

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

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| P.T., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0841 |
| |) | Issued: January 26, 2023 |
| NATIONAL OCEANIC & ATMOSPHERIC |) | |
| ADMINISTRATION, NATIONAL FISHERIES |) | |
| SERVICE, ALASKAN OBSERVERS, INC., |) | |
| Seattle, WA, Employer |) | |
| |) | |

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 9, 2022 appellant, through counsel, filed a timely appeal from a January 31, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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 an 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that his claim should be expanded to include left knee arthritis causally related to his accepted August 16, 2014 employment injury; and (2) whether appellant has met his burden of proof to establish a recurrence of disability from October 10, 2015 through March 29, 2016 causally related to his accepted August 16, 2014 employment injury.

FACTUAL HISTORY

On September 2, 2014 appellant, then a 43-year-old North Pacific groundfish observer, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2014 he injured his left knee, ankle, and foot when his boat hit a wave and he was thrown forward while in the performance of duty. OWCP accepted the claim for left knee and ankle sprains. Appellant stopped work on September 14, 2014. OWCP paid him wage-loss compensation on the supplemental rolls for intermittent disability from October 18, 2014 through June 26, 2015. Appellant subsequently returned to full-duty work on July 6, 2015.

An October 2, 2014 magnetic resonance imaging (MRI) scan of the left knee showed no meniscus tear and a ganglion cyst from the posterior joint line that may be related to an otherwise unremarkable anterior cruciate ligament (ACL). An October 12, 2015 MRI scan of the left ankle revealed a small amount of fluid possibly reflecting tenosynovitis and mild-to-moderate degenerative joint disease of the medial midfoot. A January 22, 2016 MRI scan of the left knee revealed a small ganglion or synovial cyst.

On October 5, 2015 Dr. Scott P. Fielder, a Board-certified orthopedic surgeon, diagnosed a partial tear of the left ACL, a popliteal cyst, and left ankle instability.

In a progress report dated October 13, 2015, Dr. Fielder evaluated appellant for pain in his left ankle and knee. He diagnosed left knee and ankle pain and noted that an MRI scan of the left ankle showed possible tenosynovitis and mild-to-moderate medial midfoot degenerative joint disease. In a work status report of even date, Dr. Fielder diagnosed ankle tendinitis and held appellant off work for five weeks. He provided a similar progress report on October 20, 2015. In progress reports dated November 3, 10, and 18, 2015, Dr. Fielder additionally diagnosed arthritis of the knee.

On April 25, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work from October 10, 2015 through March 29, 2016.

In a development letter dated May 10, 2016, OWCP advised appellant of the definition of a recurrence of disability and requested that he submit additional medical evidence. It afforded him 30 days to submit the requested information.

Thereafter, OWCP received an October 26, 2015 report from Dr. Brian T. Damitz, a podiatrist. Dr. Damitz reviewed appellant's history of an August 16, 2014 employment injury when he fell on his knee when a wave flipped him over. He diagnosed left tibialis posterior tendinitis and peroneal tendinitis of the left lower extremity. Dr. Damitz indicated that he would "defer to Dr. Fielder" regarding appellant's ability to work. In a work status report of even date,

he found that appellant should not work. Dr. Damitz provided a similar progress report on November 3 and 17, 2015.

In a May 27, 2016 statement, appellant related that because his condition had been misdiagnosed, his left knee “gave out more [and] the left ankle shifted more.”

By decision dated September 23, 2016, OWCP denied appellant’s recurrence claim, finding the medical evidence of record was insufficient to establish a material change or worsening of his accepted conditions from October 10, 2015 through March 29, 2016.

Appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

In a report dated October 17, 2016, Dr. Fielder discussed appellant’s history of an August 16, 2014 hyperflexion injury to his left knee working on a deck of a boat. He diagnosed a partial ACL tear causing a parameniscal cyst. Dr. Fielder attributed the ACL tear to appellant’s employment injury.

On February 1, 2017 OWCP referred appellant for a second opinion examination to determine the current diagnoses causally related to the accepted employment injury, whether he had continued residuals, and the extent of any resulting disability. It further requested an opinion regarding the extent of any permanent impairment.

A telephonic hearing was held on April 28, 2017.

By decision dated June 9, 2017, OWCP’s hearing representative set aside the September 23, 2016 decision regarding appellant’s recurrence claim and remanded the case for OWCP to obtain and consider the report of the second opinion physician.

Thereafter, OWCP received a June 7, 2017 report from Dr. Sukhjit S. Purewal, a Board-certified orthopedic surgeon, serving as the second opinion physician. Dr. Purewal noted his review of appellant’s history of injury and the medical record. He found that appellant had no residuals of his left ankle or knee sprains; however, he determined that appellant had also sustained tenosynovitis of the posterior tibial tendon and peroneal tendon of the left ankle and foot due to the accepted August 16, 2014 injury. Dr. Purewal noted that appellant had returned to his usual employment without restrictions.

