United States Department of Labor
Employees' Compensation Appeals Board

L.W., Appellant	)	
and	)	**Docket No. 19-0722**
	)	**Issued: November 20, 2019**
DEPARTMENT OF AGRICULTURE, OFFICE OF THE INSPECTOR GENERAL, Denver, CO, Employer	)	

Appearances:
James E. Nesland, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 19, 2019 appellant, through counsel, filed a timely appeal from a January 2, 2019 merit decision and a January 23, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the Federal Employees' Compensation Act[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] The Board notes that following the January 23, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

[3] 5 U.S.C. § 8101 *et seq.*

(FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[4]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a consequential bilateral knee and left foot or ankle condition causally related to his October 10, 1986 employment injury; (2) whether he has met his burden of proof to establish greater than 13 percent permanent impairment of the left lower extremity for which he previously received schedule award compensation; and (3) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.[5] The facts and circumstances as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On November 17, 1986 appellant, then a 40-year-old investigator, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 1986 he injured his lower back when lifting exercise equipment off a truck while in the performance of duty. OWCP accepted the claim for lumbar sprain, depressive disorder, lumbar intervertebral disc disorder with myelopathy, and thoracic or lumbosacral neuritis or radiculitis not otherwise specified. Appellant stopped work on October 14, 1986 and returned to work on October 20, 1986. He stopped work again on April 29, 1988 and received wage-loss compensation from OWCP.

By decision dated April 9, 1993, OWCP terminated appellant's wage-loss compensation and medical benefits. By decision dated November 29, 1994, an OWCP hearing representative affirmed the April 9, 1993 termination decision. Appellant subsequently requested reconsideration. OWCP denied modification of its termination of his wage-loss compensation and medical benefits by decisions dated March 13 and May 22, 1995. Appellant appealed to the Board. By order dated March 11, 1997, the Board remanded the case for proper assemblage of the case record followed by an appropriate decision to protect his appeal rights.[6]

By decision dated November 12, 1997, OWCP again terminated appellant's wage-loss compensation and medical benefits. By decision dated March 1, 1999, an OWCP hearing representative set aside the November 12, 1997 decision. He found that OWCP had not met its

[4] The record also contains a November 28, 2018 OWCP decision denying his request for reconsideration for further merit review of its April 9, 2018 decision denying authorization for a gym membership under 5 U.S.C. § 8128(a). He has not appealed this decision and thus it is not before the Board at this time. 20 C.F.R. § 501.2(c)

[5] *Order Remanding Case*, Docket No. 95-2604 (issued March 11, 1997); Docket No. 16-1407 (issued November 14, 2016).

[6] *Supra* note 5.

burden of proof to establish that appellant had no further disability or need for medical treatment due to his accepted conditions.

By decision dated July 6, 1999, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity. By decision dated January 22, 2008, it granted him a schedule award for an additional 12 percent permanent impairment of the left lower extremity.

On February 11, 2010 appellant underwent a left total knee replacement (TKR) and on August 12, 2010, he underwent a right TKR.

In a report dated October 5, 2010, Dr. Zulfiqar Farooqui, Board-certified in internal medicine, discussed appellant's history of bilateral TKRs. He advised that he had no history of any knee condition prior to his October 10, 1986 employment injury. Dr. Farooqui related, "[Appellant] has a long history of back problems and loss of feeling in the left leg, both accepted conditions. Over the years [he] has developed scoliosis and an extreme pronation of the left leg. These physical developments led to loss of knee internal structure, including cartilage necessitating the need for knee replacements."

On November 15, 2010 Dr. Martin Boublik, a Board-certified orthopedic surgeon, advised that appellant had a history of left knee injuries in 1984 and 1986. He opined that his October 1986 employment injury had aggravated his knee symptoms, and that his knee arthritis had progressed such that he required TKRs. Dr. Boublik related, "While the origin of [appellant's] knee arthritis is most likely multifactorial, the 1986 injury and resultant chronic spine issues no doubt played a role in the progression of his disease process."

In an August 1, 2011 report, Dr. David G. Carfagno, an osteopath and Board-certified internist, noted that appellant had injured his left knee in 1984 and also had experienced an injury in 1986 involving exercise equipment which had exacerbated his left knee condition. He opined that his consequential bilateral knee condition caused chronic injuries to his lumbar spine and left lower extremity.

On January 24, 2011 appellant filed a claim for an increased schedule award (Form CA-7).

