

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

S.P., Appellant)	
)	
and)	Docket No. 20-0133
)	Issued: May 21, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Philadelphia, PA, Employer)	
)	

Appearances:
Russell T. Uliase, Esq., 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 21, 2019 appellant, through counsel, filed a timely appeal from a May 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 May 21, 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.*

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work commencing February 2, 2010 causally related to her accepted November 20, 2002 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on other issues.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 21, 2002 appellant, then a 41-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2002 she fractured her left knee when she tripped over a buckled rug while in the performance of duty. OWCP accepted the claim for a fractured left patella and assigned OWCP File No. xxxxxx840. On November 25, 2002 appellant underwent tension band wiring of the left patella and on April 23, 2003 she underwent surgery to remove the left patella hardware. On February 3, 2003 she accepted a full-time modified position with the employing establishment.⁵

On October 7, 2009 appellant filed a notice of recurrence (Form CA-2a) alleging that she required medical treatment "from March 2009 onward" due to her accepted employment injury.

By decision dated March 2, 2010, OWCP found that appellant had not established a recurrence of the need for medical treatment commencing March 2009 causally related to her accepted employment injury.

On March 9, 2010 Dr. Michael J. Ross, Board-certified in emergency medicine, diagnosed a distal fibular fracture. He opened that appellant should not work, noting that she could not stand or walk for more than one to two hours a day. On April 5, 2010 Dr. Ross advised that appellant

³ 5 U.S.C. § 8101 *et seq.*

⁴ Docket No. 14-0467 (issued September 26, 2014); *Order Dismissing Appeal*, Docket No. 15-1209 (issued July 20, 2015); Docket No. 16-1384 (issued February 1, 2017).

⁵ On January 11, 2010 appellant filed a CA-1 form alleging that she injured her left knee and left ankle on that date when her left knee gave out and she fell to the floor, twisting her left ankle. OWCP assigned the claim OWCP File No. xxxxxx746. By decision dated April 30, 2010, it denied appellant's traumatic injury claim in OWCP File No. xxxxxx746, finding that she had not established a claimed medical condition due to the accepted work-related incident. On June 28, 2013 appellant, through counsel, requested reconsideration of the April 30, 2010 decision. In a decision dated March 11, 2014, OWCP denied appellant's June 28, 2013 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. It has administratively combined OWCP File No. xxxxxx746 into the current claim, with the current claim serving as the master file.

continued to experience buckling episodes from her left knee. He diagnosed a healing distal fibular fracture and left knee osteoarthritis with recurrent giving way.

On June 9, 2010 Dr. Ross opined that appellant's patellar fracture had accelerated her left knee arthritis. He related, "I do question that the osteoarthritis secondary to the patellar fracture is also causing her knee to continuously give way which led to her initial fall that resulted in her fibular fracture."

On August 3, 2010 Dr. Dennis W. Ivill, a Board-certified physiatrist, diagnosed left knee degenerative joint disease causally related to appellant's November 20, 2002 left knee fracture. He opined that the employment incident had accelerated her left knee degenerative joint disease.

Appellant, on October 13, 2010, requested reconsideration of OWCP's March 2, 2010 decision. She asserted that she sustained left knee osteoarthritis and degeneration arising from her November 20, 2002 employment injury.

By decision dated January 11, 2011, OWCP denied modification of its March 2, 2010 decision.

On December 29, 2011 appellant, through her representative, requested reconsideration.

By decision dated February 8, 2012, OWCP denied modification of its January 11, 2011 decision.

On August 28, 2012 appellant filed a Form CA-2a alleging that on January 11, 2010 her left knee "gave out" and she fell to the floor, twisting her left ankle. She maintained that her November 20, 2002 employment injury had weakened her left knee and caused severe pain, stiffness, weakness, and swelling. Appellant stopped work on January 11, 2010. The employing establishment indicated on the form that she had resumed her usual employment after the original injury.

By decision dated November 28, 2012, OWCP found that appellant had not established a recurrence of disability commencing January 11, 2010.

On December 4, 2012 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 13, 2013, OWCP's hearing representative affirmed the November 28, 2012 decision, as modified to reflect that appellant had alleged a consequential injury rather than a recurrence of disability. He determined that she had not submitted medical evidence sufficient to establish that she sustained a left ankle fracture as a consequence of her accepted left knee injury.

By decision dated June 17, 2013, OWCP denied appellant's request to expand the acceptance of her claim to include a consequential left ankle condition causally related to her November 20, 2002 employment injury.

