

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her July 22, 2019 employment injury; (2) whether OWCP abused its discretion in denying appellant's request for authorization for lumbar spine and right knee surgery; and (3) whether appellant has met her burden of proof to establish a recurrence of disability beginning September 30, 2019 causally related to her accepted July 22, 2019 employment injury.

FACTUAL HISTORY

On July 26, 2019 appellant, then a 52-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 22, 2019 she injured her knee when her right foot hit the curb of a walkway and she twisted and fell onto her right side while in the performance of duty. She stopped work on July 23, 2019 and returned to modified duty on August 9, 2019. OWCP accepted the claim for lumbar sprain.

On July 22, 2019 Dr. Renee Venzen, an internist with the employing establishment, evaluated appellant for pain in her right foot, ankle, knee, and right elbow finding no bruising or edema.

On July 24, 2019 Dr. Chow Ng, a Board-certified physiatrist, obtained a history of appellant experiencing pain in her low back, right elbow, right ankle, and right knee after she fell on her right side on July 22, 2019. He found decreased range of motion of the back, hip, and right knee secondary to the fall with resulting myofascial pain syndrome of the lumbar spine due to pain and lumbar degenerative joint disease, right gluteus medius tendinitis, right knee meniscal derangement, and diabetic neuropathy. Dr. Ng referred appellant for physical therapy.

In a clinic note dated July 24, 2019, Dr. Ozzie Orbach, a Board-certified internist, noted that appellant complained of continued knee pain after a fall a several days earlier. He found crepitus between the upper kneecap and femur.

On August 6, 2019 the employing establishment offered appellant a limited-duty position in her capacity as a licensed practical nurse. Appellant accepted the position on August 7, 2019.

In an initial evaluation dated August 21, 2019, Dr. Richard Parker, a Board-certified orthopedic surgeon, evaluated appellant for pain in her back, elbow, and right ankle due to an injury at work when she bumped her feet on a walkway injuring her right knee, ankle, hip, and elbow. He diagnosed right-sided lumbago/sciatica, other intervertebral disc degeneration of the lumbosacral region, spondylosis of the lumbar spine without myelopathy, a sprain of the medial collateral ligament of the right knee, and right ankle pain. Dr. Parker opined that appellant was unable to work due to back pain and recommended physical therapy and a magnetic resonance imaging (MRI) scan of the lumbar spine and right knee. He noted that what appellant originally described as right hip pain was back pain and right sciatica. Dr. Parker advised that appellant's lumbar spine was an additional affected body part.

In a certification of health care provider form dated August 26, 2019, Dr. Venzen found that appellant was unable to perform the duties of her position beginning July 22, 2019 as she

could not bend, push, or pull. In a clinic note of even date, she diagnosed neck and low back sprain due to a July 22, 2019 employment injury.

In a duty status report (Form CA-17) dated August 26, 2019, Dr. Parker diagnosed back and neck sprain and found that appellant was disabled from work.

In a progress report dated September 5, 2019, Dr. Parker evaluated appellant for complaints of pain in her neck, back, and right shoulder due to “a work[-]related accident.” He requested authorization for MRI scans to rule out a rotator cuff tear and lumbar and cervical herniated discs. Dr. Parker advised that appellant could continue working with restrictions on lifting, bending, and twisting. In CA-17 forms dated September 17, 2018 and October 31, 2019, he found that appellant was disabled from work.

An MRI scan of the lumbar spine dated September 13, 2019 revealed a broad bulge and facet hypertrophy at L3 to L5 and a broad bulge and herniation at L5-S1 with two-millimeter retrolisthesis, facet hypertrophy, and foraminal encroachment with impingement on the exiting nerve roots.

On September 17, 2019 Dr. Parker recounted appellant’s history of an employment injury and noted that an MRI scan had demonstrated a herniated nucleus pulposus (HNP) at L5-S1. He diagnosed right-sided lumbago/sciatic, a lumbar HNP, unspecified internal derangement of the right knee. Dr. Parker opined that appellant was disabled from employment due to sciatica.

