

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

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**L.M., Appellant**

**and**

**U.S. POSTAL SERVICE, NEWBURG POST  
OFFICE, Cleveland, OH, Employer**

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**Docket No. 23-1040  
Issued: December 29, 2023**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 1, 2023 appellant, through counsel, filed a timely appeal from a July 12, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include left knee substantial aggravation of lateral meniscus tear, causally related to the accepted October 28, 2021 employment injury.

## **FACTUAL HISTORY**

On November 1, 2021 appellant, then a 36-year-old postal collection and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on October 28, 2021 he sustained a left knee injury when he tripped on the bar that closed the back door of his vehicle and he hit his left knee on a tray while in the performance of duty. He stopped work that same day.

On November 15, 2021 OWCP accepted the claim for contusion of the left knee.

A December 20, 2021 magnetic resonance imaging (MRI) scan of the left knee read by Dr. Michael Paley, Board-certified in diagnostic radiology, revealed that appellant was postlateral meniscectomy and that he had arthritic changes of the lateral compartment, with prominent subchondral cystic changes and edema, and flattening of the articular surface of the lateral femoral condyle. Dr. Paley noted that a developing avascular necrosis (AVN) was difficult to fully exclude and there was an intrasubstance signal in the medial meniscus without articular surface tear.

In a February 14, 2022 report, Dr. Louis Keppler, a Board-certified orthopedic surgeon, noted appellant's history of injury. He noted that appellant's prior history included a remote lateral meniscectomy and related that he had done well with that procedure and was able to work as a mail delivery worker without difficulties until his most recent incident. Dr. Keppler related that appellant indicated his pain was in the peripatellar region. He noted that appellant did not have an effusion, that at the time of his injury the knee was swollen, and that the swelling had resolved, but the pain persisted. Dr. Keppler related that a recent MRI scan revealed evidence of a previous lateral meniscectomy and some changes of the lateral femoral condyle. He opined that the most recent injury was not reflected in the MRI scan of the posterior aspect of the lateral femoral condyle and that the injury was more likely a deep soft tissue contusion with possible chondral injury to the patellofemoral joint. Dr. Keppler gave appellant an intra-articular injection. He explained that appellant might require an arthroscopic examination of the joint to deal with post-traumatic plica or injury to the articular surface of the patellofemoral condyle.

In a report dated March 14, 2022, Dr. Teresa Griffin, Board-certified in family practice, provided an assessment of left knee contusion, and left knee strain. She reviewed appellant's recent left knee MRI scan and noted a truncated lateral meniscus from a prior surgery; thinning of the cartilage of the lateral femoral condyle; subchondral cystic change; as well as edema of the lateral femoral condyle with flattening of the lateral femoral condyle, suggesting avascular necrosis; and thinning of the articular cartilage of the lateral tibial plateau.

Appellant was evaluated again on April 11, 2022 by Dr. Keppler. Dr. Keppler noted appellant's physical examination findings. He related that he was concerned that appellant may have sustained an injury to his articular cartilage of the patellofemoral joint and that he may have a post-traumatic plica associated with the deep contusion of the retro patellar fat pad, or that he

may have further injured his lateral joint and meniscus with hyperflexion associated with the injury.

In a June 1, 2022 report, Dr. George Bertalan, an internist, noted appellant's history of injury and explained that appellant continued to have uncontrolled pain. He requested that acceptance of appellant's claim be expanded to include the diagnosis of substantial aggravation of the underlying left meniscus tear, which he opined was ongoing and was visualized on appellant's recent MRI scan.

In a June 21, 2022 report, Dr. Muyuan Ma, a family medicine specialist, noted the history of injury and explained that appellant continued to have uncontrolled pain. She reiterated that findings of appellant's recent MRI scan, as reported by Dr. Griffin. Dr. Ma diagnosed contusion of left knee, initial encounter, and left knee sprain and other meniscus derangements, unspecified lateral meniscus. She also noted that a request to expand acceptance of the claim to include lateral meniscus tear, substantial aggravation was pending.

On August 3, 26, and October 25, 2022 appellant, through counsel, requested that acceptance of the claim be expanded to include substantial aggravation of the lateral meniscus tear of the left knee.

On November 7, 2022 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. David K. Halley, a Board-certified orthopedic surgeon, for a second opinion examination.

