

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

F.R., Appellant)	
)	
)	
and)	Docket No. 21-0065
)	Issued: February 4, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Stephanie Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
 ALEC J. KOROMILAS, Chief Judge
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge

On October 21, 2020 appellant, through counsel, filed a timely appeal from a September 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0065.

On January 9, 2015 appellant, then a 52-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2015 he injured his left knee when he slipped and fell on ice that was covered with snow while in the performance of duty. OWCP assigned OWCP File No. xxxxxx947 and accepted his claim for left leg contusion, meniscus derangement, and permanent aggravation of degenerative left knee arthritis.

Under OWCP File No. xxxxxx952, OWCP previously accepted that on February 22, 2010 appellant sustained a traumatic injury, which caused left knee sprain, sprain of left knee cruciate

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 an 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.

ligament tear and a left knee medial meniscus tear. On April 29, 2010 he underwent an arthroscopy, partial medial meniscectomy, chondral shaving of the left knee.

On February 26, 2015 appellant underwent a right knee arthroscopy and a partial meniscectomy with chondral shaving, which was performed by Dr. Eugene J. Bartucci, a Board-certified orthopedic surgeon. Dr. Bartucci subsequently requested that appellant's case be expanded to include the acceptance of a meniscus tear of the right knee as his right knee gave out due to favoring of his work-related left knee condition.²

In a July 6, 2015 report, Dr. David H. Garelick, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed appellant's medical record, which included February 20, 2015 diagnostic testing evidence of a right degenerative meniscal tear and other degenerative changes. He opined that appellant's right knee condition was degenerative in nature and not consequential to his left knee condition. The DMA further found no evidence of an aggravation of appellant's preexisting degenerative right knee condition.

On November 2, 2015 OWCP determined that a conflict in the medical opinion evidence existed between Dr. Bartucci and the DMA regarding whether appellant sustained a right knee consequential injury as a consequence of his January 8, 2015 employment injury. It referred appellant for an impartial medical examination in order to resolve the conflict of medical opinion.

In a December 6, 2015 medical report, Dr. Kevin Walsh, a Board-certified orthopedic surgeon serving as an impartial medical examiner (IME), noted his review of an August 5, 2015 statement of accepted facts (SOAF)³ and the medical record, and set forth his December 3, 2015 physical examination findings of appellant's lower extremities. He diagnosed bilateral knee osteoarthritis. Dr. Walsh opined that the right knee meniscus tear was degenerative, not post-traumatic, in nature and did not result from or was aggravated by the left knee work-related injury or from overuse of the accepted left knee conditions.

On January 7, 2016 appellant underwent an OWCP approved left total knee replacement, performed by Dr. Bartucci. OWCP updated the SOAF on February 2, 2016.⁴

By decision dated March 31, 2016, OWCP denied expansion of the acceptance of appellant's claim to include a consequential right knee degenerative meniscal tear with surgery or right knee osteoarthritis. It found that the special weight of the medical evidence rested with the December 6, 2015 report of Dr. Walsh, the IME.

² On March 20, 2015 appellant filed an occupational disease claim alleging that on January 8, 2015 he injured his left knee and consequently he favored his right knee, which caused a tear of the right meniscus. OWCP assigned that claim OWCP File No. xxxxxx065. It suspended development of that claim on May 5, 2015.

³ The SOAF noted only contusion of the left leg and permanent aggravation of degenerative left knee arthritis as the accepted conditions. The SOAF did not reference any of appellant's other claims.

⁴ The updated SOAF noted appellant's left knee accepted conditions under OWCP File No. xxxxxx952 and his left total knee replacement on January 7, 2016.

On April 20, 2016 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 9, 2016. By decision dated December 20, 2016, the hearing representative affirmed OWCP's March 31, 2016 decision.

Appellant, through counsel, submitted additional requests for reconsideration. By decisions dated March 23, 2018, August 1, 2019 and September 30, 2020, OWCP denied modification.⁵

The Board, having duly considered this matter, finds that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁶ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁷ Herein, appellant has additional accepted claims for bilateral knee conditions under OWCP File Nos. xxxxxx065, xxxxxx952 and xxxxxx954. The evidence pertaining to those other files, however, was not part of the case record at the time of OWCP's September 30, 2020 merit decision. Therefore, for a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx065, xxxxxx952 and xxxxxx954. OWCP shall then prepare a new SOAF which includes a complete history of appellant's other accepted claims for knee injuries and then refer appellant and the case record to another IME to resolve the conflict in medical opinion. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

⁵ On August 24, 2019 appellant filed a traumatic injury claim alleging that he injured his left knee and left toe while ascending stairs in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx954 and accepted this claim for left knee effusion, left knee derangement, and left knee sprain.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁷ *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018)

IT IS HEREBY ORDERED THAT the September 30, 2020 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 4, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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