



Federal Employees' Compensation Act<sup>3</sup> (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 her burden of proof to establish that acceptance of her claim should be expanded to include the additional condition of left knee osteoarthritis as causally related to her accepted May 25, 2017 employment injury; and (2) whether appellant has met her burden of proof to establish disability from work commencing December 9, 2018 causally related to her May 25, 2017 accepted employment injury.

### **FACTUAL HISTORY**

On June 29, 2017 appellant, then a 45-year-old customer service advocate, filed a traumatic injury claim (Form CA-1) alleging that on May 25, 2017 she developed pain in the lower back, buttocks, neck, hips, and knees when she slipped on a wet pavement at the loading dock area while in the performance of duty. She completed a second Form CA-1 on July 6, 2017 and reported that she slipped on a wet floor at the loading dock area while in the performance of duty sustaining low back pain and a knee contusion. Appellant stopped work on May 25, 2017 and returned to work on May 29, 2017.

On May 25, 2017 appellant underwent x-rays of the lumbosacral spine and right knee. Her knee x-rays revealed mild degenerative joint disease with osteophyte formation of the medial and lateral compartments.

Dr. Vanessa Allen, a Board-certified family practitioner, examined appellant on June 15, 2017 due to acute low back pain after a fall and referred her for physical therapy. She also completed an attending physician's report (Form CA-20) on July 3, 2017 and diagnosed lumbar strain as a result of the May 25, 2017 slip and fall.

On October 27, 2017 OWCP accepted the claim for strain of muscle, fascia, and tendon of the lower back. In a separate decision of even date, it found that appellant was not entitled to continuation of pay (COP) as the injury was not reported on a form approved by OWCP within 30 days following the injury. On November 27, 2017 appellant requested an oral hearing from a hearing representative of OWCP's Branch of Hearings and Review.

Dr. Teresa Camden, Board-certified in family practice and sports medicine, examined appellant on November 15, 2017 due to back pain. She described appellant's May 25, 2017 work injury of slipping and falling onto both knees resulting in a burning sensation in both knees and her neck as well as low back pain. Appellant indicated that she was diagnosed with bilateral knee contusions. She asserted that back pain was her dominant symptom, but that she had an occasional tingle in the anterior area of her left knee. Dr. Camden diagnosed sacroiliitis. She later examined appellant on January 3, 2018 and diagnosed strain of the muscle, fascia, and tendon of the lower back as well as sacroiliitis.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

On January 10 and 26, 2018 Dr. William Fleming, an orthopedic surgeon, examined appellant due to back pain and knee conditions. He described her employment injury and diagnosed low back pain and lumbar radiculopathy. Dr. Fleming requested additional electrodiagnostic studies.

In a February 7, 2018 letter, appellant requested to expand the acceptance of her claim to include injuries to her buttocks, both legs, and knees.

In a March 13, 2018 development letter, OWCP noted that appellant had requested expansion of her claim and requested that she provide additional medical evidence, which clearly explained the causal relationship between her currently diagnosed conditions and her accepted work injury. It afforded her 30 days to respond.

Dr. Fleming examined appellant on February 22, 2018 and diagnosed lumbar sprain and arthritis of the spine. He recommended additional physical therapy.

In a report dated April 6, 2018, Dr. Allen diagnosed lumbar disc disease with radiculopathy. She opined that this condition was related to appellant's previous diagnosis.

Appellant testified before an OWCP hearing representative on May 16, 2018 regarding the denial of COP.

In a memorandum of telephone call (Form CA-110) dated June 4, 2018, OWCP noted that appellant reported issues with her knees and requested that acceptance of her claim be expanded to include additional conditions.

On July 24, 2018 Dr. Marc Caligtan, a Board-certified physiatrist, examined appellant due to lumbar pain that she had experienced since May 2017. He diagnosed lumbar spondylosis and chronic pain syndrome.

By decision dated July 30, 2018, OWCP's hearing representative set aside the October 27, 2017 COP decision, noting that appellant was released to return to work on May 27, 2017. She remanded the claim for OWCP to review the medical evidence to determine if appellant was totally disabled due to her accepted condition.

On November 23, 2018 OWCP expanded acceptance of appellant's claim to include sprain of ligaments of the lumbar spine, aggravation of intervertebral disc disorders with radiculopathy, lumbar region, bilateral knee contusions, and sacroiliitis.

In a Form CA-110 dated December 13, 2018, appellant informed OWCP that she had underwent knee replacement surgery.

Dr. Allen completed a work capacity evaluation (Form OWCP-5c) on October 16, 2018 and advised that appellant was unable to sit for more than two hours without exacerbation of her back pain. She completed an attending physician's report (Form CA-20) of even date and diagnosed lumbar disc prolapse with radiculopathy. Dr. Allen completed an additional Form CA-20 on December 6, 2018 and diagnosed severe osteoarthritis of the left knee. She checked a box marked "Yes" to indicate that she believed that appellant's condition was due to her employment

and further added that appellant had no prior history, that she was previously able to ambulate without restraints or assistance, but that subsequent to her employment injury appellant had limited mobility and severe pain.

