

employment injury; (2) whether appellant met her burden of proof to establish disability for the period February 7 to August 7, 2015, causally related to the accepted employment injury; and, (3) whether OWCP abused its discretion by denying appellant authorization for left knee surgery.

On appeal counsel asserts that the medical evidence of record establishes entitlement to disability compensation and the need for left knee surgery.

FACTUAL HISTORY

On February 26, 2015 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 23, 2014 she tripped on wet steps in the rain and hit her left knee while in the performance of duty. In an undated statement, she described the injury and noted that she missed work intermittently between December 23, 2014 and February 25, 2015 as she continued to have left knee pain and was still limping. Appellant related that, when she reported for work on February 26, 2015, a manager sent her home, gave her a claim form, and told her that she could not return to work until cleared for full duty by her physician.

In a February 11, 2015 report, Dr. Howard S. Levine, an attending osteopath, advised that appellant could not work for two weeks due to a bruised bone in her left knee, advising that she was unable to climb stairs, and was limited in walking and standing. He prescribed physical therapy. On March 23, 2015 Dr. Levine noted that he had seen appellant beginning February 4, 2015 for complaints of severe left knee pain. He related that a magnetic resonance imaging (MRI) scan of the left knee showed a bone bruise.³ In an attending physician's report (Form CA-20) dated March 26, 2015, Dr. Levine diagnosed a left knee bone bruise, opined that it was employment related, and advised that appellant could only perform sedentary duty. He referred her to an orthopedic surgeon.

On April 15, 2015 OWCP accepted contusion of the left knee. Appellant filed claims for compensation (Form CA-7) for the periods February 7 to July 10, 2015 and July 11 to August 7, 2015.

Appellant thereafter submitted an unsigned disability slip from Dr. Levine's office advising that she could not perform her job duties and was excused from work from February 26, 2015, pending outcome of physical therapy and orthopedic referral. In reports dated May 20 and July 8, 2015, Dr. Levine advised that she had been examined that day and was unable to perform job duties.

On March 5, 2015 Dr. Jeffrey F. Augustin, a Board-certified orthopedic surgeon, advised that appellant was seen in his office that day. In a treatment note dated April 2, 2015, he noted tenderness on left knee examination. Dr. Augustin advised that appellant could not return to work. On June 25, 2015 he advised that left knee x-ray demonstrated mild lateral tilt of the patella. On July 23, 2015 Dr. Augustin reported that appellant was still complaining of left knee pain. He

³ One page of a February 6, 2016 left knee MRI scan demonstrated intact anterior and posterior cruciate ligaments, intact medial and lateral menisci, intact medial and lateral collateral ligaments, and intact quadriceps and patellar tendons.

found lateral peripatellar tenderness to palpation and recommended left knee arthroscopic lateral retinacular release.

By development letter dated August 17, 2015, OWCP informed appellant of the evidence needed to support her claims for disability from February 7 through August 7, 2015. Appellant was allotted 30 days to provide the necessary information.

In an undated statement, appellant reiterated that she was told by a manager on February 26, 2015 that she could not return to work until she was fit for full duty.

Dr. Augustin requested authorization for left knee surgery on September 9, 2015. In correspondence that day, OWCP informed appellant that the medical evidence submitted was not sufficient to establish that the requested procedure was medically necessary or causally related to the accepted condition. It informed her that, if her physician believed a newly diagnosed condition was caused by the December 23, 2014 employment injury, the physician should submit a detailed narrative report explaining why the condition was caused or aggravated by the employment injury. OWCP allotted appellant 30 days to provide the medical report.

By decision dated September 17, 2015, OWCP denied appellant's claim for disability from February 7 through August 7, 2015. It found the medical evidence insufficient to establish that the claimed disability was due to the accepted employment injury.

