

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

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| I.T., Appellant |) | |
| |) | |
| and |) | Docket No. 20-0001 |
| |) | Issued: July 1, 2021 |
| U.S. POSTAL SERVICE, BERGEN SOUTH |) | |
| STATION, Jersey City, NJ, Employer |) | |
| _____ |) | |

Appearances:
Thomas R. Uliase, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 1, 2019 appellant, through counsel, filed a timely appeal from an April 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.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 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 17, 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work for the period February 7 to August 7, 2015 causally related to the accepted December 23, 2014 employment injury; (2) whether OWCP abused its discretion by denying appellant's request for authorization of left knee surgery due to the accepted left knee contusion; and (3) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional left knee conditions causally related to the December 23, 2014 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

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 when ascending wet steps in the rain, striking her left knee while delivering mail in the performance of duty.

On April 15, 2015 OWCP accepted appellant's claim for left knee contusion.

In reports dated February 11 and March 23, 2015, Dr. Howard S. Levine, an osteopath specializing in family medicine and manipulative therapy, noted that he began treating appellant on February 4, 2015 for complaints of severe left knee pain. He indicated that a magnetic resonance imaging (MRI) scan of her left knee showed a bone bruise.

Appellant filed claims for compensation (Form CA-7) for disability during the periods February 7 to July 10, 2015 and July 11 to August 7, 2015. By decision dated September 17, 2015, OWCP denied her claim for disability from February 7 through August 7, 2015. It found that the medical evidence was insufficient to establish that the claimed disability was due to the accepted condition.

Dr. Jeffrey F. Augustin, a Board-certified orthopedic surgeon, began treating appellant on March 5, 2015. On June 25, 2015 he advised that her left knee x-ray demonstrated mild lateral tilt of the patella, and on July 23, 2015. He recommended left knee arthroscopic lateral retinacular release. Dr. Augustin requested authorization for left knee surgery on September 9, 2015.

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

Dr. Robin R. Innella, an osteopath Board-certified in orthopedic surgery, began treating appellant on December 9, 2015. He noted a history that she hurt her left knee at work in December 2014 when she slipped on a step while delivering mail in the rain. Dr. Innella described left knee examination findings and diagnosed left knee chondromalacia patella and contusion. He

⁴ Docket No. 17-1012 (issued July 24, 2018); *Order Dismissing Appeal*, Docket No. 19-0706 (issued April 1, 2019).

opined that appellant most likely sustained an articular surface injury, recommended arthroscopy, and advised that she could work light duty only. Dr. Innella continued to submit monthly treatment notes in describing her continued left knee complaints with consistent examination findings. He reiterated appellant's diagnoses, opining that her knee injuries were causally related to the December 23, 2014 employment injury.

Appellant, through counsel, requested reconsideration of the September 17, 2015 decision on March 14, 2016. On August 12, 2016 appellant, through counsel, also requested reconsideration of the October 26, 2015 decision.

By decision dated December 14, 2016, OWCP denied modification of the September 17 and October 26, 2015 decisions, finding that the medical evidence of record was insufficient to establish the claimed disability or to authorize left knee arthroscopic surgery.⁵

Appellant, through counsel, filed an appeal with the Board on April 10, 2017. By decision dated July 24, 2018, the Board found that appellant had not met her burden of proof to establish additional left knee conditions causally related to the December 23, 2014 employment injury, nor had she established disability from work for the period February 7 to August 7, 2015 causally related to the accepted employment injury. The Board further found that OWCP properly exercised its discretion by denying her authorization for left knee surgery. It affirmed the December 14, 2016 decision.⁶

On September 13, 2018 appellant, through counsel, requested reconsideration.

Dr. Innella continued to submit treatment notes describing her left knee condition from February 1 to September 10, 2018 in which he reiterated his findings and conclusions. Beginning March 28, 2018, he recommended left knee surgery and on August 16, 2018 he requested authorization for left knee surgery for a diagnosis of transient synovitis.

