

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

_____)	
W.C., Appellant)	
)	
and)	Docket No. 19-1740
)	Issued: June 4, 2020
U.S. POSTAL SERVICE, WOODSTOCK POST)	
OFFICE, Woodstock, IL, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 16, 2019 appellant filed a timely appeal from March 1 and 15 and April 15, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish entitlement to wage-loss compensation for the period December 8, 2018 through January 18, 2019 and January 19 through February 1, 2019 causally related to the December 5, 2016 employment injury; and (2) whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include an additional right knee condition as a consequence of the December 5, 2016 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2016 appellant, then a 54-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2016 he injured his right foot and ankle after his foot gave way when stepping on a curb as he was delivering mail while in the performance of duty. OWCP accepted his claim for right ankle sprain. Appellant stopped work on December 5, 2016 and worked intermittently thereafter.

On February 1, 2017 the employing establishment offered appellant a part-time limited-duty position as a city carrier associate effective January 24, 2017. On January 31, 2017 appellant accepted the position and returned to work.

Appellant filed a claim for compensation (Form CA-7) requesting intermittent compensation for disability for four hours per day beginning January 21, 2017.

On February 24, 2017 appellant filed a notice of recurrence (Form CA-2a) for disability alleging that, after returning to part-time limited-duty work on February 6, 2017, he experienced right knee pain causally related to the accepted December 5, 2016 employment injury. He asserted that the manner in which he walked due to his right ankle injury caused him to overcompensate and injure his right knee. Appellant stopped work on February 13, 2017.

In a development letter dated March 3, 2017, OWCP notified appellant of the definition of a recurrence of disability and informed him of the type of evidence necessary to establish his recurrence claim. It afforded appellant 30 days to submit additional evidence.

By decision dated April 26, 2017, OWCP denied appellant's wage-loss compensation claim finding that the medical evidence of record failed to establish that he was disabled as a result of the accepted work-related medical conditions. It explained that it had not accepted a right knee condition and that compensation benefits for disability could not be paid for a condition not accepted as work related.

Reports from Dr. Robert T. Nixon, Jr., a Board-certified orthopedist, dated December 19, 2016 to January 30, 2017, noted treatment for right ankle pain after a twisting injury at work on December 6, 2016. He diagnosed right ankle sprain and right Achilles tendinitis and recommended a controlled ankle movement (CAM) walker boot, physical therapy, and sedentary work. Dr. Nixon continued to treat appellant from February 27 to April 14, 2017 for right knee pain. He diagnosed right knee meniscal tear and opined that appellant's right knee was injured at the time of his ankle injury. Dr. Nixon recommended arthroscopic surgery. In a duty status report (Form CA-17) dated March 17, 2017, he again diagnosed right knee meniscus tear and opined that appellant required right knee surgery. Dr. Nixon returned him to sedentary work.

A magnetic resonance imaging (MRI) scan of the right knee dated March 10, 2017 revealed thickening and signal abnormality of the anterior cruciate ligament (ACL) compatible with old avulsion injury and mucinous degeneration, attenuation of the medial meniscus surgery, and arthritis from degenerative joint disease (DJD)/osteoarthritis (OA), medial worse than lateral.

In a report dated April 18, 2017, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), reviewed the statement of accepted facts (SOAF) and

medical records. He noted that appellant sought authorization for an arthroscopy and meniscectomy for the right knee. The DMA opined that there was no causal relationship between the accepted right ankle sprain and the proposed arthroscopy and meniscectomy of the right knee. He noted that the MRI scan did not demonstrate clear evidence of a meniscal tear, appellant had not reported symptoms suggestive of a tear, he had a prior history of right knee arthroscopy, and he was obese. The DMA further opined that the proposed surgical procedures were not medically necessary.

By decision dated May 25, 2017, OWCP denied appellant's claim for a recurrence of disability finding that the medical evidence he submitted failed to establish that his accepted December 5, 2016 employment injury had worsened to the extent that he was disabled from his work duties.

On June 22, 2017 appellant, through his then counsel, requested an oral hearing before an OWCP hearing representative which was held on November 17, 2017.

