

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

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| S.D., Appellant |) | |
| |) | |
| and |) | Docket No. 21-0297 |
| |) | Issued: July 2, 2021 |
| U.S. POSTAL SERVICE, HARKER HEIGHTS |) | |
| POST OFFICE, Harker Heights, TX, Employer |) | |
| |) | |

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 23, 2020 appellant, through counsel, filed a timely appeal from a September 4, 2020 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 September 4, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a consequential left knee condition causally related to the accepted November 15, 2017 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 16, 2017 appellant, then a 37-year-old postal support employee mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2017 she sprained and bruised her right foot when an equipment gate fell on her leg while in the performance of duty. She stopped work on November 21, 2017 and returned to part-time, limited-duty work for approximately six hours per day on December 13, 2017. OWCP accepted appellant's claim for right foot and ankle sprains. On March 28, 2018 appellant stopped work again.⁵

On July 31, 2019 appellant underwent OWCP-approved right ankle arthroscopic surgery and stopped work. OWCP paid her wage-loss compensation on the supplemental rolls beginning July 31, 2019.

In a report dated August 28, 2019, Dr. Thomas Martens, an osteopath who specializes in family medicine, described the history of the November 15, 2017 employment injury and noted that appellant recently underwent right ankle surgery. He reported right ankle examination findings of mild tenderness over the lateral ligament and two well-healed incisions. Upon examination of appellant's left lower extremity, Dr. Martens observed mild swelling of the left ankle and tenderness of the left lateral/medial knee joint with limited range of motion (ROM). He diagnosed right foot and right ankle sprains. Dr. Martens opined that appellant was incapacitated from work beginning July 31, 2019 due to her work-related injuries.

On October 26, 2019 appellant returned to part-time, limited-duty work for four hours per day. OWCP continued to pay her wage-loss compensation for partial disability.

In a December 3, 2019 report, Dr. Martens indicated that he had treated appellant for work-related right ankle and foot sprain injuries. Upon examination of appellant's right ankle, he observed tenderness over the lateral ligament and limited ROM secondary to pain. Examination of appellant's left knee revealed tenderness of the left lateral and medial knee joint, pain on palpation, and limited ROM secondary to pain. Dr. Martens noted that a July 17, 2018 left knee magnetic resonance imaging (MRI) scan had revealed a complex tear of the lateral meniscus body and posterior horn. He requested that the acceptance of appellant's claim be expanded to include complex tear of the lateral meniscus of the left knee as a direct result of appellant's authorized

⁴ Docket No. 19-0955 (issued February 3, 2020).

⁵ Appellant subsequently filed claims for compensation (Form CA-7) for disability for the period March 28 through April 28, 2018. OWCP denied appellant's claim by decision dated August 6, 2018, which was affirmed by an OWCP hearing representative on March 11, 2019. Appellant appealed to the Board. By decision dated February 3, 2020, the Board affirmed the March 11, 2019 OWCP decision. *Id.*

right ankle surgery. Dr. Martens noted that appellant's left knee lateral meniscus tear was "consequential to the right ankle/foot injury as she was required to wear the boot due to the pain and discomfort." He explained that the lateral meniscus was on the outside of the knee and began to lose its resiliency as the altered gait and weight was placed heavily on the left lower extremity. Dr. Martens reported that appellant was immobilized in a walking boot on January 5, 2018 and recounted how appellant continued to ambulate with a walking boot for months while she attempted to return to work.

Appellant provided a July 17, 2018 left knee MRI scan, which revealed a complex tear of the lateral meniscus body and posterior horn, moderate lateral compartment arthrosis, and mild medial compartment arthrosis with articular cartilage thinning. She also submitted reports dated January 5 through October 4, 2018 from Dr. Ryan Shock, a podiatrist, who treated appellant for her right ankle sprain and indicated that appellant's right foot was immobilized in a walking boot.

In a February 11, 2020 report, Dr. Martens indicated that appellant was treated for follow up of her work-related right ankle and foot injuries. He noted that they were waiting for appellant's claim to be expanded to include a left knee injury. Dr. Martens conducted an examination and diagnosed right foot and ankle sprains.

On February 21, 2020 OWCP requested that a district medical adviser (DMA) review Dr. Martens' reports and comment on whether he agreed with his opinion that appellant's left knee condition was a consequence of the accepted November 15, 2017 employment injury.

