

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

_____)
D.H., Appellant)

and)

**U.S. POSTAL SERVICE, NORMANDY POST
OFFICE, St. Louis, MO, Employer**)
_____)

**Docket No. 22-0533
Issued: August 4, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 23, 2022 appellant filed a timely appeal from September 2, 2021 and January 3, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of disability commencing June 7, 2021 causally related to his accepted June 6, 2015 employment

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 3, 2022 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.*

injury; and (2) whether OWCP abused its discretion in denying appellant's request for authorization for right knee surgery.

FACTUAL HISTORY

On June 8, 2015 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2015 he injured his right knee when he tripped over a stump and fell while in the performance of duty. He stopped work on June 8, 2015. OWCP accepted the claim for right knee sprain and a tear of the medial meniscus of the right knee. It paid appellant wage-loss compensation on the supplemental rolls from August 21 to December 21, 2015. On October 22, 2015 appellant underwent a right knee partial medial meniscectomy. He returned to full-time regular employment effective December 22, 2015.

On October 22, 2020 appellant filed a notice of recurrence of the need for medical treatment (Form CA-2a) causally related to his accepted June 6, 2015 employment injury. By decision dated December 11, 2020, OWCP found that he had not established that he required medical treatment due to his accepted work injury. Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, OWCP's hearing representative reversed the December 11, 2020 decision. The hearing representative found that, although the last medical evidence regarding appellant's right knee was dated June 2016 and the claim was administratively closed on January 31, 2019 due to inactivity, appellant had not been officially released from treatment and OWCP had not formally terminated wage-loss compensation benefits. OWCP's hearing representative thus determined that OWCP should reopen the case to allow him to obtain medical care. The hearing representative noted that any further treatment or request for disability compensation should be developed to determine whether the request was causally related to the accepted injury.

An October 2, 2020 magnetic resonance imaging (MRI) scan of the right knee revealed a torn posterior horn of the medial meniscus associated with a meniscal cyst, mild medial subluxation, mild joint effusion with a small popliteal cyst, medial and patellofemoral compartment osteoarthritis, and mild thickening around the medial collateral ligament.

In a report dated April 12, 2021, Dr. Fallon Maylack, a Board-certified orthopedic surgeon, evaluated appellant for carpal tunnel syndrome and pain, swelling, and intermittent locking of the right knee. He reviewed the findings of an MRI scan and noted that he had a history of a prior right knee scope in 2015. Dr. Maylack found tenderness of the right knee with reduced motion. He diagnosed a complex tear of the medial meniscus of the right knee and carpal tunnel syndrome of the right wrist. Dr. Maylack recommended surgery on the right knee and right wrist.

On June 3, 2021 Dr. Maylack discussed appellant's complaints of right medial knee pain and indicated that the pain reduced his ability to "work, stand, stoop, and bend." On examination he found swelling, tenderness, and reduced motion of the right knee with a positive McMurray's test. Dr. Maylack diagnosed a complex tear of the medial meniscus of the right knee and recommended surgery.

On July 6, 2021 appellant filed a claim for compensation (Form CA-7) requesting intermittent wage-loss from June 6 to 18, 2021 due to disability from work. An accompanying

time analysis form dated June 30, 2021 indicated that there was no work available for the hours claimed during this period.

In a development letter dated July 6, 2021, OWCP noted that appellant had returned to full-time employment from December 21, 2015 until June 7, 2021, when he began working reduced hours. It advised him of the definition of a recurrence of disability and requested that he provide additional factual and medical information supporting that his accepted condition worsened such that he was disabled from employment. OWCP afforded appellant 30 days to respond to the request.

Appellant continued to submit CA-7 forms requesting compensation for intermittent time lost from work beginning June 19, 2021 and continuing.

On July 21, 2021 appellant related that he had returned to work full time after his injury, but the pain in his knee had increased substantially. He attributed his disability to performing the same job following his surgery.

On July 23, 2021 OWCP advised Dr. Maylack of the definition of a recurrence of disability and requested that he explain the causal relationship between appellant's disability and his accepted June 6, 2015 employment injury. It further requested that he address the recommended course of treatment and noted that the request for right knee surgery was under review.

By decision dated September 2, 2021, OWCP found that appellant had not established a recurrence of disability causally related to his accepted June 6, 2015 employment injury. It further determined that the medical evidence failed to establish that he required right knee surgery as a result of his June 6, 2015 employment injury.

Subsequently, OWCP received an August 26, 2021 progress report from Dr. Maylack, who provided examination findings and diagnosed a complex tear of the medial meniscus of the right knee. Dr. Maylack requested approval for a right knee scope.

On August 27, 2021 Dr. Maylack advised that appellant had tripped at work on June 6, 2015³ and injured his right knee. He noted that appellant had reinjured his knee on September 2020 when he again tripped. Dr. Maylack found that a recently obtained MRI scan confirmed a meniscal tear. He diagnosed a complex tear of the medial meniscus and recommended arthroscopic surgery. Dr. Maylack opined that appellant had a right knee injury and a reinjury with a meniscal tear based on his history, examination, and the findings on MRI scan. He asserted that appellant had "difficult with standing, walking, bending, stooping, and climbing."

In a September 27, 2021 progress report, Dr. Maylack provided findings on examination, diagnosed a complex tear of the right medial meniscus, and noted that he was awaiting approval from workers' compensation for surgery.

³ Dr. Maylak's report indicates an injury date of June 15, 2015; however, this appears to be a typographical error, as the correct date June 5, 2015.