On February 4, 2019 appellant filed claims for wage-loss compensation (Form CA-7) for the period December 9, 2018 through March 1, 2019.

In a February 6, 2019 development letter, OWCP requested appellant to submit additional medical evidence to establish employment-related disability from December 9, 2018 through March 1, 2019. It afforded her 30 days for a response.

On February 28, 2019 Dr. Allen reported that appellant had a chronic history of left knee osteoarthritis, which was managed medically until the May 25, 2017 injury. She noted that, after May 25, 2017, her knee osteoarthritis had been exacerbated and she underwent a left total knee replacement on December 11, 2018.

In a February 25, 2019 note, Dr. David W. Miller, Sr., a Board-certified orthopedic surgeon, reported treating appellant for her left knee since November 2018. He opined that the work-related injury she suffered on May 25, 2017 when she slipped on a wet concrete floor, created the need for left total knee replacement.

By decision dated April 15, 2019, OWCP denied appellant's claim for wage-loss compensation for the period December 9, 2018 and continuing. It found that she had not submitted the necessary medical opinion evidence to establish that her diagnosed left knee condition and resulting disability was causally related to her accepted May 25, 2017 employment injury. On April 23, 2019 appellant, through counsel, requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review.

In a June 27, 2019 report, Dr. Robert W. Macht, a general surgeon, noted appellant's history of injury and asserted that she injured her back, knees, right hip, and buttocks. He diagnosed traumatic injury to back with left L5-S1 radiculopathy and contusion of both knees with aggravation of underlying arthritis. Dr. Macht found that she had 64 percent permanent impairment of the left lower extremity and 9 percent permanent impairment of the right lower extremity.

Appellant testified before an OWCP hearing representative on July 26, 2019. She noted that she had returned to full duty in November 2018 and stopped work on November 13, 2018 using accrued leave and requested leave-without-pay compensation beginning December 9, 2018. Appellant testified that, prior to the May 25, 2017 employment injury, she was receiving knee shots, but that the work fall caused further deterioration of her knee.

Dr. Miller examined appellant on November 13, 2018 due to bilateral knee pain, left worse than right. He reported that she had a known history of degenerative joint disease of both knees and had been treating her pain conservatively with several rounds of injections for two years. Dr. Miller noted that appellant last received knee injections in June 2018. Appellant experienced a severe flare up of pain in the left knee on November 10, 2018 and was unable to bear weight. He reviewed her November 13, 2018 bilateral knee x-rays and found medial joint space narrowing, left worse than right with osteophytes both medially and laterally. Dr. Miller diagnosed primary

osteoarthritis of both knees and effusion of both knee joints. He recommended a left total knee arthroplasty.

On December 11, 2018 Dr. Miller performed a left total knee arthroplasty. In a July 11, 2019 note, he reported examining appellant due to chronic pain of the left knee and total left knee replacement.

On August 26, 2019 appellant filed a schedule award claim (Form CA-7).

By decision dated October 1, 2019, OWCP's hearing representative remanded the case for referral to a second opinion physician with a statement of accepted facts (SOAF) and a series of questions including a determination of whether appellant's disability from December 9, 2018 and continuing and her total left knee replacement were causally related to the accepted May 25, 2017 employment injury.

On October 9, 2019 OWCP referred appellant, a SOAF, and a list of questions to Dr. Norman Marcus, a Board-certified orthopedic surgeon, for a second opinion examination. In his October 28, 2019 report, Dr. Marcus reviewed the SOAF and noted the accepted employment incident and accepted conditions including contusion of the knees. He reviewed appellant's medical records and noted that the overall pattern of lower back complaints changed its focus into bilateral knee symptoms, left greater than right, secondary to degenerative joint disease. Dr. Marcus opined that appellant's degenerative joint disease had no relationship to the accepted employment injuries including knee contusions. He performed a physical examination and diagnosed bilateral knee osteoarthritis and systemic lupus erythematosus unrelated to the accepted May 25, 2017 work injury. Dr. Marcus also found that appellant's disability for work from December 9, 2018 and continuing was not work related. He noted that the development of degenerative joint disease was multifactorial, but unrelated to a single contusive injury to the knees. Dr. Marcus reported that, when degenerative joint disease was symmetric and bilateral, it tended to progress and require surgical treatment. He opined that there was no rationale that appellant's knee condition was medically connected to the accepted employment injury by aggravation or acceleration. Dr. Marcus determined that her left total knee replacement was not related to the work injury of May 25, 2017. He noted that degenerative joint disease required years and decades to develop and that especially when it was symmetric as in this case, it was multifactorial and genetic in origin. Dr. Marcus opined that there was no logical explanation whatsoever to connect appellant's bilateral knee degenerative joint disease to a slip and fall injury or an industrial claim of any sort. He found that she had no residuals of the accepted employment injuries.