In an August 20, 2018 report, Dr. Innella provided examination findings and diagnosed transient synovitis, contusion, and chondromalacia patella of the left knee. He advised that appellant's left knee condition had not changed and reiterated his opinion that she had injured the articular surface of the patella of her left knee when she had fallen several years prior, noting that her knee had been flexed when she landed on the knee. Dr. Innella indicated that she had subsequently developed recurrent symptoms from the chondral injury of traumatic chondromalacia and synovitis within the knee.

On September 27, 2018 Dr. Innella performed left knee arthroscopic multiple compartment synovectomy and chondroplasty patella. His postoperative diagnoses were transient synovitis, chondral injury/chondromalacia patella, and lateral tracking patella of the left knee. On October 29, 2018 Dr. Innella noted that appellant was doing well and that he had injected her left knee.

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

⁶ *Supra* note 4.

By decision dated December 4, 2018, OWCP denied modification of its prior decision. It found the medical evidence insufficient to establish additional left knee conditions, disability from work due to the accepted knee condition, and that knee surgery was necessitated by the accepted employment injury.

OWCP continued to receive progress reports from Dr. Innella dated from January 7 through March 11, 2019.

In correspondence dated February 12, 2019, Dr. Innella opined, based on reasonable probability that appellant's injuries to her knee occurred during the accident when she fell directly on her knee on December 23, 2014, based on the fact that her symptoms developed following this incident. He noted that recurrent synovitis and a chondral injury underneath her patella were seen on surgery. Dr. Innella opined that the direct impact to the patella caused articular surface injury and resulted in the development of type 2 scar cartilage, noting that this type of cartilage notoriously caused recurrent symptomatology. He concluded that appellant's injuries were causally related to the events of the December 23, 2014 accident, which caused left knee contusion, chondral patella injury, and recurrent synovitis.

On March 6, 2019 appellant, through counsel, requested reconsideration.

By decision dated April 17, 2019, OWCP denied modification of its December 4, 2018 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ 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.⁹ Furthermore, whether a particular injury causes an employee to be disabled from work and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.¹⁰

⁷ *Supra* note 2.

⁸ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *See* 20 C.F.R. § 10.5(f); *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁰ *K.A., id.*; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that she was disabled from work due to her accepted left knee contusion during the period February 7 to August 7, 2015.

In his reports, Dr. Innella advised that appellant was restricted to light duty, but he did not explain why the accepted left knee contusion caused her disability. Furthermore, he did not offer an opinion regarding the period of claimed disability at issue in this case. Similarly, Drs. Levine and Augustin, in their reports, also did not provide an opinion regarding the claimed period of disability. The Board has held that evidence which does not address the accepted condition and explain why the accepted condition caused disability on the specific dates claimed, is insufficient to establish a claim for wage-loss benefits.¹¹

As appellant did not submit sufficient rationalized medical opinion evidence to establish that she was disabled from 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.

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

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.¹²

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.¹³ 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.¹⁴

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

¹¹ See *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² 5 U.S.C. § 8103; see *B.H.*, Docket No. 17-0479 (issued March 19, 2019); *Dona M. Mahurin*, 54 ECAB 309 (2003).

¹³ *M.G.*, Docket No. 19-1791 (issued August 13, 2020); *M.B.*, 58 ECAB 588 (2007).

¹⁴ *M.G.*, *id.*; *R.C.*, 58 ECAB 238 (2006).

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.¹⁵ 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 established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁶

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.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of 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.¹⁸ The accepted condition in this case is left knee contusion.

Dr. Innella initially requested authorization for arthroscopic left knee surgery for an articular surface injury of the patella medial femoral condyle. He continued to recommend left knee surgery and on August 16, 2018 requested authorization for left knee surgery for a diagnosis of transient synovitis. Dr. Innella did not indicate at any time that it was necessitated by the accepted left knee contusion.

As indicated above, no additional left knee 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.¹⁹ 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. 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.²⁰

¹⁵ *D.K.*, Docket No. 20-0002 (issued August 25, 2020).