In a June 19, 2017 report, Dr. Nixon noted that appellant sustained a work-related right ankle injury on December 5, 2016. He indicated that appellant was prescribed a CAM walker boot for his ankle condition and reported experiencing increasing right knee pain with use of the boot. Dr. Nixon advised that the right knee injury was causally related to the ankle injury as it had been aggravated due to the sprain and the use of the CAM walker boot. In reports dated October 23, 2017, he noted that after wearing the CAM walker boot for the right ankle appellant developed increasing right knee pain. Dr. Nixon advised that appellant had prior treatment for right patella femoral arthritic changes and the most recent MRI scan revealed chondromalacia and an abnormality of the meniscus.

By decision dated January 26, 2018, OWCP's hearing representative vacated the April 26 and May 25, 2017 decisions and remanded the case for further medical development. She determined that appellant submitted sufficient medical evidence from Dr. Nixon supporting that he injured his right knee or aggravated a preexisting right knee condition causally related to the December 5, 2016 employment injury and that further development was merited. The hearing representative instructed OWCP to refer appellant for a second opinion evaluation.

On February 13, 2018 OWCP referred appellant, the case file, a SOAF, and a series of questions to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion on appellant's employment-related conditions and disability.

Appellant continued to submit reports from Dr. Nixon dated from January 24 to March 28, 2018, in which he diagnosed right knee pain, probable meniscal tear, patellofemoral chondromalacia, and right ankle pain. Dr. Nixon opined that appellant's right knee injury was causally related to his accepted ankle injury and recommended right knee arthroscopic surgery.

In a March 5, 2018 medical report, Dr. Shivaram described appellant's December 5, 2016 employment injury, noting that he stepped on a curb and slipped injuring his right ankle. He diagnosed mild right ankle sprain, sprain of the right Achilles tendon, both resolved, and degenerative arthritis of the right knee and right big toe. Dr. Shivaram indicated that appellant had no complaints of right knee symptoms until two and a half months following the ankle injury at

work. He further noted that MRI scan findings demonstrated significant degenerative changes involving the medial compartment and patellofemoral joint of the right knee suggesting a preexisting right knee condition. Dr. Shivaram opined that, based on the available medical records, appellant sustained a mild sprain of the right ankle and right Achilles tendon which should have resolved by March 5, 2017. He determined appellant's right knee problems were unrelated to the December 5, 2016 employment injury. In an addendum report, Dr. Shivaram opined that the use of a CAM walker was not responsible for the onset of right knee pain. He noted appellant's symptoms were secondary to preexisting degenerative arthritis of the right knee and there was insufficient evidence to support that the CAM boot contributed to the knee condition. Dr. Shivaram opined that there was no relationship between the employment injury and the right knee condition.

In a letter dated June 12, 2018, OWCP advised appellant that a conflict in medical opinion existed between Dr. Shivaram, OWCP's second opinion examiner, and Dr. Nixon, appellant's treating physician, regarding whether the right knee condition was causally related to the December 5, 2016 employment injury. It referred him, along with the case record, a list of questions, and a SOAF, to Dr. David A. Fetter, a Board-certified orthopedic surgeon, for an impartial medical examination.

In reports dated April 25 to August 29, 2018, Dr. Nixon noted that appellant remained symptomatic with right knee pain on posterior lateral and anteromedial aspect of the knee. He diagnosed right knee medial meniscus tear and right knee chondromalacia and again recommended arthroscopic surgery.

On August 17, 2018 the employing establishment offered appellant a sedentary limited-duty position for five hours a day. Appellant accepted the position.

In a September 6, 2018 report, Dr. Fetter described a history of the December 5, 2016 employment injury, noted his review of the medical reports, and reported appellant's continued complaints. Upon physical examination of appellant's lower extremity there was mild antalgic gait, negative effusion and swelling of either knee, no right ankle instability, and intact motor and sensory examination of the lower extremities other than global decreased right foot sensation. Dr. Fetter noted that x-rays of the knees and ankles revealed degenerative changes. He reported diagnoses of right ankle sprain resolved, preexistent degenerative right knee condition not caused by the employment injury, and right gastrocnemius muscle weakness, etiology undetermined. Dr. Fetter opined that appellant sustained a temporary work-related right ankle sprain which resolved on March 5, 2017. He concluded that appellant's right knee condition was not related to the December 5, 2016 employment injury. Dr. Fetter returned appellant to work regular duty without restrictions.