In a report dated October 2, 2019, Dr. Neil B. Kirschen, a Board-certified anesthesiologist, obtained a history of appellant experiencing pain in the right lumbar spine after a July 22, 2019 employment injury. He discussed the results of the MRI scan and diagnosed lumbar radiculitis/radiculopathy. Dr. Kirschen recommended steroid injections. In a note of even date, he indicated that appellant had been evaluated on that date and could return to work.

On October 16, 2019 appellant requested that OWCP expand its acceptance of her claim to include right elbow, knee, ankle, and shoulder conditions.

In a development letter dated October 24, 2019, OWCP requested that appellant submit medical evidence from her physician addressing the relationship between the additional claimed employment-related conditions and her accepted work injury. It afforded her 30 days to submit the requested information.

In an October 31, 2019 progress report, Dr. Parker described appellant’s complaints of pain throughout the right side of her body after a fall at work onto her right side. He diagnosed an HNP of the lumbar spine, right shoulder pain, a rotator cuff sprain, and unspecified internal derangement of the right knee. Dr. Parker related that the “right shoulder and right knee should be added as injured parts at [the] time of fall. Right ankle and right elbow are better.” He found that appellant was disabled from employment until December 12, 2019.

On December 4, 2019 appellant filed a notice of recurrence (Form CA-2a) on September 9, 2019 claiming disability causally related to her July 22, 2019 employment injury. She stopped work on September 30, 2019.

In a December 12, 2019 progress report, Dr. Parker provided the date of onset of appellant's complaints as July 22, 2019 and evaluated appellant for continued back and right leg pain after an employment injury. He diagnosed an HNP at L5-S1 and requested surgical authorization for a laminectomy and discectomy at L5-S1. Dr. Parker opined that appellant was disabled from work and required surgery.

In a report dated December 17, 2019, Dr. Vladimir Y. Dadashev, a Board-certified neurosurgeon, discussed appellant's history of low back pain after an employment injury. He diagnosed "progressively worsening low back pain with L4 to S1 disc recess, collapse, degeneration, and spondylolisthesis with stenosis." Dr. Dadashev noted that appellant wanted to proceed with a lumbar interbody fusion from L4 to S1.

In a development letter dated January 6, 2020, OWCP advised appellant of the definition of a recurrence of disability and requested that she provide additional factual and medical information in support of her claim. It noted that the medical evidence referred to diagnoses that had not been accepted as related to the employment incident. OWCP requested that appellant submit an opinion from her physician explaining how her disability was related to the accepted employment injury. It afforded her 30 days to respond to the request.

On January 13, 2020 Dr. Parker diagnosed lumbar intervertebral disc displacement, a lumbar HNP, and lumbar stenosis. He asserted that appellant had also injured her right shoulder. Dr. Parker opined that she was totally disabled and required surgery. He related, "[Appellant] states that she injured her right shoulder when she fell and it should be added to [her] case."

On January 24, 2020 OWCP expanded its acceptance of the claim to include a sprain of the medial collateral ligament (MCL) of the right knee.

On January 24, 2020 OWCP advised appellant and her physician that it was unable to authorize the proposed spinal fusion as the procedure "is not consistent with the accepted lumbar conditions in this claim, which is only lumbar strain." It requested medical evidence explaining how the need for the procedures resulted from the accepted condition.

Thereafter, OWCP received a January 14, 2020 note from Dr. Parker, who provided the date of accident as July 22, 2019. Dr. Parker related, "This letter is in regard to [appellant's] work-related injury. [She] requires PLIF [posterior lumbar interbody fusion] at the L4-5 and L5-S1 levels when medically cleared." He indicated that the injury "resulted from a fall at work." Dr. Parker related that appellant further advised that she had injured her right shoulder at the time of her fall and that it should be added to her case.

