

<sup>3</sup> The Board notes that, following the May 14, 2021 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a consequential right knee injury causally related to his accepted July 28, 1997 employment injury.

## **FACTUAL HISTORY**

On July 28, 1997 appellant, then a 40-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a left knee injury when he made a turn going up stairs on his delivery route and his left knee buckled while in the performance of duty. He stopped work on the date of the claimed injury. OWCP accepted appellant's claim for aggravation of osteoarthritis of left knee, effusion of left lower leg joint, and medial meniscus tear of the left knee. It paid him wage-loss compensation for periods of disability and authorized left knee arthroscopic surgery, which was performed on September 19, 1997.<sup>4</sup>

In reports dated December 22, 2017 and January 5, 19, and 26 and February 2, 2018, Dr. Philip B. Bovell, a Board-certified orthopedic surgeon, requested that OWCP expand the acceptance of appellant's claim to include additional consequential conditions of the right knee, noting that appellant had to rely on his right leg during ambulation due to his accepted left knee conditions. He indicated that appellant sustained a consequential injury in the form of chronic right knee pain status postsurgery with residual contractions.

On March 22, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation with Dr. Chester DiLallo, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant sustained a consequential right knee injury related to his accepted July 28, 1997 employment injury. In an April 17, 2018 report, Dr. DiLallo reported his physical examination findings and determined that appellant did not sustain a consequential right knee injury related to his accepted July 28, 1997 employment injury. He noted, "[i]t is my opinion that there is no evidence to indicate the presence of a consequential injury to the right knee as due to [a] condition existing in the left knee." Dr. DiLallo indicated that appellant had a preexisting degenerative condition of the right knee, which explained his symptoms.

By decision dated February 28, 2019, OWCP denied the expansion of the acceptance of appellant's claim to include a consequential right knee condition, finding that he did not meet his burden of proof to establish a consequential right knee injury causally related to his accepted July 28, 1997 employment injury. It later vacated this decision on October 21, 2019 as it had been determined that there was a conflict in the medical opinion evidence on the issue between Dr. DiLallo and appellant's attending physicians, Dr. Bovell, Dr. Eric Dawson, an orthopedic surgeon, and Dr. Daniel Herman, a Board-certified internist. In July 10 and 11 and August 23, 2019 reports, Dr. Dawson determined that appellant sustained consequential injuries to his right knee, including arthritis and a medial meniscus tear, due to extra stress placed on the right knee, a phenomenon known as "stress transfer," by the accepted conditions of the left knee. He maintained that the atrophy of appellant's right leg supported the finding of such consequential injuries.

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<sup>4</sup> Appellant later underwent unauthorized left knee surgeries, including a total left knee replacement on July 28, 2015 and a surgical procedure for adhesion on September 1, 2015.

On remand, OWCP referred appellant, along with a SOAF and a series of questions, for an impartial examination and evaluation with Dr. Robert Saltzman, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant sustained a consequential right knee injury related to appellant's accepted July 28, 1997 employment injury.

In a December 18, 2019 report, Dr. Saltzman reviewed appellant's factual and medical history and reported findings of the physical examination he conducted on that date. There was no significant effusion of the right knee and it was stable on examination. Dr. Saltzman indicated that he was in agreement with Dr. DiLallo that appellant's right knee osteoarthritis was unrelated to the July 28, 1997 employment injury. He opined that development of osteoarthritis in the right knee of appellant was significant, but was not related to his osteoarthritis of the contralateral knee and the total left knee arthroplasty he underwent in 2015. Dr. Saltzman noted that, although Dr. Bovell asserted that is a well-accepted fact that damage to one leg leads to increased stress of the other side and damage to the contralateral side, he indicated that "this is not the case."

After further development of the evidence, which included vacating an additional denial of appellant's consequential injury claim, OWCP requested a supplemental report from Dr. Saltzman in August 2020.<sup>5</sup> In a September 1, 2020 supplemental report, Dr. Saltzman indicated that he reviewed the July 10 and 11 and August 23, 2019 reports of Dr. Dawson. He noted that it was Dr. Dawson's opinion that the only two etiologic factors for development of right knee osteoarthritis were on-the-job usage of almost 25 years and the stress transfer phenomenon. Dr. Saltzman indicated that Dr. Dawson found that a medial meniscus tear was an objective finding of consequential injury and that he attached importance to the atrophy of the quadriceps of appellant's right leg. He noted, "I am of the opinion that the arthritis that has developed in the right knee is the result of normal wear and tear over the course of life for [appellant].... I was unable to find any studies of scientific value that support the stress transfer phenomenon." Dr. Saltzman opined that the atrophy of appellant's right leg was due to nonwork-related osteoarthritis and "not indicative of a work-related injury." He further noted that appellant's right knee arthritis was not related to any employment injury or to his work activities for the employing establishment.

