to the left ankle and foot. By decisions dated June 13 and October 19, 2011, OWCP denied her claim for an additional schedule award.

On March 11, 2016 appellant filed a recurrence claim (Form CA-2a) alleging a recurrent need for medical treatment. She explained that she believed that her current left knee condition was related to the original injury, "because never had knee problem until then."[7] No date was indicated for the recurrence. No evidence was received with appellant's claim.

[4] Docket No. 05-1465 (issued November 15, 2005).

[5] The records in both claims show that appellant continues to receive medical treatment in both claims for the accepted left foot conditions and that they remain in an open status for medical treatment.

[6] *Supra* note 4.

[7] The employing establishment did not complete its portion of the form.

The medical evidence of record indicates that appellant underwent physical therapy on December 29, 2015 and last received medical care for her accepted work-related foot conditions on January 26, 2016. In a January 26, 2016 report, Dr. Samuel J. Alianell, a Board-certified physiatrist, provided a follow up of appellant's chronic left foot pain. He provided an assessment of status post left foot and hind foot reconstruction and chronic left foot and ankle pain.

In an April 6, 2016 development letter, OWCP advised appellant of the evidence necessary to establish the claim for a recurrent need for medical treatment. It requested that she submit a detailed report from her attending physician with clinical findings supporting that she sustained a worsening of her accepted work injury without intervening cause. OWCP also requested that appellant respond to its questionnaire. It afforded her 30 days to submit the necessary evidence.

In an April 22, 2016 supplemental statement, appellant indicated that she wished to reopen her claim regarding her left knee. She stated that the left knee condition had not been addressed for the last nine years.

OWCP received several medical reports from Dr. Alianell beginning October 12, 2015, which provided an assessment of status post left foot and hind foot reconstruction and chronic left foot and ankle pain.

In his March 22, 2016 report, Dr. Alianell noted that appellant was under treatment and assessment with Dr. Meena W. Shatby, a Board-certified orthopedic surgeon, an orthopedic foot ankle specialist, for her acute ankle pain. In his April 19, 2016 report, he provided an additional diagnosis of pain in limb. Dr. Alianell noted that appellant was seen by Dr. Shatby, who had ordered a magnetic resonance imaging (MRI) scan of appellant's left knee.

By decision dated May 18, 2016, OWCP denied appellant's claim for recurrent medical treatment. It found that the evidence submitted did not establish that she required additional medical treatment due to her accepted work-related conditions.

OWCP continued to receive progress notes from Dr. Alianell.

In an April 5, 2016 report, Dr. Shatby, a Board-certified orthopedic surgeon, reported a history that appellant had an acute onset of left knee pain 16 years ago and the mechanism of injury was a fall. The injury had been progressive for the past 16 years and appellant had tried physical therapy without any result. Dr. Shatby provided examination and x-ray findings and diagnosed left knee synovitis. He noted that appellant had a work injury several years ago and continued pain despite therapy and modified activities, home therapy, and physical therapy.

A May 3, 2016 MRI scan of appellant's left knee which indicated focal undersurface tear of the medial meniscus posterior horn.

In a May 10, 2016 report, Dr. Shatby noted that appellant indicated that her left knee pain had moved from the medial to the lateral aspect of the knee. He provided examination findings of the knees and an assessment of synovitis of knee and tear of left medial meniscus knee. Dr. Shatby discussed MRI scan findings and both conservative and aggressive pain management options. He reported that appellant had medial symptoms since her work injury and had only been evaluated

last week with MRI scan which revealed medial meniscal tear. Dr. Shatby noted that she wished to proceed with surgery.

On June 14, 2016 OWCP received a request for authorization for left knee arthroscopy.

A June 26, 2017 MRI scan of the left knee indicated interval progression of horizontal undersurface tear in the medial meniscus posterior horn extending into the meniscal body.

By appeal request form dated and postmarked June 16, 2016, appellant requested a telephonic hearing before an OWCP hearing representative.

OWCP received copies of medical documentation from 2002, 2010, and 2011, previously of record.

In a June 14, 2016 report, which Dr. Alianell electronically signed on August 17, 2016, and in an August 9, 2016 report, which he electronically signed on October 13, 2016, Christine Lucker, a certified physician assistant, provided assessments related to appellant's left foot and ankle pain. In September 7, October 5, and November 28, 2016 reports, which he electronically signed on October 13, 2016 and February 3, 2017, Ms. Lucker noted that appellant also had left knee pain. An additional diagnosis of pain in limb was provided.

A telephonic hearing was scheduled for February 17, 2017. Appellant did not appear, but contacted OWCP and agreed to a review of the written record in lieu of the hearing.

In a February 22, 2107 statement, appellant described the July 24, 2000 work incident. She indicated that her supervisor took her to the physician as her knee was swollen. Appellant stated that x-rays were taken, but "they couldn't see." She related that she was off work for about a week and a half and was told to double up on her pain medication when she returned to work. Appellant indicated that she later bid on a mounted route so she would not have to stand as much. She also described the December 10, 2002 work incident and indicated that she had been prescribed pain pills ever since. Appellant noted weight issues because she was unable to exercise and problems with blood pressure, diabetes, and sleep apnea. She stated that it was only when she tried to cut back on her pain medicine that she realized how bad her knee really was injured.