In a February 3, 2020 statement, appellant related that the right side of her body made "direct contact with the concrete" when she fell, resulting in multiple injuries.

A February 29, 2020 MRI scan of the right knee demonstrated degeneration of the posterior horn of the medial and lateral meniscus with a possible subtle horizontal tear, joint effusion, a lateral subluxation of the patella, and anterior cruciate ligament mucoid change.

On March 5, 2020 Dr. Parker repeated the history of injury, noted that appellant's MRI scan had shown a torn medial meniscus of the right knee, and recommended surgery of the lumbar spine and right knee. He opined that appellant had injured her "right knee, right shoulder, right

elbow, and back when she fell on July 22, 2019.” Dr. Parker advised that a lumbar MRI scan showed an HNP at L5-S1 and an MRI scan of the right knee revealed a torn medial meniscus. He opined that appellant was disabled from work.

By decision dated March 20, 2020, OWCP denied appellant’s request to expand the acceptance of her claim to include lumbago, right leg pain, cervicgia without disc disorder, lumbar intervertebral disc degeneration, a lumbar HNP, lumbar spondylosis without myelopathy, and lumbar radiculopathy causally related to her July 22, 2019 employment injury. It further denied authorization for lumbar surgery.

By separate decision dated March 20, 2020, OWCP found that appellant had not established a recurrence of disability beginning September 30, 2019 causally related to her accepted employment injury. It found that the evidence failed to establish that she failed to establish that she was disabled as a result of her accepted employment injury.

Appellant resubmitted progress reports dated August 21 and October 19, 2019, and February 24 and March 5, 2020 from Dr. Parker and December 17, 2019 from Dr. Dadashev.

On April 15, 2020 appellant requested reconsideration.

By decision dated April 21, 2020, OWCP denied appellant’s request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In a progress report dated May 19, 2020, Dr. Parker again indicated that he was evaluating appellant for “complaints of back, right knee, and right shoulder pain due to injuries sustained in a work-related accident.” He noted that she had fallen on July 22, 2019 injuring her right knee, right shoulder, and lumbar spine. Dr. Parker diagnosed right-sided lumbago/sciatica, a lumbar HNP, a right rotator cuff capsule sprain, a sprain of the MCL of the right knee, and a complex tear of the right medial meniscus. He asserted that appellant required an L5-S1 PLIF and a right knee arthroscopy. Dr. Parker indicated that the injury had also affected her right shoulder. He opined that appellant was totally disabled and that she required surgery.

On July 2, 2020 Dr. Parker provided the history of injury and diagnosed cervicgia without disc disorder, right lumbago/sciatica, a lumbar HNP, right impingement syndrome, and a right medial meniscal tear. He opined that appellant was totally disabled and required authorization for surgery. Dr. Parker submitted similar progress reports on August 13, September 30, October 22, 2020, and January 13, 2021. On August 13, 2020 he noted that the most recent MRI scan had shown disc collapse and degeneration at L4-5 and L5-S1 with stenosis and an HNP at L5-S1. On October 22, 2020 Dr. Parker diagnosed primary osteoarthritis of the right knee.

In a report dated July 13, 2020, Dr. Kenneth McCulloch, a Board-certified orthopedic surgeon, evaluated appellant for a July 22, 2019 employment injury to her right knee. He diagnosed right knee patellofemoral condyle damage, meniscus tear, and prepatellar bursitis. Dr. McCulloch recommended surgery. In a follow-up report dated October 12, 2020, he noted that appellant had continued knee pain a year after her July 22, 2019 employment injury and requested authorization for a right knee meniscal debridement.

An MRI scan of the lumbar spine, obtained on October 12, 2020, demonstrated degenerative disc disease at L3-4 through L5-S1, a bulge and facet hypertrophy at L3-4 and L4-5, and a bulge, facet hypertrophy with foraminal stenosis, and a left lateral herniation at L5-S1.