On July 17, 2013 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated August 15, 2013, Dr. Ivill noted that he had initially examined appellant on June 25, 2010 for pain in her left ankle, left knee, and left lower extremity. He advised that she fractured her patella on November 20, 2002. Dr. Ivill diagnosed chronic regional pain syndrome (CRPS) of the left lower extremity. He opined that appellant's left knee gave out on January 11, 2010 causing her to fall and fracture her left fibula near the left ankle.

A hearing was held on November 8, 2013.

In a December 4, 2013 report, Dr. Ivill indicated that appellant had fallen on November 23, 2013 as a result of left lower extremity pain and instability due to her employment. On examination he found that her left lower extremity was cool and her skin was shiny and thin." Dr. Ivill diagnosed CRPS/reflex sympathetic dystrophy (RSD) of the left lower extremity, spreading to the right. He related that appellant's November 20, 2002 and January 11, 2010 injuries had resulted in "left lower extremity weakness and instability and ultimately resulted in the [CRPS]/RSD in the lower extremities with [a] recent fall on November 23, 2013 with left tibial fracture...." Dr. Ivill opined that appellant was permanently disabled from employment.

On January 15, 2014 Dr. R. Bruce Lutz, a Board-certified orthopedic surgeon, performed a surgical repair of a displaced left distal tibia fracture. He indicated that appellant had a history of RSD and a left distal tibia fracture. Dr. Lutz advised that appellant's left leg had given out while she was healing, resulting in a second fracture.

By decision dated March 18, 2014, OWCP's hearing representative vacated the June 17, 2013 decision. He found that OWCP should refer appellant for a second opinion evaluation for an opinion regarding whether she had sustained a consequential injury on January 11, 2010 causally related to the accepted November 20, 2002 employment injury.

On March 21, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon.

In a report dated April 17, 2014, Dr. Didizian noted appellant's history of a fractured left patella on November 20, 2002 and her subsequent fall on January 11, 2010 resulting in a fractured left distal fibula. He also indicated that she had fractured her tibia on January 11, 2014, which had been treated with surgery on January 15, 2014. Dr. Didizian diagnosed status post a left patellar fracture treated with "internal fixation and removal of the wires with a second procedure and degenerative joint disease of the patellofemoral joint and malalignment." He found that appellant's patellar fracture was a direct result of her work injury and that she would continue to have problems with her patellofemoral joint. Dr. Didizian opined that she had no evidence of CRPS based on the results of a bone scan and her failure to respond to sympathetic blocks. He found that appellant had reached maximum medical improvement "as far as the secondary injuries are concerned" but required further medical treatment for the original injury. Dr. Didizian indicated that she could perform limited-duty work.

On June 5, 2014 Dr. Ivill advised that appellant had pain in her left lower extremity resulting from CRPS/RSD that was spreading into the right lower extremity after a November 20,

2002 employment injury and resulting January 11, 2010 fall. He indicated that the November 20, 2002 and January 11, 2010 falls had caused “left lower extremity weakness and instability and ultimately [CRPS]/RSD of the left lower extremity status post fall of November 23, 2013 and January 10, 2014 with left tibial fracture with osteoporosis.” Dr. Ivill attributed appellant’s CRPS/RSD to the accepted employment injury.

In a supplemental report dated June 16, 2014, Dr. Didizian opined that appellant had sustained a consequential injury on January 11, 2010 causally related to her November 20, 2002 work injury.

Based on Dr. Didizian’s opinion, OWCP expanded acceptance of the claim to include a closed fracture of the left fibula as a consequential injury.

A July 23, 2014 magnetic resonance imaging (MRI) scan of the thoracic spine revealed multilevel degenerative disc disease throughout the thoracic spine most significant at the T8-9 level with disc protrusions at T7-8, T8-9, and T11-12. An MRI scan of even date demonstrated mild degenerative disc disease at T11-12, a right small disc protrusion, and degenerative disc disease and bulges at L2-3, L3-4, L4-5, and L5-S1.

Appellant filed claims for wage-loss compensation (Form CA-7) from February 26 through December 3, 2010 and from April 2, 2011 through December 12, 2014.

In a development letter dated August 28, 2014, OWCP requested that appellant provide medical evidence supporting that she was disabled from work due to her accepted consequential injury during the claimed periods.

Thereafter, OWCP received a February 10, 2014 certification of reassignment and accommodation efforts form from the employing establishment. It indicated that it had been unable to either accommodate appellant or provide reassignment due to the severity of her medical condition and the physical requirements of her position.