¹⁶ *Id.*; *Daniel J. Perea*, 42 ECAB 214 (1990).

¹⁷ *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *Kennett O. Collins, Jr.* 55 ECAB 648 (2004).

¹⁸ *Supra* note 14.

¹⁹ *Id.*

²⁰ *Supra* note 13.

Based on the evidence of record, the Board finds that OWCP did not abuse its discretion in denying the proposed surgical procedure. As noted, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.²¹ 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.

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 3

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.²²

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment injury is rationalized medical opinion evidence.²³ The opinion of the physician must be based on a complete factual and medical background, 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 injury.²⁴

ANALYSIS -- ISSUE 3

The Board finds this case not in posture for decision with regard to whether appellant has additional left knee conditions causally related to the accepted December 23, 2014 employment injury.

Dr. Innella, in his December 9, 2015 report, indicated that appellant developed recurrent symptoms from a chondral injury with articular cartilage traumatic chondromalacia and recurrent synovitis within the knee and opined that, based on reasonable probability, her left knee injuries occurred during the December 23, 2014 incident when she fell directly on her knee. He stated that his opinion was based on the fact that her symptoms developed following this incident, and noted his surgical findings of recurrent left knee synovitis and chondral injury underneath her patella. Dr. Innella reiterated that this direct impact to the patella caused articular surface injury underneath her patella, which resulted in the development of type 2 scar cartilage, noting that this type of cartilage notoriously caused recurrent symptomatology. Dr. Innella continued to submit monthly treatment notes in describing her continued left knee complaints with consistent examination findings. He reiterated appellant's diagnoses, opining that her knee injuries were causally related to the December 23, 2014 employment injury.

²¹ *Supra* note 15.

²² *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

²³ *B.C.*, Docket No. 20-0498 (issued August 27, 2020).

²⁴ *T.L.*, Docket No. 19-1467 (issued July 24, 2020); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In an August 20, 2018 report, Dr. Innella provided examination findings and diagnosed transient synovitis, contusion, and chondromalacia patella of the left knee. He advised that appellant's left knee condition had not changed and reiterated his opinion that she had injured the articular surface of the patella of her left knee when she had fallen several years prior, noting that her knee had been flexed when she landed on the knee. Dr. Innella indicated that she had subsequently developed recurrent symptoms from the chondral injury, of traumatic chondromalacia and synovitis within the knee.

In correspondence dated February 12, 2019, Dr. Innella opined that, based on reasonable probability, appellant's injuries to her knee occurred during the accident when she fell directly on her knee on December 23, 2014, based on the fact that her symptoms developed following this incident. He noted that recurrent synovitis and a chondral injury underneath her patella were seen on surgery. Dr. Innella opined that the direct impact to the patella caused articular surface injury and resulted in the development of type 2 scar cartilage, noting that this type of cartilage notoriously caused recurrent symptomatology. He concluded that appellant's injuries were causally related to the events of the December 23, 2014 accident, which caused left knee contusion, chondral patella injury, and recurrent synovitis.

The Board finds that, while Dr. Innella's reports are not fully rationalized and are insufficient to meet appellant's burden of proof to establish her occupational disease claim, they are consistent in indicating that she sustained a medical condition due to the accepted employment incident.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.²⁵

The Board will therefore remand the case for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether appellant has additional left knee conditions causally related to the accepted injury. If the referral physician disagrees with the explanations provided by Dr. Innella, he or she must provide a fully-rationalized explanation explaining why Dr. Innella's opinion is unsupported. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not established disability from work for the period February 7 to August 7, 2015 causally related to the accepted employment injury. The Board also finds that OWCP did not abuse its discretion by denying her request for authorization of left knee surgery. The Board further finds that this case is not in posture for decision with regard to whether the acceptance of her claim should be expanded to include additional left knee conditions causally related to her December 23, 2014 employment injury.

²⁵ S.W., Docket No. 18-0119 (issued October 5, 2018); *William J. Cantrell*, 34 ECAB 1233 (1993).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 1, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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