On December 3, 2020 appellant, through counsel, requested reconsideration. He contended that OWCP should have expanded acceptance of the claim to include additional conditions and authorized the requested surgical procedures to the right knee and spine. Counsel further contended that appellant's recurrence of disability had occurred within 90 days of her return to duty. He asserted that OWCP had not applied the appropriate burden of proof in adjudicating her recurrence of disability.

By decision dated January 22, 2021, OWCP denied modification of its March 20, 2020 decisions. It found that the medical evidence was insufficient to support that the acceptance of appellant's claim should be expanded, that she required surgery on her lumbar spine or right knee, or that she had sustained a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 1

When 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.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to her July 22, 2019 employment injury.

In a progress report dated October 31, 2019, Dr. Parker obtained a history of appellant experiencing pain along the right side of her body after a fall at work. He diagnosed an HNP of the lumbar spine, right shoulder pain, a rotator cuff sprain, and unspecified internal derangement of the right knee. Dr. Parker advised that appellant's right shoulder condition should be added as an injury due to the fall. He did not, however, explain physiologically how the accepted

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

employment injury resulted in a right shoulder condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is causally related to employment injury.⁷ Thus, Dr. Parker's report is insufficient to meet appellant's burden of proof to expand the acceptance of her claim.

On January 13, 2020 Dr. Parker evaluated appellant for back and right leg pain and diagnosed lumbar intervertebral disc displacement, a lumbar HNP, and lumbar stenosis. He noted that she advised that she had also injured her right shoulder when she fell and believed that a right shoulder injury should be added to her claim. While Dr. Parker discussed appellant's belief that her right shoulder condition was work related, he did not otherwise provide an independent causation finding. A physician's report is of little probative value when it is based on a claimant's belief rather than the physician's independent judgment.⁸ Consequently, Dr. Parker's report is insufficient to meet appellant's burden of proof to expand the acceptance of her claim.

On January 14, 2020 Dr. Parker advised that appellant required a lumbar interbody fusion at L4-5 and L5-S1 due to her fall at work. He further indicated that she had also injured her right shoulder at the time of her fall. On May 19, 2020 Dr. Parker related that appellant had injured her right knee, right shoulder, and back due to an employment injury on July 22, 2019. He diagnosed right-sided lumbago/sciatica, a lumbar HNP, a right rotator cuff capsule sprain, a sprain of the MCL of the right knee, and a complex tear of the right medial meniscus. Dr. Parker indicated that the injury had also affected appellant's right shoulder. Again, however, he did not offer medical rationale explaining how the accepted employment injury caused the additional diagnosed conditions. The Board has held that medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Dr. Parker's report, therefore, is insufficient to meet appellant's burden of proof to expand the acceptance of her claim.

On March 5, 2020 Dr. Parker again provided the history of injury and advised that appellant had injured her right shoulder, knee, elbow, and back on July 22, 2019. He noted that a lumbar MRI scan showed an HNP at L5-S1 and a right knee MRI scan showed a torn medial meniscus. Dr. Parker did not explain how the diagnosed conditions found on diagnostic studies were related to the accepted employment injury. His opinion, therefore, is of limited probative value and insufficient to establish expansion of the claim.¹⁰

On July 24, 2019 Dr. Ng evaluated appellant for complaints of pain in her low back, right elbow, right ankle, and right knee after she fell on her right side on July 22, 2019. He found that she had decreased range of motion of the back, hip, and right knee secondary to the fall with resulting myofascial pain syndrome of the lumbar spine due to pain and lumbar degenerative joint

⁷ See *R.B.*, Docket No. 22-0713 (issued July 26, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.S.*, Docket No. 21-0673 (issued October 10, 2021).

⁸ See *K.B.*, Docket No. 17-0682 (issued July 24, 2017); *B.S.*, Docket No. 15-0002 (issued February 27, 2015); *Earl David Seale*, 49 ECAB 152 (1997).