In a report dated August 28, 2014, Dr. Ivill reviewed the results of appellant’s thoracic spine MRI scan and found marked right anterior displacement of the thoracic cord at T6-7. He diagnosed a transdural cord herniation. Dr. Ivill again attributed appellant’s CRPS/RDS to the November 20, 2002 employment injury and resulting fall on January 11, 2010.

On September 12, 2014 Dr. Ivill opined that appellant’s November 20, 2002 and January 11, 2010 injuries had resulted in CRPS, or RSD, and weakness and instability of the left lower extremity. He noted that she was “status post fall of November 23, 2013 and January 10, 2014 with left tibial fracture with osteoporosis, rule out thoracic myelopathy.”

An October 29, 2014 notification of personnel action PS Form 50, indicated that appellant was totally disabled from work and that the Office of Personnel Management (OPM) had approved her request for disability retirement. Her last day in pay status was July 26, 2014.

On November 20, 2014 appellant elected to receive FECA benefits, effective January 11, 2010, in lieu of retirement benefits.

By decisions dated December 18 and 19, 2014, OWCP denied appellant's claims for wage-loss compensation from February 26 through December 3, 2010 and April 2, 2011 through December 12, 2014.

On December 29, 2014 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant underwent a T5-8 posterior arthrodesis with autograft and a T6-7 complete laminectomy on March 30, 2015 to repair a thoracic T6-7 transdural spinal cord herniation.

By decision dated May 11, 2015, OWCP's hearing representative found that the case required further development by OWCP. She noted that appellant had stopped work in January 2010 due to a consequential injury and that OWCP had accepted this injury based on the opinion of Dr. Didizian. The hearing representative indicated that Dr. Didizian had opined that appellant could not perform her regular duties due to her work injuries and that the record did not indicate light duty was available. She remanded the case for OWCP to administratively combine appellant's files, update the statement of accepted facts, and request a supplemental report from Dr. Didizian regarding the extent of appellant's disability since January 11, 2010. The hearing representative also noted that the employing establishment should confirm whether she had been offered light duty for any period after January 11, 2010.

In a May 27, 2015 e-mail, OWCP requested that the employing establishment address whether appellant was offered light duty for any period after January 11, 2010. In a May 28, 2015 response, the employing establishment advised that it had not had the opportunity to offer her a modified position as the medical evidence supported total disability.

On September 2, 2015 OWCP referred appellant Dr. Didizian for a second opinion evaluation to determine any periods of employment-related disability on or after January 2010.

In a September 10, 2015 report, Dr. Didizian noted that appellant had undergone thoracic surgery on March 30, 2015 for myelomalacia to prevent her neurological condition from worsening. He discussed her continued complaints of buckling, aching, and pain in her left knee. Dr. Didizian noted that appellant had fractured her tibia and fibula on January 11, 2010. He found hyperreflexia of the knee and decreased sensation in the left leg in all dermatomes. Dr. Didizian opined that appellant's left leg weakness was due to a thoracic disc injury rather than her left knee condition. He disagreed with Dr. Ivill's diagnosis of RSD. Dr. Didizian related that appellant's left knee condition had plateaued and that the "consequential tibia and fibula fractures are healed." Regarding disability beginning January 2010, he responded that she was partially disabled due to patellafemoral arthritis of the left knee and totally disabled due to surgery on her thoracic spine.

On September 10, 2015 Dr. Ivill again advised that appellant's fall on January 11, 2010 had resulted in CRPS/RSD and indicated that she had experienced falls on November 23, 2013 and January 10, 2014. He noted her history of a March 30, 2015 thoracic fusion.

By decision dated October 16, 2015, OWCP found that appellant had not established that she was disabled from work for the periods February 26 through December 3, 2010 and April 2, 2011 through October 2, 2015 causally related to her accepted employment injury.

On October 28, 2015 counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on February 8, 2016. Counsel asserted that the employing establishment did not provide appellant with limited-duty work and Dr. Didizian failed to specifically address any periods of partial disability due to her accepted employment injuries. He requested that OWCP expand the acceptance of the claim to include patellofemoral arthritis based on Dr. Didizian's opinion.

By decision dated March 17, 2016, OWCP's hearing representative found that appellant was entitled to compensation for total disability from January 11 to February 1, 2010, but noted that she had not filed a claim for this period.⁶ He found that she was not entitled to wage-loss compensation benefits from February 2, 2010 onward as she was disabled due to nonoccupational conditions. The hearing representative determined that appellant could have worked limited duty after February 2, 2010 due to her accepted fractures, and that as she was totally disabled due to other conditions the employing establishment was not required to offer her modified duty.

