

accepted the claim for left knee tear of medial meniscus, left knee sprain of medial collateral ligament, and contusion of left lower leg. Appellant stopped work on the date of injury and received wage-loss compensation.³ On May 3, 2016 he underwent an authorized left knee arthroscopy, partial medial meniscectomy, and medial compartment chondroplasty. Appellant returned to full-time sedentary work with restrictions on June 13, 2016.

On July 22, 2016 appellant filed a claim for wage-loss compensation (Form CA-7), commencing July 7, 2016, and on the same date he also filed a notice of recurrence (Form CA-2a), alleging that he sustained a recurrence of disability commencing July 7, 2016 due to his accepted January 23, 2016 employment injury. He indicated that his left knee pain and symptoms were ongoing and had increased since he returned to light-duty work.

In a development letter dated August 1, 2016, OWCP requested that appellant submit a physician's opinion supported by a medical explanation as to how his accepted employment-related medical conditions worsened to the extent that he was disabled from work.

On September 8, 2016 appellant described the circumstances surrounding his recurrence, reporting that his left knee symptoms never resolved and he experienced pain on a daily basis, often times causing his knee to give out without warning.

On October 17, 2016 OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination. It did not request that he address appellant's objective findings of disability due to his accepted conditions as of July 7, 2016.

In a November 8, 2016 medical report, Dr. Didizian reported that appellant was currently recovering from his May 3, 2016 left knee surgery, resulting in limited motion and the use of a cane. He further explained that three weeks of modified-duty work would not cause a recurrence or necessitate a work stoppage on July 7, 2016.

By decision dated December 29, 2016, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence of record was insufficient to establish disability commencing July 7, 2016 due to a material change/worsening of his accepted conditions.

On September 22, 2017 appellant, through counsel, requested reconsideration.

By decision dated December 21, 2017, OWCP denied modification of the December 29, 2016 decision finding that the evidence of record was insufficient to establish a recurrence of total disability commencing July 7, 2016 due to a material change/worsening of his accepted conditions or a consequential injury.

The Board, having reviewed the case record submitted by OWCP, finds that this case is not in posture for decision.⁴

³ OWCP subsequently determined that the accepted injury occurred on January 23, 2016.

⁴ See *T.Z.*, Docket No. 17-0679 (issued May 9, 2019).

OWCP's procedures require that, in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work.⁵ Thus, in cases where a recurrence is claimed within 90 days or less from the return to work, the focus is on disability rather than causal relationship.⁶

The Board finds that OWCP should have developed the claim under the proper recurrence standard, emphasizing disability rather than causal relationship. Pursuant to OWCP's procedures, appellant should have been asked to submit a narrative statement from his attending physician which described the duties appellant could not perform, and the demonstrated objective findings that formed the basis for renewed disability from work.⁷ However, the August 1, 2016 OWCP development letter improperly instructed appellant to provide medical evidence in accordance with the standard for a recurrence of disability claim after 90 days of his return to duty, which required that appellant establish a material worsening of the accepted condition.⁸

The Board also finds that OWCP improperly developed the recurrence claim when providing instructions to the second opinion physician. Dr. Didizian's November 8, 2016 report failed to discuss and evaluate appellant's disability and work capabilities as a result of his accepted left knee conditions.

Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.⁹ As appellant received improper guidance from OWCP regarding the specific evidence required to establish a recurrence claim within 90 days of his return to duty and as OWCP did not seek to obtain the relevant medical information from Dr. Didizian, the Board finds that this case must be remanded for further development.¹⁰ Accordingly, the case will be remanded for OWCP to properly develop appellant's recurrence claim. Following this and other further development as deemed necessary, OWCP shall issue an appropriate merit decision.¹¹

⁵ *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

⁶ *K.R.*, Docket No. 19-0413 (issued August 7, 2019).

⁷ *A.C.*, Docket No. 17-0384 (issued September 11, 2017); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

⁸ *Id.* at Chapter 2.1500.6.

⁹ *See K.S.*, Docket No. 18-0845 (issued October 26, 2018).

¹⁰ *See S.S.*, Docket No. 17-0871 (issued November 6, 2017).

¹¹ *See generally, B.N.*, Docket No. 17-0787 (issued July 6, 2018); *C.D.*, Docket No. 17-1074 (issued August 28, 2017).

IT IS HEREBY ORDERED THAT the December 21, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: October 21, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board