



## ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include left knee torn meniscus and arthropathy, consequential to the accepted April 16, 2013 employment injury.

## FACTUAL HISTORY

On April 17, 2013 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2013 he injured his right foot/heel and right knee when he fell on a collapsed porch while in the performance of duty. He stopped work on April 17, 2013. OWCP initially accepted the claim for right foot contusion, right foot sprain, right knee sprain, right knee and right foot edema, bilateral buttock contusion, and lumbosacral sprain. It subsequently expanded appellant's claim to include aggravation of lumbosacral spondylosis and acceleration of underlying right knee medial compartmental arthritis. Beginning June 1, 2013, OWCP paid appellant wage-loss compensation for temporary total disability on the supplemental rolls.<sup>4</sup> Appellant underwent OWCP-approved lumbar surgery on February 15, 2014, and a right knee arthroscopic procedure on May 17, 2014. OWCP also approved a March 1, 2016 right total knee arthroplasty, which was performed by Dr. Jeffrey S. Meisles, a Board-certified orthopedic surgeon.

In a July 27, 2017 examination note, Dr. Meisles indicated that he reviewed a left knee magnetic resonance imaging (MRI) scan, which demonstrated a tear of the posterior horn of the medial meniscus with a small perimeniscal cyst. He explained that these findings were consistent with appellant's symptoms of pain and locking in the medial joint line. Dr. Meisles recommended additional surgery.

On August 28, 2017 appellant returned to full-duty work.

In a September 30, 2017 report, Dr. Florian Miranzadeh, a Board-certified family practitioner, related that on May 10, 2017, appellant felt left knee pain while undergoing physical therapy treatment. He reported examination findings of decreased range of motion and tenderness on the medial and lateral aspects of the joint line of appellant's left knee. Dr. Miranzadeh reported that since appellant's April 16, 2003 right knee injury, he had walked for a significant amount of time with a cane and significant limp, which caused undue and unbalanced pressure on his left knee. He diagnosed "left knee torn meniscus and arthropathy, a consequential injury as a result of favoring the right knee."

By letter dated October 5, 2017, OWCP requested a report from its district medical adviser (DMA) in response to whether he agreed with Dr. Miranzadeh's opinion of a torn meniscus and arthropathy as a consequence of the accepted condition. In an October 13, 2017 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as the DMA, reviewed an attached statement of accepted facts (SOAF) and the medical evidence of record. He expressed his disagreement with Dr. Miranzadeh's opinion that favoring of one limb caused an injury to the uninjured limb. Dr. Fellars explained that several studies had shown that there was not an increased force in the opposite limb when compared to individuals walking with a normal gait. He indicated that the American Medical Association, *Guides to the Evaluation of Disease and Injury Causation*

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<sup>4</sup> Effective May 4, 2014, OWCP placed appellant on the periodic compensation rolls.

(A.M.A., *Guides*).<sup>5</sup> The A.M.A., *Guides* provides that the use of the term “favoring” was speculative and that several studies had shown that there was no increased force in the opposite limb when compared to individuals walking with a normal gait. Dr. Fellars concluded that appellant’s left knee conditions were not related to the accepted April 16, 2013 employment injury.

By letter dated November 13, 2017, appellant, through counsel, requested that the acceptance of his claim be expanded to include left knee torn meniscus and arthropathy.

OWCP determined that a conflict in the medical evidence existed between Dr. Miranzadeh, appellant’s treating physician, and Dr. Fellars, the DMA, with respect to whether appellant’s left knee conditions were causally related to the accepted April 16, 2013 employment injury. It referred him to Dr. Hythem P. Shadid, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 5, 2018 report, Dr. Shadid noted appellant’s complaints of left knee pain, the April 17, 2013 employment injury, and his review of the medical reports. He related appellant’s accepted conditions and indicated that in May 2017 appellant began to complain of left knee pain due to favoring the right knee over the past year. Dr. Shadid noted that a July 27, 2017 MRI scan showed tear of the posterior horn of the medial meniscus, mild-to-moderate arthritic changes, and moderate distal quadriceps tendinopathy. Upon examination of appellant’s left knee, he observed tenderness along the medial joint line and mild edema. Range of motion testing was full on flexion and extension. McMurray’s and Lachman’s tests were negative.

In response to OWCP’s questions, Dr. Shadid related that there was no scientific evidence to support the conclusion that appellant’s current left knee symptoms was consequential to the accepted April 16, 2013 employment injury. He reported that there was also no evidence to support the conclusion that a career as a letter carrier or physical therapy for the opposite knee was the cause of appellant’s degenerative left knee. Dr. Shadid explained that MRI scan findings were consistent with age-related progression of degenerative arthritis, which included a degenerative medial meniscus tear.