Appellant appealed to the Board. By decision dated February 1, 2017, the Board set aside the March 17, 2016 decision.⁷ The Board found that Dr. Didizian had failed to fully address the period of appellant's disability due to her accepted employment injuries. The Board remanded the case for OWCP to obtain a supplemental report from Dr. Didizian addressing the period of partial and total disability as a result of her consequential left ankle fracture and to obtain a response from the employing establishment regarding the availability of modified employment.

On March 31, 2017 OWCP again referred appellant to Dr. Didizian for a second opinion examination.

In a report dated June 15, 2017, Dr. Didizian noted that appellant had fractured her patella on November 20, 2002. On May 19, 2013 she resumed modified employment until she fell on January 11, 2010 fracturing her left fibula. On examination, Dr. Didizian found no effusion of synovitis of the knee, no patellar crepitation, good muscle tone and strength of the quadriceps, and no atrophic changes. He opined that appellant was totally disabled from January 11 to February 1, 2010 due to her consequential left fibula injury. Dr. Didizian related that after that period there was "no reason why she could not have gone back to her modified duty, which she did for [seven] years prior to the fibula fracture." He noted that appellant had developed myelomalacia of the left lower extremity due to a T6-7 disc condition for which she underwent surgery on March 30, 2015. Dr. Didizian found that her thoracic spine injury was unrelated to her employment and that Dr. Ivill's treatment of her low back condition was "not an accepted injury."⁸ In a work capacity

⁶ The Board notes that on November 20, 2014 appellant elected FECA benefits in lieu of disability retirement benefits effective January 11, 2010.

⁷ *Supra* note 4.

⁸ Dr. Ivill provided progress reports dated August 30, November 8, and December 6, 2017 and January 8, 2018 similar to his prior reports of record.

evaluation of even date, he indicated that appellant could perform modified work, walking and standing for two hours per day and lifting no more than 20 pounds.

By decision dated January 29, 2018, OWCP found that appellant had not established that she was disabled on and after February 2, 2010 causally related to her accepted employment injury.

On February 5, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On March 15, 2018 Dr. Ivill evaluated appellant for pain and weakness in the lower extremity, left low back pain, and right knee pain after a left tibial fracture in October 2014, an initial employment injury on November 20, 2002, and an injury on January 11, 2010 due to the November 20, 2002 injury. He diagnosed CRPS/RSD of the left lower extremity spreading to the right lower extremity as a result of her employment injuries. Dr. Ivill noted that appellant had sustained fractures due to falls in July 2015 and July 2017.⁹

A hearing was held on May 23, 2018. Counsel contended that OWCP had failed to establish whether modified employment was available during the period in which compensation was claimed, noting that Dr. Didizian had determined that appellant was partially disabled due to her patellar fracture.

By decision dated July 19, 2018, OWCP's hearing representative vacated the January 29, 2018 decision. She found that Dr. Didizian's opinion supported that appellant could resume modified work on February 2, 2010 and that she did not suffer from RSD or CRPS of the left lower extremity. The hearing representative noted that Dr. Didizian advised that she may have sustained left patella arthritis due to her authorized surgeries but found that he had considered this condition in his disability determination. She determined, however, that OWCP had not adequately developed the issue of whether the employing establishment had offered appellant a limited-duty position after January 11, 2010. The hearing representative remanded the case for OWCP to obtain clarification from the employing establishment regarding whether it could have provided her with modified employment within her restrictions had she not been totally disabled due to a nonemployment-related condition.

On October 31, 2018 OWCP requested that the employing establishment advise whether appellant would have been able to resume the position held beginning May 19, 2003, effective February 1, 2010.¹⁰

In an e-mail response dated November 7, 2018, the employing establishment indicated that it did not have appellant's file but that since "her work[-]related restrictions would have allowed her to continue her modified assignment on February 2, 2010, the same position would have been available to the claimant. [The employing establishment] does not replace employees that quickly, especially when it is a 'temporary out of work' situation."

⁹ Dr. Ivill submitted a similar report on May 24, 2018.

¹⁰ Dr. Ivill submitted progress reports dated August 9, October 11, and December 13, 2018 and February 7, 2019.

By decision dated November 26, 2018, OWCP denied appellant's claim for wage-loss compensation on or after February 2, 2010 causally related to her accepted November 20, 2002 employment injury.

