

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

---

R.N., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
PALO ALTO VA MEDICAL CENTER, )  
Palo Alto, CA, Employer )

---

**Docket No. 22-0786  
Issued: April 18, 2023**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 23, 2022 appellant filed a timely appeal from a January 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the January 27, 2022 decision, appellant submitted additional evidence to OWCP. 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 recurrence of the need for medical treatment commencing January 1, 2021, causally related to his accepted October 1, 2020 employment injury.

## **FACTUAL HISTORY**

On October 1, 2020 appellant, then a 41-year-old physical therapist, filed a traumatic injury claim (Form CA-1) alleging that on October 1, 2020 he sustained a right “gastroc strain” when he hopped on one leg as part of a demonstration to a patient, and felt a pop and pain in the medial head of his right calf while in the performance of duty.

In a November 23, 2020 work status report, Dr. Rose V. Alapat, a Board-certified physiatrist and rehabilitation specialist, released appellant to full-duty work.

In a work status report dated February 1, 2021, Dr. Alapat noted diagnoses of right gastrocnemius strain and right knee sprain. She reported that appellant “was able to return to work at full capacity.”

In a report dated March 8, 2021, Dr. Alapat noted the October 1, 2020 date of injury and recounted appellant’s complaints of persistent right knee instability and anterior knee pain. She indicated that his tibial tubercle still appeared enlarged, swollen, and tender to touch. Dr. Alapat diagnosed right gastrocnemius strain and right knee sprain. She reported that appellant’s knee buckling could be due to a weakening of the gastrocnemius from a large tear or from meniscal derangement. Dr. Alapat also noted that she suspected that altered gait mechanics may have exacerbated patellar tendinitis. She provided additional progress reports dated April 30 through July 12, 2021, which she continually noted diagnoses of right gastrocnemius strain and right knee sprain.

In a report dated June 18, 2021, Dr. Theodore Scott Bucklin, a Board-certified orthopedic surgeon, noted the October 1, 2020 date of injury. On examination of appellant’s right knee, he observed prominent tibial tubercle and tenderness to palpation at the distal patella tendon. Dr. Bucklin diagnosed right patellar tendon tendinitis and Osgood Schlatter’s disease of the right knee.

On July 12, 2021 appellant filed a notice of recurrence (Form CA-2a) alleging the recurrent need for additional medical treatment for his right leg conditions beginning January 1, 2021. He indicated that a month or two after returning to work without restrictions, his right tibial tuberosity started to become painful and tender to touch. Appellant also asserted that because of his right calf tear, his Osgood Schlatter’s symptoms became exacerbated.

In a state workers’ compensation form report dated August 23, 2021, Dr. Alapat noted diagnoses of right gastrocnemius strain, tendinitis of right patellar tendon, and Osgood Schlatter’s disease of the right knee. She advised that appellant could work full duty that day.

By decision dated August 26, 2021, OWCP accepted appellant's claim for right lower leg strain of the other muscle and tendons of the posterior muscle group, right knee sprain, and right knee patellar tendinitis.

OWCP received a progress report dated February 1, 2021 by Dr. Alapat who described the October 1, 2020 employment incident and noted appellant's complaints of persistent anterior right knee and calf pain. On physical examination, Dr. Alapat observed that his right tibial tuberosity appeared enlarged and noted tenderness to palpation of the patellar tendon. She diagnosed right gastrocnemius strain and right knee sprain. Dr. Alapat opined that appellant's altered gait may have exacerbated patellar tendinitis. She recommended that he continue working full duty.

In a report and work status note dated October 4, 2021, Dr. Alapat provided a history of injury and conducted an examination. She diagnosed right gastrocnemius strain, right patellar tendon tendinitis, and Osgood Schlatter's disease of the right knee.

On November 12, 2021 appellant underwent patella tendon debridement surgery and stopped work. The operative report noted diagnosis of Osgood Schlatter's disease of the right knee.

In report and work status notes dated November 16 and 30, 2021, Dr. Alapat diagnosed right gastrocnemius strain, right patellar tendon tendinitis, and Osgood Schlatter's disease of the right knee. She held appellant off work from November 12 through December 7, 2021 due to postoperative recovery.

In a recurrence claim development letter dated November 30, 2021, OWCP provided a definition of recurrence of disability and informed appellant of the deficiencies of his claim. Additionally, it advised him of the type of factual and medical evidence necessary to establish his claim, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Appellant submitted additional reports by Dr. Alapat dated December 7 through 21, 2021. She noted the October 1, 2020 date of injury and provided examination findings. Dr. Alapat reported that appellant had started physical therapy and was healing well after surgery. She diagnosed right gastrocnemius strain, right knee strain, and Osgood Schlatter's disease of the right knee. Dr. Alapat recommended that appellant return to modified-duty work on December 8, 2021.

By decision dated January 27, 2022, OWCP denied appellant's claim for a recurrence of the need for medical treatment, finding that the medical evidence of record was insufficient to establish that he required additional medical treatment due to a worsening of his accepted work-related conditions without intervening cause.

### **LEGAL PRECEDENT**

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 that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of

any disability, or aid in lessening the amount of any monthly compensation.<sup>3</sup> A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.<sup>4</sup> Continuous treatment for the original condition or injury is not considered a “need for further medical treatment after release from treatment,” nor is an examination without treatment.”<sup>5</sup>

An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.<sup>6</sup> To meet this burden the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.<sup>7</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment commencing January 1, 2021, causally related to his accepted October 1, 2020 employment injury.

Appellant submitted reports dated February 1 through December 21, 2021 by Dr. Alapat. Dr. Alapat did not, however, offer an opinion on how appellant’s accepted work-related conditions had worsened to the point that he required additional medical treatment after he was released to full duty.<sup>9</sup> Likewise, Dr. Bucklin’s June 18, 2021 report also did not contain an opinion as to why appellant required additional medical treatment for his accepted employment conditions after he was released to full duty. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.<sup>10</sup> Accordingly, these reports are insufficient to establish appellant’s recurrence claim.<sup>11</sup>

---

<sup>3</sup> 5 U.S.C. § 8103(a).

<sup>4</sup> 20 C.F.R. § 10.5(y).

<sup>5</sup> *Id.*

<sup>6</sup> See *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

<sup>7</sup> *T.B.*, Docket No. 18-0672 (issued November 2, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

<sup>8</sup> *T.B.*, *id.*; *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988); see also *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

<sup>9</sup> See *B.A.*, Docket No. 22-0213 (issued July 26, 2022); *K.B.*, Docket No. 21-1038 (issued February 28, 2022).

<sup>10</sup> See *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988). See also *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *M.F.*, Docket No. 21-1221 (issued March 28, 2022).

As the medical evidence of record is insufficient to establish a recurrence of the need for medical treatment causally related to the accepted October 1, 2020 employment injury, the Board finds that appellant has not met his 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 his burden of proof to establish a recurrence of the need for medical treatment commencing January 1, 2021, causally related to his accepted October 1, 2020 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2023  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board