OWCP subsequently received a July 7, 2015 operative report from Dr. Nixon, who performed an arthroscopy of the right knee with chondroplasty and limited synovectomy. He provided post-surgical diagnoses of right knee patellofemoral chondromalacia and right knee synovitis.

On July 27, 2018 Dr. Nixon noted that appellant presented with persistent right knee pain localized in the posterolateral and anterior aspect of the knee. He diagnosed right knee pain with

patellofemoral chondromalacia and possible meniscus tear. Dr. Nixon provided work restrictions of primarily sedentary work due to limitations on standing and walking. He recommended arthroscopic surgery.

In a September 26, 2018 report, Dr. Nixon treated appellant for right knee pain, slightly improved since the last visit. He reported standing and walking limits which prevented him from his full activities. Dr. Nixon diagnosed right knee medial meniscus tear and right knee chondromalacia and again recommended arthroscopic surgery.

Appellant was treated by Dr. Dana Tarandy, a Board-certified orthopedist, on October 23, 2018 who returned him to full-duty work on November 3, 2018. Dr. Tarandy noted that appellant was scheduled to have surgery on November 21, 2018 and would be off work for 8 to 12 weeks.

On January 18, 2019 appellant filed a Form CA-7 for disability from work for four hours per day for the period December 8, 2018 through January 18, 2019. He filed a Form CA-7 for disability from work for four hours per day for the period January 19 through February 1, 2019.

In development letters dated January 29 and February 12, 2019, OWCP requested that appellant submit additional information to support his claim for compensation beginning December 8, 2018, including medical evidence establishing that his partial disability was due to the accepted condition for the period claimed. It afforded him 30 days to respond. No additional evidence was received.

By decision dated March 1, 2019, OWCP denied appellant's claim for compensation for the period December 8, 2018 through January 18, 2019. It indicated that on January 29, 2019 he was instructed to submit medical evidence supporting disability during the period claimed within 30 days, but he failed to respond.

By decision dated March 15, 2019, OWCP denied appellant's claim for compensation for the period January 19 through February 1, 2019. It indicated that on February 12, 2019 he was instructed to submit medical evidence supporting disability during the period claimed within 30 days, but he failed to respond.

By decision dated April 15, 2019, OWCP denied appellant's request to expand the acceptance of his claim to include a right knee condition finding the special weight of medical evidence rested with the opinion of Dr. Fetter, the impartial medical examiner, who opined in a September 6, 2018 report that the right knee condition was not causally related to the December 5, 2016 employment injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.³ Under FECA the

² *Id.*

³ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁵ Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by the preponderance of the reliable, probative, and substantial medical evidence.⁶

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish entitlement to wage-loss compensation for the periods December 8, 2018 through January 18, 2019 and January 19 through February 1, 2019 causally related to the accepted December 5, 2016 employment injury.

In support of his claim appellant submitted reports from Dr. Nixon dated December 19, 2016 to September 26, 2018. Dr. Nixon diagnosed right ankle sprain, right knee medial meniscus tear, and right knee chondromalacia and recommended arthroscopic surgery. Appellant also submitted an October 23, 2018 report from Dr. Tarandy who noted that he could return to work full duty on November 3, 2018. Dr. Tarandy also noted that appellant was scheduled to have surgery on November 21, 2018 and would be off work for 8 to 12 weeks. These reports lack probative value in addressing appellant's claimed period of disability commencing December 8, 2018 as they predate the claimed period and do not specifically address or attribute the period of disability to the accepted right ankle sprain.⁸ Evidence that does not address his accepted conditions and dates of disability is insufficient to establish his claim.⁹

Appellant has not submitted other medical evidence to support that his claimed periods of disability were due to the accepted ankle condition related to his December 5, 2016 employment

⁴ *A.S.*, Docket No. 17-2010 (issued October 12, 2018); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁵ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

⁶ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁷ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

⁸ *D.J.*, Docket No. 18-0200 (issued August 12, 2019); *V.G.*, Docket No. 17-1425 (issued February 16, 2018).

⁹ *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

injury. Therefore, the Board finds that he has not met his burden of proof to establish his wage-loss compensation claim.¹⁰

LEGAL PRECEDENT -- ISSUE 2

When 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.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.¹³ 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).¹⁴

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.¹⁵ 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 consequence of a compensable primary injury.¹⁶

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.¹⁷ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁸ Where OWCP has referred the case to an impartial medical examiner to resolve a

¹⁰ See *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

¹¹ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹² *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *Id.*

¹⁵ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

¹⁶ *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

¹⁷ 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁸ *Darlene R. Kennedy*, 57 ECAB 414, 416 (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.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include an additional right knee condition as a consequence of the accepted December 5, 2016 employment injury.