On March 21, 2018 OWCP expanded its acceptance of the claim to include tenosynovitis of the posterior tibial and peroneal tendons of the left foot and ankle.

By decision dated April 26, 2018, OWCP denied appellant’s recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability from October 10, 2015 through March 29, 2016 causally related to his accepted employment injury.

On May 2, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

Following a preliminary review, by decision dated August 10, 2018, OWCP’s hearing representative vacated the April 26, 2018 decision and remanded the case for OWCP to request a

supplemental opinion from second opinion physician Dr. Purewal regarding whether appellant was totally disabled from work at any point during the period October 10, 2015 through March 29, 2016 and whether he had sustained any additional conditions due to the accepted employment injury.

On December 19, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, to Dr. Nathan A. Fogt,³ an osteopath, for a second opinion examination regarding whether appellant was totally disabled from work during the period October 10, 2015 through March 29, 2016.⁴

In a report dated January 8, 2019, Dr. Fogt discussed appellant's accepted work injury and provided his review of the medical evidence. He opined that the popliteal cyst was not causally related to the August 2014 employment injury and that there were no objective findings supporting the diagnosis of a torn ACL. Dr. Fogt concluded that the accepted conditions of a left knee sprain, left ankle sprain, and tenosynovitis of the posterior tibialis tendon and peroneal tendon would have "resolved within several weeks to months post injury." He opined that the objective findings during the claimed period of disability "would have allowed the claimant to return to work with restrictions at a minimum."

By decision dated January 30, 2019, OWCP denied appellant's claim for a recurrence of disability from October 10, 2015 to March 29, 2016 causally related to his accepted employment injury.⁵ It noted that Dr. Fogt had not found any additional employment-related left knee conditions.

On February 6, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on June 13, 2019. By decision dated August 28, 2019, OWCP's hearing representative set aside the January 30, 2019 decision, finding a conflict between the medical opinions of Dr. Fielder and Dr. Fogt regarding whether appellant sustained additional left lower extremity conditions due to his accepted employment injury, and whether he was totally disabled from work during the period October 10, 2015 through March 29, 2016. The hearing representative remanded the case for OWCP to refer appellant for an impartial medical examination.

On September 12, 2019 OWCP referred appellant to Dr. James Kemmler, a Board-certified orthopedic surgeon, serving as an impartial medical examiner (IME). It requested that he address whether the August 16, 2014 employment injury caused a partial ACL tear with a resulting cyst,

³ Dr. Purewal was no longer available to provide a supplemental report as he had retired.

⁴ The questions posed to the referral physician noted the beginning date of the period of disability as "October 15, 2015." However, this appears to be a typographical error as the Form CA-7 noted the beginning date as "October 10, 2015."

⁵ The decision noted the beginning date of the period of disability as "October 15, 2015." However, this again appears to be a typographical error as the Form CA-7 noted the beginning date as "October 10, 2015."

an osteochondral lesion of the left knee, post-traumatic left knee changes, or any other condition, and whether the injury caused disability from work during the claimed period.

In a report dated October 13, 2019, Dr. Kemmler discussed appellant's history of injury and provided his review of the medical evidence of record. He found that the accepted employment injury had caused the partial ACL tear with a resulting parameniscal cyst, but that there was no evidence of "any resulting post-traumatic degenerative changes of the left knee." Dr. Kemmler opined that the injury had not caused any progression of any degenerative left lower extremity condition, and that there were no additional diagnoses causally related to the August 16, 2014 employment injury. He found that appellant was disabled from work from the date of injury until July 6, 2015. Dr. Kemmler noted that appellant had tried to return to his usual employment on July 6, 2015, but had worked only two months. He related that the "lack of ability to maintain his full return, in my opinion, is subjective" and that he could not find evidence that "necessitated ongoing disability from his regular job beyond the date of July 6, 2015."

By decision dated October 29, 2019, OWCP again denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability from October 10, 2015 through March 29, 2016 causally related to the accepted employment injury. It further found that he had not established a left knee partial ACL tear, left knee popliteal cyst, or left knee arthritis due to his work injury.

On November 5, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on February 28, 2020.

In a report dated March 17, 2020, Dr. Fielder noted that appellant had received treatment for his ankle tendinitis from November 3, 2015 to March 29, 2016 and that he had partial disability as a result of his injury until that date. He further found that appellant had a ganglion cyst which could be an indication of a lateral meniscal tear and recommended further evaluation of his knee.

By decision dated May 7, 2020, OWCP's hearing representative vacated the October 29, 2019 decision, finding that the report of IME Dr. Kemmler required clarification. He remanded the case for OWCP to obtain a supplemental report from Dr. Kemmler explaining whether appellant's ACL tear and popliteal cyst had healed, providing a rationalized finding regarding whether appellant had sustained left knee arthritis, and addressing whether objective evidence supported that an employment-related condition had resulted in disability beginning October 10, 2015.