By decision dated November 13, 2020, OWCP determined that appellant had not met his burden of proof to expand the acceptance of his claim to include a consequential injury causally related to his accepted July 28, 1997 employment injury. It found that the special weight of the medical opinion evidence rested with the opinion of Dr. Saltzman.

Appellant, through counsel, requested reconsideration of the November 13, 2020 decision and argued that the opinion of Dr. Saltzman was not entitled to special weight. He submitted a January 1, 2021 report from Dr. Bovell who asserted that Dr. Saltzman did not adequately discuss the postsurgery status of appellant's left knee. In a January 13, 2021 report, Dr. Herman indicated that appellant had been favoring his right leg since 2015.

By decision dated May 14, 2021, OWCP denied modification of its November 13, 2020 decision.

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<sup>5</sup> OWCP indicated that Dr. Saltzman should review the reports of Dr. Dawson before rendering his supplemental opinion.

### **LEGAL PRECEDENT**

The claimant bears the burden of proof to establish a claim for a consequential injury.<sup>6</sup> As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own conduct.<sup>12</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>13</sup> For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.<sup>14</sup> In situations where the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist,

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<sup>6</sup> *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

<sup>7</sup> *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

<sup>8</sup> *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

<sup>13</sup> 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

<sup>14</sup> *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a consequential right knee injury causally related to his accepted July 28, 1997 employment injury.

OWCP properly determined that there was a conflict in the medical opinion evidence on the issue between Dr. DiLallo, OWCP referral physician, and appellant's attending physicians, Dr. Bovell, Dr. Dawson, and Dr. Herman. It then, pursuant to 5 U.S.C. § 8123(a), properly referred appellant to Dr. Saltzman for an impartial medical examination and opinion of appellant's consequential injury claim.

In a December 18, 2019 report, Dr. Saltzman discussed appellant's factual and medical history and reported findings of the physical examination he conducted on that date. There was no significant effusion of the right knee and it was stable on examination. Dr. Saltzman indicated that appellant's right knee osteoarthritis was unrelated to the employment injury from July 28, 1997. He opined that development of osteoarthritis in the right knee of appellant was significant, but was not related to appellant's osteoarthritis of the contralateral knee and the total left knee arthroplasty he underwent in 2015. Dr. Saltzman noted that, although Dr. Bovell asserted that is a well-accepted fact that damage to one leg leads to increased stress of the other side and damage to the contralateral side, he indicated that "this is not the case."

In a September 1, 2020 supplemental report, Dr. Saltzman indicated that he reviewed the July 10 and 11 and August 23, 2019 reports of Dr. Dawson. He noted that it was Dr. Dawson's opinion that the only two etiologic factors for development of right knee osteoarthritis were on-the-job usage of almost 25 years and the stress transfer phenomenon. Dr. Saltzman indicated that Dr. Dawson found that a medial meniscus tear was an objective finding of consequential injury and that he attached importance to the atrophy of the quadriceps of appellant's right leg. He noted, "I am of the opinion that the arthritis that has developed in the right knee is the result of normal wear and tear over the course of life for [appellant].... I was unable to find any studies of scientific value that support the stress transfer phenomenon." Dr. Saltzman opined that the atrophy of appellant's right leg was due to nonwork-related osteoarthritis and "not indicative of a work-related injury." He further noted that appellant's right knee arthritis was not related to any work injury or to appellant's work activities for the employing establishment.

The Board has reviewed the opinion of Dr. Saltzman and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding appellant's consequential injury claim. Dr. Saltzman provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his

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<sup>15</sup> See *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

opinion by explaining that appellant's right knee condition was due to nonwork-related factors, including the natural progression of his underlying degenerative condition.<sup>16</sup>

The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Saltzman, the impartial medical specialist selected to resolve the conflict in the medical opinion evidence. The December 18, 2019 and September 1, 2020 reports of Dr. Saltzman establish that appellant did not sustain a right knee injury as a consequence of his accepted July 28, 1997 employment injury.

Appellant submitted a January 1, 2021 report from Dr. Bovell who asserted that Dr. Saltzman did not adequately discuss the postsurgery status of his left knee. In a January 13, 2021 report, Dr. Herman indicated that appellant had been favoring his right leg since 2015. However, these reports do not contain medical rationale on the relevant issue of the case, which would overcome the probative value of Dr. Saltzman's opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain supporting medical rationale.<sup>17</sup> These reports, therefore, are insufficient to establish appellant's consequential injury claim.

On appeal, counsel contends that the special weight of the medical opinion evidence regarding appellant's consequential injury claim does not rest with the opinion of Dr. Saltzman. However, the Board has explained why Dr. Saltzman's well-rationalized opinion warrants such special weight.

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 consequential right knee injury causally related to his accepted July 28, 1997 employment injury.

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<sup>16</sup> See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

<sup>17</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 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