⁹ *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *P.J.*, Docket No. 18-1738 (issued May 17, 2019); *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

¹⁰ *R.G.*, Docket No. 21-1238 (issued May 9, 2022); *M.M.*, Docket No. 20-1557 (issued November 3, 2021).

disease, right gluteus medius tendinitis, right knee meniscal derangement, and diabetic neuropathy. Dr. Ng, however, did not provide any rationale for his findings. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition has an employment-related cause.¹¹ Therefore, this report is insufficient to meet appellant's burden of proof to establish expansion of her claim.

On August 26, 2019 Dr. Venzen diagnosed neck and low back sprain due to a July 22, 2019 employment injury. She failed, however, to provide any rationale supporting his finding of cervical sprain due to appellant's fall on July 22, 2019; consequently, her report is insufficient to establish claim expansion.¹²

On August 21, 2019 Dr. Parker reviewed the history of appellant sustaining pain in her back, elbow, and right ankle after an injury at work. He diagnosed right-sided lumbago/sciatica, other intervertebral disc degeneration of the lumbosacral region, spondylosis of the lumbar spine without myelopathy, a sprain of the medial collateral ligament of the right knee, and right ankle pain. Dr. Parker noted that what appellant originally described as right hip pain was low back pain and right sciatica. He advised that her lumbar spine was an additional affected body part. Dr. Parker did not, however, specifically attribute any of the diagnosed conditions to the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ Therefore, these reports are insufficient to establish that appellant's claim should be expanded to include additional conditions.

In a form report dated August 26, 2019, Dr. Parker diagnosed back and neck sprain. In a progress report dated September 5, 2019, he evaluated appellant for neck, back, and right shoulder pain after a work accident. On September 17, 2019 Dr. Parker diagnosed right-sided lumbago/sciatic, a lumbar HNP, unspecified internal derangement of the right knee. In a December 12, 2019 progress report, he discussed appellant's complaints of continued back and right leg pain after an employment injury and diagnosed an HNP at L5-S1. In progress reports dated July 2, 2020 through August 13, 2020, Dr. Parker provided multiple diagnoses, including cervicgia without disc disorder, right lumbago/sciatica, a lumbar HNP, right impingement syndrome, and a right medial meniscal tear. On August 13, 2020 he noted that the MRI scan showed disc collapse and degeneration at L4-5 and L5-S1 with stenosis and an HNP at L5-S1. While Dr. Parker discussed appellant's history of an employment injury, he failed to specifically relate the diagnosed conditions to the accepted July 22, 2019 employment injury. As noted, the Board has held that medical evidence that fails to offer an opinion regarding the cause of a diagnosed condition is of no probative and thus these reports are insufficient to establish claim expansion.¹⁴

On October 2, 2019 Dr. Kirschen indicated that appellant had a history of pain in the right lumbar spine following a July 22, 2019 employment injury. He diagnosed lumbar

¹¹ *M.M.*, *id.*; *S.C.*, Docket No. 21-0263 (issued August 24, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹² *Id.*

¹³ *See L.T.*, Docket No. 19-1794 (issued October 2, 2020); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

radiculitis/radiculopathy. In a report dated December 17, 2019, Dr. Dadashev advised that appellant had low back pain after an employment injury. He diagnosed disc recess, collapse, degeneration, and spondylolisthesis with stenosis at L4 to S1. On July 13, 2020 Dr. McCulloch discussed appellant's history of a July 22, 2019 employment injury and diagnosed right knee patellofemoral condyle damage, meniscus tear, and prepatellar bursitis. While these physicians discussed appellant's history of injury, they did not specifically address the cause of the diagnosed opinions or provide an opinion on the relevant issue of whether appellant's claim should be expanded to include additional conditions.¹⁵ Thus, these reports are of no probative value.¹⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰

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.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for authorization of lumbar and right knee surgery.