In a November 29, 2022 report, Dr. Halley noted appellant's history and treatment. He examined appellant and found "exquisite" tenderness to palpation over the lateral joint line. Dr. Halley noted that there were no current objective findings of the accepted condition of contusion of the left knee. He noted that normally a soft tissue contusion would resolve in a matter of 6 to 12 weeks, which appeared to be the case. Dr. Halley further explained that there was indirect evidence that it was more than a simple contusion, citing the MRI scan two months later, which revealed edema along the flattening of the articular surface of the lateral femoral condyle. He opined that the force of the injury was significant enough to cause edema in the femoral condyle. Dr. Halley explained that AVN, if fully developed, would not improve, but only progress and lead to further arthritic changes in the lateral femoral condyle, which he opined explained the objective findings and ongoing symptomatology. He further noted that AVN was not attributed to the accepted contusion, which was a self-limiting, soft tissue condition, and that appellant did not have residuals from the left knee contusion.

Dr. Halley opined that based upon the MRI scan evidence, appellant's claim should be expanded to include left knee aggravation of other unspecified arthritis. He explained that the diagnosis provided by Dr. Bertalan of substantial aggravation of left lateral meniscus tear was not correct. Dr. Halley noted that the code referred to by Dr. Bertalan specifically states other derangement, unspecified lateral meniscus, rather than substantial aggravation of an underlying meniscal tear. Additionally, he explained that he did not have any idea what Dr. Bertalan meant by substantial aggravation of the underlying meniscal tear. Dr. Halley opined that the only thing he could think of would be that it was a re-tear of the residual discoid meniscus of the lateral discoid meniscus of the left knee; there was no evidence on the MRI scan of any additional tear to the

lateral discoid meniscus of the left knee. Also, for the requested additional condition of left knee strain, he explained that this diagnosis was a soft tissue condition which would resolve in a matter of 6 to 12 weeks. Dr. Halley opined that appellant reached maximum medical improvement (MMI) for the contusion; however, the work-related aggravation of other specified arthritis of the left knee was not at MMI. He further opined that the development of AVN could be a result of the work injury; however, AVN also can be caused by obesity, and he noted that appellant was morbidly obese and also had nonwork symptoms in the right knee. Dr. Halley provided work restrictions in a work capacity evaluation (Form OWCP-5c).

On December 21, 2022 OWCP expanded the acceptance of appellant's claim to include left knee other specified arthritis, and left knee strain. It noted that the contusion of the left knee was resolved.

In a separate decision also dated December 21, 2022, OWCP denied expansion of the acceptance of appellant's claim to include an additional diagnosis of left knee substantial aggravation of lateral meniscus tear, causally related to the accepted October 28, 2021 employment injury.

On January 4, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In reports dated January 23 and 30, February 8, March 9, 23, and 29, and May 30, 2023, Dr. Ma diagnosed other specified arthritis of the left knee, strain of unspecified muscle and tendon of the lower left leg, and contusion of the left knee. She added that appellant was having difficulty mentally dealing with the possibility that he may require knee replacement surgery.

In a report dated March 2, 2023, Dr. Keppler related that he was concerned that appellant's chondral injury may have progressed to post-traumatic arthritis. He recommended that appellant undergo another MRI scan of the left knee to direct further care.

A March 8, 2023 MRI scan of the left knee read by Dr. Robert J. Steffy, a diagnostic radiologist, revealed weight bearing lateral femoral condyle which may represent sequela of impaction fracture or may be post-surgical, bone marrow edema within the posterior non-weightbearing lateral femoral condyle that was likely degenerative given the tiny overlying full thickness cartilage defect, and post-surgical changes of partial meniscectomy through the posterior horn of the medial meniscus.

In a report dated April 14, 2023, Dr. Daniel Zanotti, an orthopedic surgeon, noted that appellant indicated that he had undergone a prior meniscectomy during which 80 percent of his meniscus was removed. He related that x-ray evaluation of appellant's left knee revealed moderate to advanced osteoarthritis of the left knee, worse laterally.

On June 8, 2023 a telephonic hearing was held before a representative of OWCP's Branch of Hearings and Review.

In reports dated June 19, 26, and 30, 2023, Dr. Ma requested that the acceptance of appellant's claim be expanded to include right knee sprain, anxiety, and depression. She related that appellant's left leg strain caused him to develop a flow through condition of right knee strain.

By decision dated July 12, 2023, OWCP's hearing representative affirmed the December 21, 2022 decision. The hearing representative found that the weight of the evidence was accorded to the second opinion physician, Dr. Halley, who did not support the requested expansion of the acceptance of the claim to include left knee substantial aggravation of the lateral meniscus tear.

### **LEGAL PRECEDENT**

Where 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.<sup>3</sup>

To establish causal relationship, the employee must submit rationalized medical opinion evidence.<sup>4</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include left knee substantial aggravation of lateral meniscus tear as causally related to the accepted October 28, 2021 employment injury.