On October 6, 2021 appellant requested reconsideration.

By decision dated January 3, 2022, OWCP denied modification of its September 2, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁵

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

⁴ 20 C.F.R. § 10.5(x); *S.G.*, Docket No. 21-0904 (issued May 11, 2022); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *R.G.*, Docket No. 21-1238 (issued May 9, 2022); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁷ *T.B.*, Docket No. 20-0255 (issued March 1, 2022); *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁸ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability, commencing June 7, 2021, causally related to his accepted June 6, 2015 employment injury.

In an August 27, 2021 report, Dr. Maylack reviewed appellant's history of tripping and injuring his right knee on June 6, 2015. He also indicated that appellant had again injured his right knee when he tripped in September 2020. Dr. Maylack diagnosed a complex tear of the medial meniscus. He opined that the history, examination findings, and MRI scan supported that appellant had sustained a right knee injury and a reinjury with a meniscal tear. Dr. Maylack advised that appellant had difficulty performing certain activities, including standing, walking, and bending. He did not, however, address the relevant issue of whether appellant sustained an employment-related recurrence of disability such that appellant was unable to work beginning June 7, 2021 and, thus, his opinion is insufficient to meet appellant's burden of proof.⁹ Further, Dr. Maylack described an intervening event, that of appellant reinjuring his knee in September 2020. The Board has found that a recurrence of disability does not occur where the claimant's work stoppage is caused by a new or intervening injury, even if the new injury involves the same part of the body previously injured.¹⁰

On April 12, 2021 Dr. Maylack discussed appellant's complaints of right knee pain and swelling and noted that he had a history of right knee surgery. On examination he found tenderness of the right knee with reduced motion. Dr. Maylack diagnosed a complex tear of the medial meniscus of the right knee. In progress reports dated June 3, August 26, and September 27, 2021, he again provided examination findings, diagnosed a complex tear of the right medial meniscus, and recommended surgery. Dr. Maylack did not, however, address the cause of the conditions or provide an opinion that appellant was disabled from work commencing June 7, 2021. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹¹ As such, these reports do not establish appellant's disability claim.

Appellant also submitted diagnostic studies. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any period of disability.¹² These reports are, therefore, insufficient to establish the claim.

⁹ See *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *D.B.*, Docket No. 21-0503 (issued August 24, 2021).

¹⁰ See *K.B.*, Docket No. 19-1055 (issued January 10, 2020); *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *D.B.*, Docket No. 19-0481 (issued August 20, 2019).

¹¹ See *T.B.*, Docket No. 20-0255 (issued March 11, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² *T.B.*, *id.*; *M.J.*, Docket No. 19-1287 (issued January 13, 2020); see *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

As the medical evidence does not contain a medical opinion establishing causal relationship between appellant's claimed recurrence of disability and the accepted June 6, 2015 employment injury, the Board finds that he has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA¹³ 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 in the amount of monthly compensation.¹⁴

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being 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 to produce a contrary factual conclusion.¹⁶

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 criteria must be met for OWCP to authorize payment.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization for right knee surgery.

On August 27, 2021 Dr. Maylack related that appellant had an employment-related right knee injury on June 6, 2015 and a subsequently injury to his right knee in September 2020. He diagnosed a complex medial meniscal tear due to the right knee injury and reinjury and recommended arthroscopic surgery. Dr. Maylack, however, failed to explain how the accepted June 6, 2015 injury resulted in the need for surgery. The Board has held that a medical report is

¹³ *Supra* note 1.

¹⁴ 5 U.S.C. § 8103; *see R.B.*, Docket No. 21-0598 (issued May 19, 2022); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

¹⁵ *See D.C.*, Docket No. 20-0854 (issued July 19, 2021); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, 59 ECAB 141 (2007).

¹⁶ *See E.F.*, Docket No. 20-1680 (issued November 10, 2021); *J.L.*, Docket No. 18-0503 (issued October 16, 2018).

¹⁷ *See P.S.*, Docket No. 20-0075 (issued July 12, 2021).

of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁸

In progress reports dated April 12, June 3, and August 26, 2021, Dr. Maylack diagnosed a complex tear of the medial meniscus of the right knee. He recommended right knee surgery. Dr. Maylack did not, however, relate the need to surgery to the accepted June 6, 2015 employment injury or explain why the surgery was medically necessary.¹⁹ His reports, consequently, are insufficient to establish that the requested surgical procedure should be authorized.²⁰

The only limitation on OWCP's authority in approving or disapproving service under FECA is one of reasonableness.²¹ Appellant has not submitted reasoned medical evidence supporting that he required right knee surgery due to his accepted employment injury. Thus, the Board finds that OWCP did not abuse its discretion in denying authorization for the requested right knee surgery.²²

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability, commencing June 7, 2021, causally related to his accepted June 6, 2015 employment injury. The Board further finds that OWCP did not abuse its discretion in denying his request for authorization for right knee surgery.

¹⁸ *L.F.*, Docket No. 18-0530 (issued February 24, 2020); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁹ *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.M.*, Docket No. 19-0563 (issued August 1, 2019).

²⁰ *Id.*

²¹ *See S.N.*, Docket No. 21-0070 (issued March 9, 2022); *W.M.*, Docket No. 18-0957 (issued October 15, 2018).

²² *See J.C.*, Docket No. 21-0301 (issued March 3, 2022); *D.S.*, Docket No. 18-0353 (issued February 18, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2022 and September 2, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 4, 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