As noted, the evidence must establish that the requested surgery is both medically warranted and causally related to the accepted employment injury. Appellant has not submitted

¹⁵ See *S.D.*, Docket No. 21-0085 (issued August 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *J.M.*, Docket No. 18-0853 (issued March 9, 2020).

¹⁶ *Supra* note 13.

¹⁷ *Supra* note 2.

¹⁸ 5 U.S.C. § 8103; see *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

¹⁹ 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).

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

²¹ See *P.S.*, Docket No. 20-0075 (issued July 12, 2021).

sufficient medical evidence to support that her accepted July 22, 2019 employment injury necessitated surgery on her lumbar spine or right knee.

Dr. Parker, on December 12, 2019, diagnosed an L5-S1 HNP and requested authorization for a laminectomy and discectomy at L5-S1. He continued to submit reports requesting authorization for back surgery and provided diagnoses that included a lumbar HNP, intervertebral disc displacement, and lumbar stenosis. On January 14, 2020 Dr. Parker advised that appellant required a posterior lumbar interbody fusion at L4-5 and L5-S1 as a result of a fall at work. On March 5, 2020 he diagnosed a right knee torn medial meniscus and recommended surgery on both the lumbar spine and right knee. Dr. Parker submitted similar progress reports throughout 2020. As previously discussed, however, he did not provide medical rationale explaining how the additional back and right knee conditions that necessitated surgery were causally related to the accepted July 22, 2019 employment injury.²² The Board has held that conclusory opinions are insufficient to meet a claimant's burden of proof.²³ Consequently, Dr. Parker's report are insufficient to establish that the requested surgical procedures were causally related to the accepted employment injury.²⁴

On December 17, 2019 Dr. Dadashev obtained a history of appellant experiencing low back pain after an injury at work. He diagnosed disc recess at L4 to S1, degeneration, and spondylolisthesis with stenosis. Dr. Dadashev noted that appellant wanted to proceed with a lumbar interbody fusion from L4 to S1. He did not, however, specifically address whether the surgery was medically necessary or whether it was warranted due to the accepted employment injury, and thus his report is insufficient to establish that the requested surgical procedures should be authorized and, therefore, is of no probative value.²⁵

On July 13, 2020 Dr. McCulloch discussed appellant's history of a July 22, 2019 employment injury to her right knee. He diagnosed patellofemoral condyle damage, meniscus tear, and prepatellar bursitis and recommended surgery. On October 12, 2020 Dr. McCulloch noted that appellant had continued complaints of right knee pain a year after her July 22, 2019 employment injury. He requested authorization for a right knee meniscal debridement. Dr. McCulloch, however, failed to provide medical rationale explaining how the requested surgery was necessary to treat appellant's accepted MCL sprain of the right knee or address how the additional conditions of patellofemoral condyle damage, a meniscus tear, and prepatellar bursitis were causally related to the accepted July 22, 2019 employment injury. Consequently, his report lacks probative value regarding the issue of whether the requested procedure was medically necessary due to the accepted employment injury.²⁶

²² See *P.S.*, Docket No. 20-0075 (issued July 12, 2021).

²³ *J.O.*, Docket No. 19-0326 (issued July 16, 2019).

²⁴ *P.S.*, *supra* note 22; *M.M.*, Docket No. 19-0563 (issued August 1, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

²⁵ See *supra* note 17; See also *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

²⁶ *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.M.*, *supra* note 24; *N.G.*, *supra* note 24.

The only limitation on OWCP's authority to authorize medical treatment is one of reasonableness.²⁷ As none of the medical evidence explained how either the proposed right knee or lumbar surgery was medically necessary and causally related to the accepted conditions under this claim, the Board finds that OWCP acted reasonably in denying appellant's request for surgical authorization.