OWCP determined that a conflict in the medical opinion evidence was created between Dr. Nixon, appellant's treating physician, who opined that appellant's diagnosed right knee condition should be included in his claim, and Dr. Shivaram, OWCP's referral physician, who concluded that there was no medical evidence to support a causal relationship between the December 5, 2016 employment injury and an additional right knee condition. It properly referred appellant to Dr. Fetter for an impartial medical examination in order to resolve the conflict in medical evidence, pursuant to 5 U.S.C. § 8123(a).

In a September 6, 2018 report, Dr. Fetter noted his review of the SOAF and the medical record. He related appellant's continued complaints of right ankle and right knee pain. Upon examination of appellant's lower right extremity, Dr. Fetter observed mild antalgic gait, negative effusion and swelling of the bilateral knees, no right ankle instability, and intact motor and sensory examination of the lower extremities except for decreased right foot sensation. He noted that a right knee x-ray examination revealed degenerative changes in the right knee. Dr. Fetter diagnosed right ankle sprain resolved, preexistent degenerative right knee condition not caused by work injury, and right gastrocnemius muscle weakness, etiology undetermined. He concluded that the preexistent degenerative right knee condition was not causally related to the December 5, 2016 employment injury.

The Board finds that Dr. Fetter's opinion is entitled to the special weight of the medical opinion evidence and establishes that appellant's right knee condition was not causally related to the accepted December 5, 2016 employment injury. Dr. Fetter accurately described the employment injury and noted his review of the medical record, including the SOAF. He performed a thorough, clinical examination and provided findings on examination. Dr. Fetter noted that x-rays of the right knee revealed preexisting degenerative changes not causally related to the December 5, 2016 employment injury. The Board concludes that Dr. Fetter's opinion is entitled to the special weight accorded an impartial medical examiner with regard to the issue of whether the acceptance of appellant's claim should be expanded to include a right knee condition.²⁰ As such, appellant has not met his burden of proof to expand the accepted conditions of his claim.

Following Dr. Fetter's report, appellant submitted a September 26, 2018 report from Dr. Nixon who diagnosed right knee medial meniscus tear and right knee chondromalacia and recommended arthroscopic surgery. Similarly, an October 23, 2018 report from Dr. Tarandy noted

¹⁹ Gary R. Sieber, 46 ECAB 215, 225 (1994).

²⁰ See *M.M.*, Docket No. 16-1655 (issued April 4, 2018); *D.G.*, Docket No. 17-0608 (issued March 19, 2018).

that appellant was scheduled to have surgery on November 21, 2018 and would be off work for 8 to 12 weeks. However, these reports are insufficient to establish the claim as the physicians did not specifically address whether appellant's employment activities had caused or aggravated a diagnosed right knee condition.²¹ Additionally, Dr. Nixon was on one side of the conflict resolved by Dr. Fetter. The Board has held that reports from a physician who was on one side of a medical conflict are generally insufficient to overcome the special weight accorded to the IME, or to create a new conflict.²² Dr. Nixon's report is thus insufficient to overcome the special weight accorded to Dr. Fetter's opinion or to create a new conflict in medical opinion.²³

On appeal appellant asserts that he submitted sufficient medical evidence supporting disability for the period claimed. As explained above, he failed to submit rationalized medical evidence establishing a causal relationship between the specific period of claimed disability and the accepted 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to wage-loss compensation for the periods December 8, 2018 through January 18, 2019 and January 19 through February 1, 2019 causally related to the accepted December 5, 2016 employment injury. The Board further finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include an additional right knee condition as a consequence of the accepted December 5, 2016 employment injury.

²¹ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

²² *See S.S.*, Docket No. 17-1361 (issued January 8, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael Hughes*, 52 ECAB 387 (2001).

²³ *See S.S., id.*; *K.R.*, Docket No. 16-0542 (issued December 21, 2016).

ORDER

IT IS HEREBY ORDERED THAT the April 15 and March 1 and 15, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 4, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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