

In a report dated July 23, 2020, Dr. Jack M. Thomas, an orthopedic surgeon, related that appellant's right knee injury and subsequent surgery had now evolved culminating in

post-traumatic osteoarthritis of the right knee. He recommended that the acceptance of her claim be expanded to include post-traumatic arthritis of the right knee, and that a right knee brace and viscosupplementation injections of the right knee be authorized.

On August 24, 2020 OWCP referred the case record to a district medical adviser (DMA) for an opinion as to whether appellant's claim should be expanded for acceptance of post-traumatic right knee arthritis. On September 3, 2020 Dr. Nathan Hammel, a Board-certified orthopedic surgeon, acting as OWCP's DMA noted that she had preexisting right knee arthritis and therefore acceptance of her claim should not be expanded.

OWCP developed the claim, but did not issue a final decision on the issue of whether the case should be expanded to include post-traumatic arthritis of the right knee.

By decision dated October 6, 2020, OWCP denied appellant's claims for wage-loss compensation finding that she had not established disability from work for the period August 12, 2020¹ and continuing causally related to the accepted September 29, 2019 employment injury.²

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

In adjudicating the current claim under OWCP File No. xxxxxx450, OWCP should have rendered a decision regarding expansion of the claimed osteoarthritis right knee condition prior to denying the disability claim. It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.³ OWCP has an obligation to see that justice is done.⁴ The issue of whether appellant's post-traumatic arthritic right knee was caused or aggravated by the accepted employment injury is material to and could potentially affect the outcome of her disability claim commencing August 12, 2020.

On remand OWCP shall issue a decision regarding whether appellant's osteoarthritic right knee was causally related to the accepted September 29, 2019 employment injury. Following any further development as deemed necessary, it shall also issue a *de novo* decision regarding appellant's disability claim.⁵

¹ The Board notes that, based on the evidence of record, OWCP mistakenly identified the commencement date for disability as August 24, 2020 as that was the date it received appellant's CA-7 form.

² On October 20, 2020 appellant filed an occupational disease claim (Form CA-2) alleging that her bilateral knee osteoarthritis was caused or aggravated by her employment duties on or about July 23, 2020. OWCP assigned that claim OWCP File No. xxxxxx797 and, on January 7, 2021 accepted the condition of right knee unilateral osteoarthritis. It paid appellant appropriate wage-loss compensation based on the date her disability began, October 17, 2020.

³ See *A.D.*, Docket No. 21-0143 (issued November 15, 2021); see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

⁴ *Id.*; *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

⁵ On remand OWCP should consolidate the current claim with OWCP File No. xxxxxx797 as both claims pertain to right knee conditions. See *supra* note 2.

IT IS HEREBY ORDERED THAT the October 6, 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: June 9, 2022
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