LEGAL PRECEDENT -- ISSUE 3

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.²⁸ 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.²⁹

OWCP's procedures discuss the evidence necessary if recurrent disability for work is alleged within 90 days of return to duty.³⁰ It provides that the claimant "is required to produce evidence establishing that the claimed disability is causally related to the accepted condition(s)," and that the focus is on disability rather than causal relationship of the accepted condition to the employment injury.³¹

The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties, which the employee cannot perform, and demonstrate objective medical findings that form the basis for the renewed disability from work.³²

ANALYSIS -- ISSUE 3

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability beginning September 30, 2019 causally related to her accepted July 22, 2019 employment injury.

In progress reports dated September 17, 2019 through December 3, 2020, Dr. Parker provided numerous diagnoses, including right-sided lumbago/sciatic, an HNP at L5-S1, a torn right medial meniscus, lumbago/sciatica, a right rotator cuff sprain, internal derangement of the right

²⁷ *Supra* note 19.

²⁸ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

²⁹ *Id.*

³⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5a (June 2013); *see also K.D.*, Docket No. 19-0628 (issued November 5, 2019); *B.R.*, Docket No. 18-0339 (issued January 24, 2019).

³¹ *Id.*

³² *See M.H.*, Docket No. 19-1552 (issued February 2, 2021); *A.B.*, Docket No. 18-0978 (issued September 6, 2019); *J.F.*, 58 ECAB 124 (2006).

knee, osteoarthritis of the right knee, and lumbar stenosis. He found that appellant was disabled from employment. In these reports, however, Dr. Parker did not attribute the cause of the disability to the accepted conditions of lumbar sprain and a sprain of the MCL of the right knee. As such, his reports fail to establish a work-related recurrence of disability.³³

In a May 19, 2020 progress report, Dr. Parker diagnosed right-sided lumbago/sciatica, a lumbar HNP, a right rotator cuff capsule sprain, a sprain of the MCL of the right knee, and a complex tear of the right medial meniscus. He indicated that the injury had also affected appellant's right shoulder. Dr. Parker opined that she was totally disabled and that she required surgery. While he noted the accepted condition of an MCL sprain of the right knee, he did not address whether this specific condition result in appellant's disability from employment. As Dr. Parker's opinion was conclusory in nature and failed to find that the accepted conditions of a lumbar sprain and MCL sprain caused her claimed disability, it is insufficient to meet her burden of proof.³⁴

Appellant submitted CA-17 form reports from Dr. Parker. These reports, however, do not contain an opinion on whether the accepted employment injury caused disability from employment; consequently, they are of no probative value on the issue of causal relationship.³⁵

On October 2, 2019 Dr. Kirschen diagnosed lumbar radiculitis/radiculopathy and found that appellant could return to work. Therefore, his opinion does not support disability from employment.

On appeal counsel argues that appellant's recurrence of disability was clearly compensable as it occurred within 90 days of her return to work. As discussed above, however, she has not met her burden of proof to show that her disability resulted from the accepted employment injury. OWCP properly developed the recurrence of disability by advising appellant to submit medical evidence supporting disability due to her accepted employment injury. As the medical evidence of record is insufficient to establish a recurrence of disability commencing September 30, 2019, she has not met her burden of proof.

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 her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her July 22, 2019 employment injury. The Board also finds that OWCP properly denied her request for authorization of lumbar and right knee surgery. The Board further finds that appellant has not met her burden of proof to

³³ See *K.R.*, Docket No. 19-0413 (issued August 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

³⁴ See *B.R.*, Docket No. 20-0050 (issued March 4, 2021); *K.D.*, Docket No. 19-0628 (issued November 5, 2019).

³⁵ *Supra* note 17; see also *S.G.*, Docket No. 20-0828 (issued January 6, 2022); *L.S.*, Docket No. 20-0570 (issued December 15, 2020).

establish a recurrence of disability beginning September 9, 2019 causally related to her accepted July 22, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2023
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