Appellant thereafter submitted a complete copy of the February 6, 2015 left knee MRI scan. This revealed a small bone bruise in the medial femoral condyles adjacent to the articular surface. In a March 5, 2015 treatment note, Dr. Augustin noted that appellant was referred to him for left knee pain. He reported left knee findings of some tenderness along the medial femoral condyle with full extension and flexion, stable varus and valgus stress, and a negative Lachman's sign. Dr. Augustin described MRI scan findings of what appeared to be a bone contusion of the medial femoral condyle with no obvious ligament tears and intact menisci. He diagnosed left knee contusion. On September 29, 2015 Dr. Augustin advised that appellant had been under his care since March 2015 for a left knee injury, with six months of failed nonsurgical management including bracing, cortisone injections, physical therapy, and oral nonsteroidal anti-inflammatory medication. He noted her continued complaint of left knee pain when last seen on September 28, 2015 and advised that, due to failed nonsurgical management, it was necessary to proceed with left knee arthroscopy for lateral retinacular release.

By decision dated October 26, 2015, OWCP denied appellant's request for authorization of left knee surgery, finding the medical evidence submitted of insufficient rationale to authorize the requested procedure.

On March 14, 2016 appellant, through counsel, requested reconsideration of the September 17, 2015 decision denying disability compensation. In a March 3, 2016 statement, she related that a manager told her not to return to work until she was cleared by a physician for full duty.

On August 12, 2016 counsel requested reconsideration of the October 26, 2015 decision denying authorization for surgery. He also requested that the acceptance of the claim be expanded

to include lateral tilt of left patella, chondromalacia of the patella of the left knee, and articular surface damage of the left knee.

Appellant submitted additional evidence on March 14, 2016. In a September 2, 2015 report, Dr. Levine described the employment injury and noted that he began treating her on February 4, 2015 for left knee pain. He described the MRI scan findings and noted that appellant was referred to Dr. Augustin, who recommended left knee surgery. Dr. Levine indicated that further testing showed that the December 2014 fall caused her left knee cap to become dislocated which required surgery for realignment. He concluded that, due to the employment-related condition, appellant was disabled until surgery and postsurgery recovery were completed and, pending the surgical outcome, she should then be able to return to full duty.⁴

Appellant also submitted reports from Dr. Robin R. Innella, a Board-certified osteopath specializing in orthopedic surgery, who began treating appellant on December 9, 2015. Dr. Innella noted a history that appellant hurt her left knee at work in December 2014 when she slipped on a step while delivering mail in the rain. She described appellant's medical care to date and appellant's complaints of frequent buckling of the knee and difficulty walking, sitting, and ambulating on stairs. Dr. Innella reported positive left knee findings of periarticular swelling and medial and lateral joint line tenderness. She diagnosed left knee chondromalacia patella and contusion. Dr. Innella opined that appellant most likely sustained an articular surface injury and recommended arthroscopy. She advised that appellant could work light duty only. Dr. Innella continued to submit monthly treatment notes in describing appellant's continued left knee complaints with consistent examination findings. She reiterated her diagnoses, opining that, with a reasonable degree of medical probability, appellant's knee injuries were causally related to the December 23, 2014 employment injury. Dr. Innella advised that appellant was refractory to conservative care. She continued to advise that appellant could perform light duty and recommended arthroscopic surgery.

On February 15, 2016 Dr. Innella requested authorization for left knee surgery. In reports dated March 9 and April 6, 2016, she provided specific restrictions to appellant's physical activity. On April 11, 2016 Dr. Innella additionally diagnosed contusion of left knee with articular surface injury of patella medial femoral condyle and post-traumatic synovitis. On July 10, 2016 she advised that appellant's left knee condition caused her to be unable to work from the time of injury until December 2015, at which time she recommended that appellant could return to modified duty.

In correspondence dated August 12, 2016, appellant reiterated that on February 26, 2015 a manager told her she could not work until she was cleared for full duty. She described her medical management, noting that both Dr. Augustin and Dr. Innella recommended surgery. Appellant maintained that, beginning in March 2016, she had contacted the employing establishment requesting light duty, but had not received a response.