By decision dated April 21, 2017, an OWCP hearing representative affirmed the May 18, 2016 denial, finding that the claim for a recurrent need for medical treatment was actually a claim for a consequential left knee condition. The hearing representative found that there was no medical evidence of record which explained how appellant's current left knee conditions were caused by, contributed to, or developed as a consequence of the July 24, 2000 or December 10, 2002 employment injuries.

## ***LEGAL PRECEDENT***

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[8]

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.[9]

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.[10] 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.[11] 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.[12]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish that her left knee synovitis or tear of the medial meniscus were causally related to or consequential to her accepted injuries of July 24, 2000 or December 10, 2002.

OWCP accepted that appellant sustained a left knee strain from a July 24, 2000 injury when she stepped on a curb while in the performance of duty. It also accepted that she sustained left foot sprain, closed fracture of calcaneus, and left tibialis tendinitis from a December 10, 2002 injury when she stepped off an employing establishment truck. Both claims remain in open status for medical treatment.

By decision dated April 21, 2017, an OWCP hearing representative determined that appellant's claim for a recurrent need for medical treatment was actually a claim that her currently diagnosed left knee synovitis and medial meniscus tear were causally related or consequential to the accepted employment injuries. Appellant was not asserting a worsening of her accepted

[8] *D.G.*, Docket No. 17-1748 (issued June 6, 2018).

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

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

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

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

conditions. Rather, she was asserting that her current left knee condition was caused by the work-related left knee injuries. This is evidenced in appellant's April 22, 2016 statement.

Appellant submitted several reports of attending physicians which discussed her current left knee condition, but none of these reports provides a clear, rationalized opinion that she sustained a causally related or consequential left knee condition.

In his March 22, 2016 report, Dr. Alianell noted that appellant was under his treatment and underwent an assessment with Dr. Shatby, an orthopedic foot ankle specialist, for her acute ankle pain. In his April 19, 2016 report and thereafter, he provided an additional diagnosis of pain in limb. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.[13] As these reports did not diagnose a left knee condition or offer an opinion regarding causal relationship, they are of limited probative value in establishing that appellant's current left knee conditions were causally related to or a consequence of her accepted injuries.[14]

In an April 5, 2016 report, Dr. Shatby reported that appellant had an onset of left knee pain 16 years ago and that the mechanism of injury was a fall.[15] He diagnosed left knee synovitis. While Dr. Shatby noted that appellant had a work-related knee injury several years ago, he did not describe or identify a specific work injury. Without a proper factual background, his opinions on causal relationship and his medical reasoning lack probative value.[16] Furthermore, Dr. Shatby did not provide an opinion regarding the cause of appellant's diagnosed left knee synovitis. 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.[17]

In his May 10, 2016 report, Dr. Shatby diagnosed left knee synovitis and tear of the posterior horn of the medial meniscus. While he indicated that appellant had left knee symptoms since her work injury, he did not identify which work injury he was referencing, nor did he offer an opinion explaining how the diagnosed conditions were causally related to the accepted injuries.[18] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how physiologically an employment injury could have caused or aggravated a medical condition.[19] Thus, these reports are insufficient to establish appellant's claim.

[13] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[14] *See A.K.*, Docket No. 16-1133 (issued December 19, 2016).

[15] It is not clear from the record whether OWCP accepted that appellant fell in either of her work-related injuries.

[16] *See B.M.*, Docket No. 16-1381 (issued November 23, 2016).

[17] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[18] *Id.*

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

The diagnostic testing of record is also of diminished probative value and is insufficient to establish appellant's consequential injury claim as diagnostic testing does not provide an opinion on the cause of the diagnosed conditions.[20]

Accordingly, the medical evidence of record is without a well-rationalized medical opinion establishing that appellant's currently diagnosed left knee conditions were causally related to or a consequence of the accepted work-related injuries of July 24, 2000 or December 10, 2002.

On appeal appellant asserts that she has an accepted left knee sprain and that since her left knee tear is located in the same place as her accepted condition, she had the tear since the initial injury. She additionally indicated that she did not understand how OWCP could refuse her left knee surgery since her left knee strain was really a tear. However, for the reasons set forth above, there is no well-rationalized medical opinion establishing that appellant's current left knee conditions of left knee synovitis and medial meniscus tear were causally related to either of the accepted work-related injuries of July 24, 2000 or December 10, 2002, or a direct and natural result of the accepted left knee or foot conditions.

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 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 that her left knee synovitis and medial meniscus tear were causally related to or consequential to her accepted employment injuries.

[20] *See C.P.*, Docket No. 15-0600 (issued June 2, 2015).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2018
Washington, DC

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

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

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