On November 29, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on April 11, 2019. Counsel argued that as appellant was partially disabled due to her accepted employment injury, it had to consider her nonemployment-related conditions. He asserted that the acceptance of the claim should be expanded to include left knee patella arthritis, noting that Dr. Didizian had found that appellant was partially disabled from that condition.

By decision dated May 21, 2019, OWCP's hearing representative affirmed the November 26, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA¹¹ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.¹² For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.¹³ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.¹⁴

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁵ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹⁶ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹⁷

¹¹ *Supra* note 3.

¹² *See C.E.*, Docket No. 19-1617 (issued June 3, 2020); *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹³ *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

¹⁴ *See D.W.*, Docket No. 18-0644 (issued November 15, 2018); *K.C.*, Docket No. 17-1612 (issued October 16, 2018).

¹⁵ 20 C.F.R. § 10.5(f); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

¹⁶ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁷ *See D.P.*, Docket No. 18-1439 (issued April 30, 2020); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

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.¹⁸

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.¹⁹ 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.²⁰

ANALYSIS

The Board finds that this case is not in posture for decision as a conflict in the medical opinion evidence remains between appellant's attending physician, Dr. Ivill, and OWCP's referral physician, Dr. Didizian, regarding whether OWCP should expand acceptance of her claim to include CRPS/RSD of the left lower extremity due to her November 20, 2002 employment injury

On December 4, 2013 Dr. Ivill diagnosed CRPS/RSD due to a November 20, 2002 employment injury and January 11, 2010 consequential fall, noting that these injuries resulted in weakness and instability of the left lower extremity. He found that appellant was permanently disabled from employment. On June 5, 2014 Dr. Ivill opined that she had CRPS/RSD in the left lower extremity spreading to the right lower extremity as a result of her accepted November 20, 2002 employment injury and resulting fall on January 11, 2010. In a September 12, 2014 report, he found that her November 20, 2002 and January 11, 2010 injuries had caused left lower extremity weakness and instability, and CRPS/RSD. On March 15, 2018 Dr. Ivill discussed appellant's history of a November 20, 2002 employment injury and consequential injury on January 11, 2010. He diagnosed CRPS/RSD of the left lower extremity moving to the right lower extremity due to the accepted employment injuries.

OWCP referred appellant to Dr. Didizian for a second opinion examination. In an April 17, 2014 report, Dr. Didizian asserted that she had continued problems with her patellofemoral joint following her employment-related left patellar fracture. He found no evidence of CRPS on a bone scan and further indicated that she had not responded to sympathetic blocks. On September 10, 2015 Dr. Didizian attributed the weakness in appellant's left leg to a thoracic disc injury rather than her accepted left knee condition. He opined that she did not have RSD. Dr. Didizian found that appellant was partially disabled due to left knee patellafemoral arthritis and totally disabled as

¹⁸ K.S., Docket No. 17-1583 (issued May 10, 2018); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014).

¹⁹ 5 U.S.C. § 8123(a); L.S., Docket No. 19-1730 (issued August 26, 2020); M.S., 58 ECAB 328 (2007).

²⁰ 20 C.F.R. § 10.321; P.B., Docket No. 20-0984 (issued November 25, 2020); R.C., 58 ECAB 238 (2006).

a result of thoracic spine surgery. On June 15, 2017 he asserted that the thoracic spine injury and her low back condition were unrelated to employment.

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.²¹ The Board finds that a conflict remains between Dr. Ivill and Dr. Didizian regarding whether the acceptance of appellant's claim should be expanded to include CRPS/RSD causally related to the accepted November 20, 2002 employment injury and/or January 11, 2010 consequential left distal fibula fracture.²²

As there is an unresolved conflict in medical opinion regarding whether appellant's claim should be expanded to include CRPS/RSD due to her accepted employment injury, the case must be remanded for OWCP to refer her to an impartial medical specialist for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).²³ OWCP should also request that the impartial medical specialist address whether she sustained patellofemoral arthritis as a result of her accepted employment injury. After such further development as OWCP deems necessary, it shall issue *a de novo* decision regarding claim expansion and whether appellant has met her burden of proof to establish disability from employment commencing on or after February 2, 2010 causally related to her accepted employment injury.

CONCLUSION

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

²¹ See S.S., Docket No. 19-1658 (issued November 12, 2020); C.S., Docket No. 19-0731 (issued August 22, 2019).

²² S.M., Docket No. 19-0397 (issued August 7, 2019).

²³ S.M., *id.*

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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