On March 16, 2012 appellant filed a notice of recurrence (Form CA-2a) of the need for medical treatment alleging that he required bilateral TKRs as a result of his October 10, 1986 back injury which caused a limp which impacted his knees. In an accompanying statement of even date, he alleged a consequential injury to his left knee and left ankle causally related to his accepted employment injury.

On January 30, 2013 OWCP referred appellant to Dr. Ronald M. Lampert, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether he sustained a consequential injury and the extent of any employment-related permanent impairment.

In a report dated February 21, 2013, Dr. Lampert diagnosed multiple left ankle surgeries bilateral total knee replacements, and degenerative arthritis of the lumbosacral spine. He found that appellant's left lower extremity paresthesia would not result in an altered gait or pressure on the joints of the lower extremities. Dr. Lampert opined that appellant's left ankle and bilateral

knee conditions were unrelated to his October 10, 1986 employment injury. He further determined that he had no employment-related permanent impairment of his left lower extremity.[7]

By decision dated August 31, 2013, OWCP denied appellant's claim for an increased schedule award.

In a report dated September 12, 2013, Dr. Todd Doerr, a Board-certified orthopedic surgeon, diagnosed progressive degenerative scoliosis causally related to appellant's employment injury. He noted that electrodiagnostic studies showed chronic radiculopathy. Dr. Doerr related, "I believe that the progressive degenerative scoliosis related to the injury as well as the spondylosis and the altered gait patterns were responsible for progression of genu valgum deformity requiring knee replacements as well as the residual hindfoot deformities in the left lower extremity.

On October 23, 2013 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP found a conflict in medical evidence between Dr. Doerr and Dr. Lampert regarding whether appellant sustained bilateral knee and left ankle conditions as a consequence of his October 10, 1986 employment injury. It referred him to Dr. Jeffrey S. Levine, a Board-certified orthopedic surgeon, for an impartial medical examination.

By decision dated August 21, 2014, an OWCP hearing representative set aside the August 21, 2013 increased schedule award decision. She found that OWCP should again refer appellant to Dr. Lambert for a supplemental report regarding whether he had a greater impairment of the left lower extremity due to his lumbar condition.

In a report dated August 29, 2014, Dr. Levine reviewed the evidence of record and provided findings on examination. He diagnosed as employment-related back sprain, depressive disorder, intervertebral lumbar disc disorder with myelopathy, and unspecified left leg radiculitis. Dr. Levine further diagnosed Barrter's syndrome, chondrocalcinosis of the bilateral knee joints, left tibialis posterior tendon dysfunction with the development of a flatfoot deformity, degenerative lumbar scoliosis, and peripheral neuropathy of the upper and lower extremities all of which were unrelated to the October 10, 1986 employment injury. He noted that it was "medically probable that [appellant's] renal disorder played a major role in the generation of [his] bilateral end-stage knee osteoarthritis and left hind and midfoot deformity." Dr. Levine further attributed appellant's degenerative scoliosis and spinal stenosis to nonemployment-related pseudogout and the aging process. He opined that appellant's left hind and midfoot deformities resulted from degenerative tibialis posterior tendon and midfoot ligamentous complex changes and pseudogout.

On October 6, 2014 Dr. Doerr asserted that appellant had 12 percent whole person impairment due to lower extremity weakness from radiculopathy and 21 percent whole person impairment due to loss of motion and deformity of his hindfoot and ankle. He further found 50 percent whole person impairment of the lumbar and thoracic spine.

[7] An OWCP district medical adviser (DMA) reviewed the evidence on July 15, 2013 and concurred with Dr. Lampert's findings.

In a report dated October 10, 2014, Dr. Mark Barter, a Board-certified internist, reviewed Dr. Levine's report and disagreed with his finding that he had Bartter's syndrome, noting that it was a diagnosis made in 1981 and subsequently clarified as Gittleman's syndrome.

On January 2, 2015 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a DMA, opined that Dr. Doerr's opinion was insufficient to support an additional schedule award.

By decision dated August 25, 2015, OWCP denied appellant's request to expand acceptance of his claim to include a bilateral knee or left ankle condition. It found that Dr. Levine's opinion represented the special weight of the evidence and established that he had not sustained a consequential injury to his knees or left ankle due to his October 10, 1986 employment injury.

By separate decision of even date, OWCP denied appellant's claim for an increased schedule award. It found that he had no more than the previously awarded 13 percent left lower extremity impairment.

On September 16, 2015 appellant requested an oral hearing before an OWCP hearing representative on both August 25, 2015 decisions.[8]

By decision dated June 10, 2016, OWCP's hearing representative set aside the August 25, 2015 decision finding that appellant had no more than 13 percent permanent impairment of the left lower extremity. She determined that OWCP had failed to obtain clarification from Dr. Lambert as instructed by the prior OWCP hearing representative.