By decision dated December 2, 2019, OWCP denied appellant's claim for disability for the period December 9, 2018 and continuing based on Dr. Marcus' report. In a separate decision of even date, it denied her claim for a schedule award. On December 10, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated December 11, 2019, Dr. Macht listed appellant's accepted conditions and found that she had significant arthritis and loss of range of motion of both knees. He opined that the knee arthritis was aggravated by the accepted employment injury. Dr. Macht explained that

her underlying arthritis was made worse by inactivity, which occurred after the acute contusion injury of May 25, 2017. He found that this worsening of the underlying arthritis led to appellant's total knee replacement.

By decision dated March 2, 2020, OWCP's hearing representative vacated and set aside OWCP's December 2, 2019 schedule award decision and remanded this aspect of appellant's claim for further development as OWCP had not referred Dr. Macht's, nor Dr. Marcus' permanent impairment reports to a district medical adviser (DMA) for review.

On April 7, 2020 appellant testified before an OWCP hearing representative. She asserted that, prior to her May 25, 2017 employment injury, she had mild arthritis in her knees. Appellant further asserted that her fall was on both knees resulting in accepted bilateral knee contusions. She noted that she was diagnosed with lupus in September or October 2019. Appellant contended that her preexisting osteoarthritis was affected by the work injury of May 25, 2017, which resulted in the need for surgery and disability for work. She returned to regular work in April 2019.

By decision dated June 12, 2020, OWCP's hearing representative found Dr. Marcus negated causal relationship between appellant's diagnosed bilateral degenerative joint disease and the accepted employment injury. OWCP's hearing representative concluded that she was not entitled to wage-loss compensation beginning December 9, 2018 and continuing.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

The medical evidence required to establish causal relationship between a claimed specific condition or period of disability and an employment injury is rationalized medical opinion evidence.<sup>7</sup> 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

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<sup>4</sup> *Id.*

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

the specific employment factors identified by the employee.<sup>8</sup> Where 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.<sup>9</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>10</sup> 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.<sup>11</sup> When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>12</sup>

### ANALYSIS -- ISSUE 1

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

The Board finds that a conflict in medical opinion exists between Dr. Macht, appellant's attending physician, and Dr. Marcus, an OWCP referral physician, regarding whether her diagnosed preexisting left knee degenerative joint disease was aggravated or accelerated by her accepted May 25, 2017 employment injury.

Dr. Macht provided a December 11, 2019 report in which he opined that appellant's knee arthritis was aggravated by the accepted employment injury. He explained that the underlying arthritis was made worse by inactivity, which occurred after the acute contusion injury of May 25, 2017. Dr. Macht found that this worsening of the underlying arthritis led to appellant's total left knee replacement.

In contrast, Dr. Marcus, a second opinion physician, opined in his October 28, 2019 report, that appellant's degenerative joint disease had no relationship to the accepted employment injuries including knee contusions. He explained that the development of degenerative joint disease was multifactorial, but unrelated to a single contusive injury to the knees and opined that there was no

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<sup>8</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Victor J. Woodhams*, 41 ECAB 345 (2005).

<sup>9</sup> *S.M.*, Docket No. 20-0241 (issued August 25, 2020); *see D.M.*, Docket No. 18-0757 (issued November 14, 2018); *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>10</sup> 5 U.S.C. § 8123(a); *K.C.*, Docket No. 19-0137 (issued May 29, 2020); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>11</sup> 20 C.F.R. § 10.321.

<sup>12</sup> *K.C.*, *supra* note 10; *M.W.*, *supra* note 10; *C.T.*, *supra* note 10; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

rationale that her knee condition was medically connected to the accepted employment injury by aggravation or acceleration. Dr. Marcus opined that degenerative joint disease required decades to develop and that especially when it was symmetric as in this case, it was multifactorial and genetic in origin. The Board finds that there is an unresolved conflict of medical opinion between Drs. Macht and Marcus,<sup>13</sup> regarding whether appellant's preexisting degenerative joint disease of the left knee was aggravated or accelerated due to her accepted May 25, 2017 employment injury.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.<sup>14</sup> The Board will, thus, remand the case to OWCP for referral to an impartial medical examiner regarding whether appellant's preexisting degenerative joint disease of the left knee was aggravated or accelerated due to her accepted May 25, 2017 employment injuries.<sup>15</sup> Following this and any such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that the case is not in posture for decision.<sup>16</sup>

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<sup>13</sup> *D.M.*, Docket No. 20-0981 (issued November 9, 2020).

<sup>14</sup> 5 U.S.C. § 8123(a); *K.C.*, *supra* note 10; *M.W.*, *supra* note 10.

<sup>15</sup> *Id.*

<sup>16</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 12, 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: August 12, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board