OWCP initially received multiple reports from appellant's treating physician Dr. Keppler, who did not diagnose left knee aggravation of lateral meniscus tear. In his February 14, 2022 report, Dr. Keppler found that appellant's work injury was not reflected in the MRI scan of the posterior aspect of the lateral femoral condyle and that the injury was more likely a deep soft tissue contusion with possible chondral injury to the patellofemoral joint. He explained that appellant might require an arthroscopic examination of the joint to deal with a post-traumatic plica or injury to the articular surface of the patellofemoral condyle. In his April 11, 2022 report, Dr. Keppler noted that he was concerned that appellant may have sustained an injury to his articular cartilage of the patellofemoral joint and that he may have a post-traumatic plica associated with the deep contusion of the retro patellar fat pad, or that he may have further injured his lateral joint and meniscus with hyperflexion associated with the injury. In a report dated March 2, 2023, he related that he was concerned that appellant's chondral injury may have progressed to post-traumatic arthritis. In so far as Dr. Keppler related that appellant may have further injured his left meniscus,

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<sup>3</sup> See *K.B.*, Docket No. 22-0842 (issued April 25, 2023); see *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>4</sup> See *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

<sup>5</sup> See *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

<sup>6</sup> *Id.*

the Board finds that his opinion is speculative. Dr. Keppler did not provide a firm diagnosis of left knee meniscal tear aggravation.<sup>7</sup>

In a report dated March 14, 2022, Dr. Griffin diagnosed left knee contusion, and left knee strain. In multiple reports commencing June 21, 2022, Dr. Ma diagnosed contusion of left knee, initial encounter, and left knee sprain and other meniscus derangements, unspecified lateral meniscus. She also noted that a request to expand acceptance of the claim to include lateral meniscus tear, substantial aggravation was pending, however, she did not specifically diagnose this condition. On April 14, 2023 Dr. Zanotti related that x-ray evaluation of appellant's left knee revealed moderate-to-advanced osteoarthritis of the left knee, worse laterally. The Board finds that these physicians did not diagnose aggravation of the left knee meniscal tear, therefore their reports do not support acceptance of this diagnosis.

In a June 1, 2022 report, Dr. Bertalan requested expansion of the acceptance of the claim to include left knee substantial aggravation of the underlying meniscus tear. However, he offered no rationalized medical opinion, which explained the basis of his diagnosis and causal relationship to the accepted October 28, 2021 employment injury. Medical opinion evidence must offer a rationalized explanation of how the specific employment incident or work factors, physiologically caused the diagnosed condition.<sup>8</sup> As Dr. Bertalan did not explain how the accepted employment injury caused or contributed to the additional diagnosis of substantial aggravation of lateral meniscus tear of left knee, his report is therefore, insufficient to establish causal relationship.

In a November 29, 2022 report, the second opinion physician, Dr. Halley specifically disagreed with Dr. Bertalan's diagnosis of substantial aggravation of left lateral meniscus tear. He noted that the diagnosis code referred to by Dr. Bertalan referred to other derangement, unspecified lateral meniscus, rather than substantial aggravation of an underlying meniscal tear. Dr. Halley explained that it was therefore unclear what Dr. Bertalan meant by substantial aggravation of the underlying meniscal tear. He further noted that if Dr. Bertalan was referring to a re-tear of the residual discoid meniscus of the lateral discoid meniscus of the left knee, there was no evidence on the MRI scan of any additional tear to the lateral discoid meniscus of the left knee. The Board notes that the second opinion physician, Dr. Halley, explained his findings, provided a rationalized opinion, and specifically disagreed with Dr. Bertalan's diagnosis of substantial aggravation of lateral meniscus tear of left knee. As such, the Board finds that the opinion of Dr. Halley constitutes the weight of the medical evidence.<sup>9</sup>

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<sup>7</sup> *B.B.*, Docket No. 21-0284 (October 5, 2022); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> *See G.R.*, Docket No. 21-1196 (issued March 16, 2022); *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>9</sup> *See supra* note 5.

OWCP also received diagnostic studies of appellant's left knee. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment injury, and a diagnosed condition.<sup>10</sup>

The Board finds that appellant has not submitted rationalized medical evidence sufficient to meet his burden of proof to expand acceptance of his claim to include an additional diagnosis of left knee substantial aggravation of lateral meniscus tear, causally related to the accepted October 28, 2021 employment injury.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to expand acceptance of his claim to include left knee substantial aggravation of lateral meniscus tear as causally related to the accepted October 28, 2021 employment injury.

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<sup>10</sup> *M.E.*, Docket No. 18-0940 (issued June 11, 2019); *V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 12, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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