On June 16, 2016 a telephonic hearing was held regarding the August 25, 2015 decision denying appellant's request for a consequential injury.

By decision dated July 28, 2016, OWCP's hearing representative set aside the August 25, 2015 decision finding that appellant had not sustained a bilateral knee or left ankle condition causally related to his accepted employment injury. She found that OWCP should have obtained a supplemental report from Dr. Lampert prior to referring appellant for an impartial medical examination. The hearing representative also found that Dr. Levine had failed to explain his diagnosis of Bartter's syndrome and thus his opinion was insufficient to constitute the special weight of the evidence.

On remand OWCP referred appellant to Dr. Michael A. Steingart, an osteopath, for a second opinion examination. It noted that Dr. Lambert was no longer on its provider list.

[8] By decision dated February 2, 2016, OWCP denied appellant's request for authorization for a gym membership as medically necessary to treat his employment injury. In a decision dated May 17, 2016, it denied his request for reconsideration of the merits of this claim under 5 U.S.C. § 8128(a). On August 15, 2016 appellant requested reconsideration of the February 2, 2016 decision denying his request for gym membership. By decision dated November 14, 2016, the Board affirmed the February 2, 2016 decision denying appellant's request for authorization for a gym membership, but set aside the May 17, 2016 decision denying his request for reconsideration under section 8128(a). The Board found that he had submitted relevant and pertinent new evidence sufficient to warrant reopening his case for further merit review. *See supra* note 5. By decision dated December 19, 2016, OWCP modified its February 2, 2016 decision and authorized appellant's request for gym membership for a one-year period.

In a report dated November 5, 2016, Dr. Steingart discussed appellant's history of injury and reviewed the medical reports of record. He provided detailed examination findings. Dr. Steingart diagnosed lumbosacral sprain/strain syndrome, L4-5 and L5-S1 radiculopathy, scoliosis with degenerative lumbar disc disease with straightening of the lumbar and thoracic normal kyphosis and congenital fusion of the anterior bone at L1 through L5, bilateral degenerative arthrosis of the knees, chronic posterior tibialis tendinopathy with a failed repair, hindfoot valgus more congenital on the left, and a history of psuedogout. He opined that appellant's bilateral knee complaints were unrelated to his employment injury. Dr. Steingart noted, "It is clear the claimant had bilateral degenerative arthrosis of both knees. It is also clear that although the claimant may have had a gait disturbance, this was not truly manifesting itself until after the total knees." He found that appellant had continued radiculopathy due to an acceleration of his accepted back strain. Dr. Steingart asserted that his employment injury "would not cause a posterior tibialis dysfunction or a congenital hindfoot valgus deformity. However, admittedly, I have not had the opportunity to review the original foot and ankle records, which would be helpful to secure my position on this." Dr. Steingart opined that appellant's 13 percent left lower extremity impairment remained unchanged.

On December 8, 2016 Dr. Harris determined that appellant had no impairment of the right lower extremity and 10 percent permanent impairment of the left lower extremity. He noted that he was not entitled to an increased schedule award as he had previously received a schedule award for 13 percent permanent impairment of the left lower extremity.

By decision dated January 10, 2017, OWCP denied expansion of appellant's claim to include a consequential bilateral knee or left ankle condition. In another decision of even date, it denied appellant's request for an increased schedule award.

On February 8, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding both decisions issued January 10, 2017.

In a report dated March 29, 2017, Dr. Stanley C. Graves, Board-certified in orthopedic surgery, opined that appellant had 30 percent permanent impairment of the left lower extremity due to his triple arthrodesis. He noted that he had a history of an employment-related back condition and that it worsened his lower extremity and ankle condition. Dr. Graves opined, "I do believe his ankle and foot problems [are] related to the industrial injury."

On May 1, 2017 Dr. Dennis Crandall, a Board-certified orthopedic surgeon, advised that appellant had seen Dr. Graves for nerve pain. He concurred with Dr. Graves' opinion that his symptoms resulted from his employment injury.

In a statement dated May 1, 2017, appellant maintained that the reports from his attending physicians were sufficient to establish that he had sustained a left lower leg and food condition

causally related to his accepted employment injury. He filed an additional claim for an increased schedule award (Form CA-7).[9]

Following a July 19, 2017 telephonic hearing, by decision dated September 29, 2017, an OWCP hearing representative affirmed the January 10, 2017 decisions. He found that Dr. Steingart's opinion represented the weight of the evidence and established that appellant had not sustained a consequential bilateral knee or left ankle condition or additional impairment of the lower extremities.