In a decision dated March 9, 2018, OWCP denied expansion of appellant’s claim to include a consequential torn left knee meniscus and arthropathy. It found that the special weight of the medical evidence rested with the February 5, 2018 report of Dr. Shadid, the impartial medical examiner, who opined that the medical evidence was insufficient to establish causal relationship between appellant’s current left knee symptoms and the accepted April 16, 2013 employment injury.

On March 16, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. A hearing was held on August 6, 2018.

OWCP received an April 11, 2018 report by Dr. Meisles, who related appellant’s complaints of bilateral knee pain. Examination of appellant’s left knee showed tenderness and positive McMurray test. Dr. Meisles related that appellant indicated that his symptoms markedly worsened during the year that he was awaiting approval for treatment of his back and right knee

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<sup>5</sup> A.M.A., *Guides* (2<sup>nd</sup> ed. 2014).

conditions. Appellant believed that this extra strain placed on his left knee markedly exacerbated his symptoms.

By decision dated October 2, 2018, an OWCP hearing representative affirmed the March 9, 2018 decision based on the February 5, 2018 report of Dr. Shadid, the impartial medical examiner.

### **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.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>9</sup>

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 a claimant's own intentional misconduct.<sup>10</sup> 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.<sup>11</sup>

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>12</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>13</sup> For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."<sup>14</sup> Where OWCP has referred the case to an impartial medical examiner to resolve the

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<sup>6</sup> *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* 10-1 (2006).

<sup>11</sup> *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>12</sup> 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>13</sup> 20 C.F.R. § 10.321.

<sup>14</sup> *R.P.*, Docket No. 17-0428 (issued April 19, 2018); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

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.<sup>15</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision as there is an unresolved conflict in medical opinion.

The Board finds that OWCP improperly determined that a conflict in medical opinion evidence existed between Dr. Miranzadeh, appellant's treating physician, and Dr. Fellars, the DMA, regarding whether appellant's left knee condition was causally related to his accepted April 16, 2013 employment injury. In a September 30, 2017 report, Dr. Miranzadeh opined that appellant sustained a consequential left knee injury due to his accepted April 16, 2013 employment. He opined that the appellant had walked for a significant amount of time with a cane and significant limp, which caused undue and unbalanced pressure on his left knee. In an October 13, 2017 report, Dr. Fellars noted his disagreement with Dr. Miranzadeh's opinion that appellant's current left knee condition resulted from his accepted April 16, 2003 right knee injury. He responded that the A.M.A., *Guides* provides that the use of the term "favoring" was speculative and that several studies had shown that there was no increased force in the opposite limb when compared to individuals walking with a normal gait.

The Board finds that Dr. Fellars' October 13, 2017 report lacked sufficient medical rationale and is not of equal weight to Dr. Miranzadeh's report as OWCP had determined. In determining the probative value of medical evidence, the Board considers such factors as the opportunity for and thoroughness of examination performed by the physician, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>16</sup> In this case, Dr. Fellars merely referenced medical literature and provided a general conclusion regarding causal relationship.<sup>17</sup> The Board finds, therefore, that this report is of diminished probative value and is insufficient to create a conflict in medical opinion with Dr. Miranzadeh.<sup>18</sup> As there was no conflict in medical evidence between Dr. Fellars and Dr. Miranzadeh pursuant to 5 U.S.C. § 8123(a), the referral to Dr. Shadid was for second opinion examination.<sup>19</sup>

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<sup>15</sup> *Gary R. Sieber*, 57 ECAB 414, 416 (2006).

<sup>16</sup> *C.D.*, Docket No. 17-1623 (issued February 20, 2018); *James T. Johnson*, 39 ECAB 1252, 1256 (1988).

<sup>17</sup> Medical evidence that offers a conclusion on causal relationship, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>18</sup> *See supra* note 11.

<sup>19</sup> *See B.T.*, Docket No. 16-1319 (issued April 25, 2017) (the Board found that at the time of the referral for a permanent impairment rating there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *see also Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the impartial medical examiner was not afforded the special weight of the evidence, but was instead considered for its own intrinsic value as he was a second opinion specialist).

In a February 5, 2018 report, Dr. Shadid reviewed the medical evidence of record and provided examination findings related to appellant's left knee. He opined that appellant's left knee condition was degenerative in nature and that there was no evidence to establish that appellant's employment caused or contributed to his degenerative left knee condition. The Board finds that there is now a new conflict in medical evidence between Dr. Miranzadeh and Dr. Shadid regarding whether appellant sustained a consequential left knee injury due to his April 16, 2013 employment injury.

Because there is an unresolved conflict in medical opinion regarding whether there is a causal relationship between appellant's left knee condition and his accepted April 16, 2013 right knee injury, the case shall be remanded to OWCP for referral to an impartial medical examiner pursuant to section 8123(a) of FECA.<sup>20</sup> After this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: August 7, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>20</sup> *Supra* notes 11 and 13.