In a March 10, 2020 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as the DMA, noted his review of appellant's history and referenced appellant's accepted conditions of right ankle and right foot sprains. He expressed his disagreement with Dr. Martens' opinion that appellant sustained a consequential left knee injury due to her November 15, 2017 employment injury. Dr. Hammel indicated that the mechanism of injury was incapable of producing a meniscus tear and that there was no correlation between temporary immobilization and contralateral meniscus tear. In response to the questions posed by OWCP, he reported that there was a delay complaint of left knee symptoms and the mechanism of injury listed on the statement of accepted facts (SOAF) was incapable of producing a meniscus tear. Dr. Hammel postulated that there is no generally accepted practice, which correlates temporary immobilization with contralateral meniscus tear. He further indicated that there was "no medical literature to support that temporary gait alterations from surgery or immobilization causes degenerative conditions like the complex tear of the lateral meniscus."

By decision dated April 8, 2020, OWCP denied the expansion of the acceptance of appellant's claim to include a consequential left knee condition, finding that the medical evidence of record was insufficient to establish that the additional condition was caused or aggravated by her accepted November 15, 2017 employment injury.

On April 14, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 7, 2020.

OWCP subsequently received reports dated March 16 through August 20, 2020 from Dr. Shock regarding his medical treatment for appellant's right ankle and foot sprains.

By decision dated September 4, 2020, OWCP's hearing representative affirmed the April 8, 2020 decision.

LEGAL PRECEDENT

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.⁶

To establish causal relationship, the employee must submit rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 accepted employment injury.⁸ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

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.¹⁰ 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.¹¹

ANALYSIS

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

In a December 3, 2019 report, Dr. Martens, appellant's treating physician, requested that the acceptance of appellant's claim be expanded to include complex tear of the lateral meniscus of the left knee as a direct result of appellant's authorized right ankle surgery. He opined that appellant's left knee condition was consequential to her right ankle and foot injury because she was required to wear a walking boot. On February 21, 2020 OWCP requested that a DMA review

⁶ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁷ *See W.C.*, Docket No. 19-1740 (issued June 4, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *D.S.*, Docket No. 20-0146 (issued June 11, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *James Mack*, 43 ECAB 321 (1991).

¹⁰ *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004).

¹¹ *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

Dr. Martens' report and comment on whether he agreed with his opinion that appellant's left knee condition was a consequence of the accepted November 15, 2017 employment injury.

In a March 10, 2020 report, the DMA indicated that the described mechanism of injury was incapable of producing a meniscus tear. In response to OWCP's questions, he reported that there was a delay in reporting the complaint of left knee symptoms, and that the mechanism of injury listed on the SOAF was incapable of producing a meniscus tear. The DMA postulated that there is no generally accepted practice, which correlates temporary immobilization with contralateral meniscus tear. He further indicated that there was "no medical literature to support that temporary gait alterations from surgery or immobilization causes degenerative conditions like the complex tear of the lateral meniscus." The DMA, however, did not provide sufficient medical reasoning to support his conclusory statements that appellant had not developed a consequential left knee condition.¹² He opined that mechanism of injury listed on the SOAF was incapable of producing a meniscus tear; however, he did not provide an explanation for his opinion. The DMA failed to explain how walking with an altered gait due to immobilization did not contribute to a consequential left knee condition.¹³ The Board has held that a report is of limited probative value if a physician does not provide medical rationale explaining his or her conclusion on that matter.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁵ It has an obligation to see that justice is done.¹⁶ Accordingly, once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.¹⁷ In this case, the DMA failed to offer a rationalized medical explanation regarding why appellant did not sustain a consequential left knee condition causally related to the accepted November 15, 2017 employment injury. Due to the deficiencies in the DMA's report, OWCP should have sought clarification or referred appellant for a second opinion evaluation.¹⁸

On remand OWCP shall refer appellant, together with a SOAF and a list of specific questions, to a specialist in the appropriate field of medicine, for a second opinion evaluation in order to resolve the issue of whether appellant developed a consequential left knee condition

¹² See *D.T.*, Docket No. 20-0234 (issued January 8, 2021); see also *K.C.*, Docket No. 19-1251 (issued January 24, 2020).

¹³ See *T.B.*, Docket No. 20-0182 (issued April 23, 2021); see also *J.H.*, Docket No. 19-0513 (issued September 24, 2019).

¹⁴ *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁵ See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁶ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁷ *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

¹⁸ *M.S.*, Docket No. 19-0282 (issued August 2, 2019); *V.H.*, Docket No. 14-0433 (issued July 3, 2014).

causally related to the accepted November 15, 2017 employment injury.¹⁹ If the second opinion physician disagrees with the explanations provided by Dr. Martens, he or she must provide a fully-rationalized explanation regarding why the accepted employment injury was insufficient to have caused or contributed to his current left knee meniscal tear. Following this and any other such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 2, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁹ *T.S.*, Docket No. 18-1702 (issued October 4, 2019).