In an addendum report dated October 26, 2017, Dr. Graves indicated that he had reviewed the medical evidence, including Dr. Steingart's report. He found that appellant had documented weakness of the lower extremity due to radiculopathy due to his employment injury. Dr. Graves related:

> "Because of this weakness and lack of function of his lower leg muscles, he has progressively developed weakness and deformity of his ankle and hind foot. Again, this problem is definitely and directly related to the radiculopathy and directly caused by the radiculopathy. He ultimately has received care for this problem which finally resulted in a triple arthrodesis as we have discussed in reports from March 29, 2017."

Dr. Graves again advised that appellant had 30 percent permanent impairment of the "involved lower extremity" due to his arthrodesis. He asserted:

> "Therefore, the progression of his radiculopathy, numbness, and weakness over time definitely have contributed to his lower extremity foot and ankle problems. And caused him to have surgical correction with increased impairment and disability. This problem is not a progressive genitive process as suggested by Dr. Steingart. It is directly related to the radiculopathy and weakness in his lower extremity over many years."

By decision dated April 9, 2018, OWCP denied appellant's request for authorization for a gym membership as medically necessary to treat the effects of his employment injury.[10]

On April 19, 2018 appellant requested reconsideration of OWCP's September 29, 2017 decision. On even date, he also requested an oral hearing on OWCP's April 9, 2018 decision.

In a report dated April 19, 2018, Dr. Justin S. Field, a Board-certified orthopedic surgeon, noted that appellant had accepted conditions of degenerative disc disease with myelopathy and

[9] In a May 17, 2017 response, OWCP advised that it would not take an action on the Form CA-7 and informed appellant to follow the appeal rights accompanying the January 10, 2017 decision. In a May 19, 2017 telephone call, appellant indicated that he was claiming a schedule award for nerve damage to his leg.

[10] In a report dated November 14, 2017, Dr. Crandall diagnosed lumbar radiculopathy and chronic back pain. He requested authorization for continued gym membership.

lumbar radiculitis/radiculopathy. He attributed the lumbar radiculitis/radiculopathy to moderate-to-severe L4-5 spinal stenosis. Dr. Field recommended surgery.[11]

By decision dated July 17, 2018, OWCP denied modification of its September 28, 2017 decision. It found that the medical evidence was insufficient to show that appellant had a bilateral knee or left ankle condition as a consequence of his accepted employment injury or any increased permanent impairment.

On September 4, 2018 appellant requested reconsideration of OWCP's April 9, 2018 decision.

By decision dated September 6, 2018, OWCP found that appellant had abandoned his request for a telephonic hearing on OWCP's April 9, 2018 decision.

In a report dated August 28, 2018, Dr. Graves related that appellant had worsening hind foot valgus due to his radiculopathy. He recommended an osteotomy through the transverse tarsal joints and a debridement of arthritic changes in the tibiotalar joint and osteophyte removal.

On October 4, 2018 appellant requested reconsideration of OWCP's July 17, 2018 decision.

Thereafter, appellant submitted a June 13, 2018 report from Dr. Graves, who found triple arthrodesis with no subtalar motion on examination and recommended additional surgery.

By decision dated November 28, 2018, OWCP denied appellant's request for reconsideration of the merits of its April 9, 2018 decision under 5 U.S.C. § 8128(a).

In a report dated December 13, 2018, Dr. Nizar Souayah, a Board-certified neurologist serving as DMA, noted that appellant's neurological examination demonstrated left lumbar radiculopathy and an MRI scan showed severe L4-5 stenosis. He recommended that OWCP approve authorization for a left L4-5 hemilaminectomy and foraminotomy as medically necessary and causally related to his accepted employment injury.

By decision dated January 2, 2019, OWCP denied modification of its July 17, 2018 decision. It found that the medical evidence was insufficient to show that appellant's claim should be expanded to include lower extremity conditions.

On January 18, 2019 appellant, through counsel, requested reconsideration. Counsel asserted Dr. Souayah's report finding that appellant required back surgery supported that his claimed lower extremity conditions were causally related to his October 10, 1986 employment injury.

By decision dated January 23, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

[11] In a report dated August 9, 2018, Dr. Field diagnosed scoliosis, left sciatica, and lumbar spinal stenosis. He recommended an L4-5 left hemilaminotomy and foraminotomy.