On November 9, 2016 Dr. Innella reported that appellant had continued complaints of constant left knee pain, and noted that she previously had physical therapy and injections without

⁴ OWCP referenced a September 2, 2015 report in its September 17, 2015 decision. The report was not found in the case record at that time.

improvement. She provided physical examination findings and advised that appellant's condition was essentially unchanged, she could perform light duty, and was awaiting approval for surgery.

In a merit decision dated December 14, 2017, OWCP denied modification of the September 17 and October 26, 2015 decisions. It found the medical evidence insufficient to establish "any other medical conditions" causally related to the accepted employment injury and any claimed employment-related disability. Additionally, OWCP found that, as the medical evidence was insufficient to establish the necessity for left knee arthroscopic surgery, it was not authorized.⁵

LEGAL PRECEDENT -- ISSUE 1

An employee has the burden of proof to establish that any specific condition for which compensation is claimed is causally related to the employment injury.⁶ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ 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 employee.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that additional left knee conditions were caused or aggravated by, or were a consequence of the accepted December 23, 2014 employment injury. OWCP accepted contusion of the left knee caused by the December 23, 2014 employment injury.

The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, supported by affirmative evidence, must address the specific factual and medical evidence of record, and must provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁰ No physician did so in this case.

⁵ Appellant continued to submit Form CA-7, claims for compensation, for dates through November 11, 2016. By letter dated December 14, 2016, it advised her of the evidence needed to establish these claims.

⁶ *Kenneth R. Love*, 50 ECAB 276 (1999).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *Robert Broome*, 55 ECAB 339 (2004).

Diagnostic studies of the left knee did not provide a cause of any diagnosed conditions and 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.¹¹

The medical reports most contemporaneous with the December 23, 2014 employment injury were those of Dr. Levine who first saw appellant on February 11, 2015 and diagnosed a bone bruise. While he continued to submit reports in which he noted severe left knee pain and advised that appellant's condition was employment related, at no time did he mention the December 23, 2014 employment injury or provide an opinion of how this injury caused any other left knee condition, including the bone bruise he diagnosed. Dr. Levine's reports are, therefore, of insufficient probative value to establish causal relationship.¹²

Likewise Dr. Augustin, who first saw appellant on March 2, 2015, did not relate any diagnosed condition to the December 23, 2014 employment injury. On March 5, 2015 he noted tenderness on knee examination and diagnosed left knee contusion, the accepted condition. On June 25, 2015 Dr. Augustin noted that a left knee x-ray demonstrated a mild lateral tilt to the patella and recommended left knee arthroscopic surgery on July 23, 2015.

Dr. Innella began treating appellant on December 9, 2015. She noted a history that appellant hurt her left knee at work in December 2014 when she slipped on a step while delivering mail in the rain. Dr. Innella described appellant's medical care to date, her complaints of frequent buckling of the knee and difficulty walking, sitting, and ambulating on stairs, and reported positive left knee findings of periarticular swelling and medial and lateral joint line tenderness. She diagnosed left knee chondromalacia patella and contusion and opined that appellant most likely sustained an articular surface injury related to the December 23, 2014 employment injury. Dr. Innella, however, did not provide a rationalized explanation of how the December 23, 2014 employment injury when appellant tripped and hit her left knee caused the diagnosed conditions.¹³ As such, her opinion is insufficient to establish additional accepted conditions.

To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of her opinion.¹⁴ Moreover, the Board has long held that contemporaneous evidence is entitled to greater probative value than later evidence,¹⁵ and Dr. Innella did not begin treatment with appellant until almost one year after the employment injury.

¹¹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹² *Leslie C. Moore*, *supra* note 8.

¹³ *See J.M.*, Docket No. 15-1906 (issued January 7, 2016).

¹⁴ *D.E.*, 58 ECAB 448 (2007).

¹⁵ *S.S.*, 59 ECAB 315 (2008).

Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁶ The Board finds that appellant has not submitted sufficient rationalized medical evidence supporting a causal relationship between any of the claimed additional left knee conditions and the December 23, 2014 employment injury. As such, appellant has failed to meet her burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁷ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not establish that she was disabled due to the accepted left knee contusion.

As noted above, appellant did not establish that the December 23, 2014 employment injury caused additional left knee conditions.

The issue of disability from work can only be resolved by competent medical evidence.¹⁹ Whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.²⁰ The record contains no medical opinion

¹⁶ *C.O.*, Docket No. 10-0189 (issued July 15, 2010).

¹⁷ *See* 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁹ *R.C.*, 59 ECAB 546 (2008).

²⁰ *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

of sufficient rationale to establish that appellant was disabled due to the accepted left knee contusion.

In reports beginning on February 11, 2015, Dr. Levine advised that appellant could not work and diagnosed a bruised bone in her left knee. A bruised bone has not been accepted as employment related, and he did not explain in any of his reports through July 8, 2015 how or why the accepted left knee contusion caused her any disability from work. Likewise, while Dr. Augustin advised that appellant could not work, he too did not explain how or why the left knee contusion caused total disability. Dr. Innella advised that appellant was restricted to light duty, but she too did not explain why the accepted left knee contusion rendered appellant totally disabled.

As appellant did not submit sufficient rationalized medical opinion evidence to establish that she was disabled for work during the period February 7 to August 7, 2015 due to the accepted left knee contusion, she failed to meet her burden of proof. She was thus not entitled to wage-loss compensation for this period.²¹

LEGAL PRECEDENT -- ISSUE 3

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.²²

To be entitled to reimbursement of medical expenses, a claimant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.²³ In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.²⁴

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from

²¹ *R.R.*, Docket No. 17-1223 (issued February 6, 2018).

²² 5 U.S.C. § 8103; *see Dona M. Mahurin*, 54 ECAB 309 (2003).

²³ *M.B.*, 58 ECAB 588 (2007).

²⁴ *R.C.*, 58 ECAB 238 (2006).

established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.²⁵

While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.²⁶

ANALYSIS -- ISSUE 3

The Board finds that OWCP did not abuse its discretion in denying authorization for left knee surgery.

For a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.²⁷

Dr. Augustin who began treating appellant in March 2015 recommended left knee arthroscopic lateral retinacular release for left patellar tilt. Dr. Levine who diagnosed a dislocated left knee cap also recommended surgery. Dr. Innella requested authorization for arthroscopic left knee surgery for articular surface injury of patella medial femoral condyle.

As indicated above, none of these conditions have been accepted as employment related. Appellant must submit evidence that shows that the requested medical procedure is both due to a condition causally related to an employment injury and that it is medically warranted. In the preceding analysis, the Board explained why the medical evidence did not support that additional left knee conditions were causally related to the December 23, 2014 employment injury. As the requested surgery has not been established to be causally related to appellant's employment injury, OWCP did not abuse its discretion by denying her requests for surgery.

Based on the evidence of record, the Board finds that OWCP did not abuse its discretion in denying the proposed surgical procedure. As noted above, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.²⁸ Absent sufficient explanation as to why the proposed surgery was causally related to the December 23, 2014 employment injury, the Board finds that OWCP acted reasonably in denying appellant's request for left knee surgery.²⁹

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to expand the acceptance of her claim to include additional left knee conditions causally related to a December 23, 2014

²⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

²⁶ *Kennett O. Collins, Jr.* 55 ECAB 648 (2004).

²⁷ *Supra* note 24.

²⁸ *See D.C.*, 58 ECAB 629 (2007).

²⁹ *B.L.*, Docket No. 15-1452 (issued September 20, 2016).

employment injury and did not establish disability for the period February 7 to August 7, 2015, causally related to the accepted injury. The Board further finds that OWCP properly exercised its discretion by denying appellant authorization for left knee surgery.³⁰

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2018
Washington, DC

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

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

³⁰ Colleen Duffy Kiko, Judge, participated in the preparation of the decision, but was no longer a member of the Board effective December 11, 2017.