LEGAL PRECEDENT -- ISSUE 1

The claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. 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.[12]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[13] 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.[14]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether 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.[15]

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[16] 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.[17] Where a case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[18]

[12] *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

[13] *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

[14] *Id*.

[15] *K.S.*, Docket No. 17-1583 (issued May 10, 2018); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014).

[16] 5 U.S.C. § 8123(a).

[17] *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

[18] *V.K.*, Docket No. 18-1005 (issued February 1, 2019).

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant sustained a bilateral knee or left ankle or foot condition causally related to his accepted employment injury due to a conflict in medical opinion.

OWCP accepted that appellant sustained lumbar sprain, depressive disorder, lumbar intervertebral disc disorder with myelopathy, and thoracic or lumbosacral neuritis or radiculitis not otherwise specified causally related to an October 10, 1986 employment injury.

In 2010 appellant underwent bilateral TKRs. On October 5, 2010 Dr. Farooqui noted that appellant had accepted back and left leg conditions. He indicated that he had developed left leg scoliosis and pronation causing a loss of internal knee structure and resulting in the need for TKRs. On November 15, 2010 Dr. Boublik opined that appellant's 1986 employment injury had aggravated his left knee arthritis and contributed to his need for TKRs. In a report dated August 1, 2011, Dr. Carfagno opined that appellant's 1986 injury had exacerbated his bilateral knee condition.

On September 12, 2013 Dr. Doerr diagnosed progressive degenerative scoliosis causally related to the accepted employment injury. He opined that appellant's altered gait due to the progression of his degenerative scoliosis and spondylosis caused a progression of a genu valgum deformity resulting in his total knee replacements and hindfoot deformities.

OWCP initially determined that a conflict existed between Dr. Doerr and Dr. Lampert regarding whether it should expand acceptance of appellant's claim to include a consequential bilateral knee or left ankle condition and referred him to Dr. Levin for an impartial medical examination. Subsequently, however, an OWCP hearing representative's determined that OWCP should have obtained a supplemental report from Dr. Lampert prior to referring him for an impartial medical examination and further found that Dr. Levine's opinion was insufficiently explained to constitute the special weight of the evidence. As Dr. Lampert was no longer available, OWCP referred appellant to Dr. Steingart for a second opinion examination.

On November 5, 2016 Dr. Steingart diagnosed lumbosacral sprain/strain syndrome, L4-5 and L5-S1 radiculopathy, scoliosis with degenerative lumbar disc disease with straightening of the lumbar and thoracic normal kyphosis and congenital fusion of the anterior bone at L1 through L5, bilateral degenerative arthrosis of the knees, chronic posterior tibialis tendinopathy with a failed repair, hindfoot valgus more congenital on the left, a history of psuedogout. He determined that appellant's bilateral knee condition was unrelated to his October 10, 1986 employment injury, providing as a rationale that his gait disturbance occurred primarily after his TKRs. Dr. Steingart further asserted that he had not sustained the diagnosed left foot conditions of congenital hindfoot valgus or a posterior tibilas tendinopathy.

In a March 29, 2017 report, Dr. Graves opined that appellant's employment injury had exacerbated his lower extremity and ankle condition. On October 26, 2017 he related that as a result of his employment-related lower extremity radiculopathy, he developed weakness of his ankle and hind foot, resulting in the need for a triple arthrodesis. Dr. Graves disagreed with

Dr. Steingart that appellant had a genitive process, opining that it was directly caused by his lower extremity weakness and radiculopathy.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or impartial medical specialist who shall make an examination.[19] The Board finds that a conflict remains in medical opinion between Dr. Doerr and Dr. Steingart regarding whether appellant sustained a consequential bilateral knee condition and between Dr. Graves and Dr. Steingart regarding whether he sustained a consequential left foot or ankle condition causally related to his October 10, 1986 employment injury.[20] Therefore, the case must be remanded to OWCP for referral of appellant to an impartial medical examiner for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).[21] After 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 regarding whether appellant sustained a bilateral knee or left ankle or foot condition causally related to his accepted employment injury due to a conflict in medical opinion.[22]

[19] *See C.S.*, Docket No. 19-0731 (issued August 22, 2019).

[20] *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

[21] *Id.*

[22] In light of the Board's disposition of the issue of whether appellant's claim should be expanded to include a consequential injury, it is premature to address the issue of whether he is entitled to an increased schedule award of the left lower extremity and the issue of whether OWCP properly denied his request for reconsideration of the merits of the claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 23 and 2, 2019 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 20, 2019
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