On June 17, 2020 OWCP referred appellant to Dr. Kemmler for a supplemental opinion on the issue of whether appellant sustained a recurrence of disability commencing October 10, 2015.

On June 25, 2020, OWCP requested that Dr. Kemmler reevaluate appellant and provide an opinion on the issue of expansion, including whether the August 16, 2014 employment injury caused left knee arthritis.

In a report dated July 7, 2020, Dr. Kemmler opined that appellant had sustained a partial tear of the ACL of the left knee and cystic lesion due to the August 16, 2014 employment injury, noting that a hyperflexion injury to the knee was consistent with these diagnoses. On examination,

he found a stable left knee with no specific tenderness, intact sensation, and no pain with McMurray's testing. Dr. Kemmler further found mild tenderness in the subtalar joint of the foot and a stable ankle. He related that a partial ACL tear does not in and of itself heal, and cystic lesion does not heal directly, and that the issue was whether the conditions caused continued symptoms. Dr. Kemmler opined that the examination findings supported the determination that "the injures have resolved in regard to any ongoing clinical symptomatology." He concluded that the work injury had not caused left knee arthritis. Dr. Kemmler further found that appellant had no further disability from his accepted employment injury after his return to work on July 6, 2015.

On July 27, 2020 OWCP requested that Dr. Kemmler provide another supplemental opinion with rationale explaining his conclusion that the work injury had not caused, aggravated, accelerated, or precipitated left knee arthritis.

In an addendum report dated August 5, 2020, Dr. Kemmler explained that appellant had no significant degenerative changes in the left knee and that the "lack of any significant changes noted post injury and currently" supported the conclusion that appellant had not sustained degenerative changes due to the injury.

On September 2, 2020 OWCP expanded its acceptance of the claim to include a partial left knee ACL tear and left knee cystic lesion.

By decision dated September 2, 2020, OWCP denied appellant's claim for a recurrence of disability for the period October 10, 2015 through March 29, 2016 causally related to his accepted employment injury. It further found that acceptance of his claim should not be expanded to include left knee arthritis.

On September 11, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 22, 2020 report, Dr. Fielder disagreed with Dr. Kemmler's conclusions, noting that appellant had not had a further work-up of his left knee or x-rays. He advised that partial tears of the ACL did not heal and may progress, and that traumatic arthritis was progressive in nature. Dr. Kemmler opined that appellant's return to work was "on a rolling boat out at sea" which did not allow for rest or recovery. He noted that Dr. Damitz found that appellant's traumatic tendinitis had not reached maximum medical improvement until March 29, 2016 and opined that he was entitled to disability for this period.

A telephonic hearing was held on November 16, 2021. Appellant related that he had returned to his usual employment working on a boat in the Bering Sea on July 6, 2015 but continued to have left knee problems. He was unable to get off the boat until September 2015. Dr. Fielder and Dr. Damitz told him to stay off his knee from October 15, 2015 to March 29, 2016. Appellant advised that he experienced severe ankle pain and that work was available for him during the claimed period.

By decision dated January 31, 2022, OWCP's hearing representative affirmed the September 2, 2020 decision.

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ 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.⁸ 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.⁹

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹⁰ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹¹

Where a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that his claim should be expanded to include left knee arthritis causally related to his accepted August 16, 2014 employment injury.

OWCP properly found a conflict in medical opinion between Dr. Fielder, appellant's treating physician, and Dr. Fogt, an OWCP referral physician, regarding whether he had sustained

⁶ *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).

⁷ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *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).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *K.C.*, Docket No. 19-1251 (issued January 24, 2020); *R.M.*, Docket No. 18-1621 (issued August 23, 2019); *R.C.*, 58 ECAB 238 (2006).

¹² *See S.N.*, Docket No. 21-0070 (issued March 9, 2022); *D.S.*, Docket No. 19-1698 (issued June 18, 2020); *K.C.*, *id.*; *V.K.*, Docket No. 18-1005 (issued February 1, 2019).

left knee arthritis due to his accepted work injury. It referred him to Dr. Kemmler for an impartial medical examination to resolve the conflict in medical opinion pursuant to 5 U.S.C. § 8123(a).

In his October 13, 2019 report, Dr. Kemmler found that OWCP should expand its acceptance of appellant's claim to include a partial ACL tear and parameniscal cyst causally related to his accepted work injury. He further determined that there was no evidence showing post-traumatic degenerative changes of the left knee. On July 7, 2020 Dr. Kemmler opined that the employment injury had not caused left knee arthritis. In an August 5, 2020 addendum report, he advised that there was no evidence demonstrating significant arthritic changes of the left knee. Based on the lack of degenerative changes after the injury and currently, Dr. Kemmler opined that appellant had not sustained a degenerative left knee condition.

In situations where the case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹³ The Board finds that Dr. Kemmler provided a well-rationalized opinion based on a complete background, his review of the SOAF and the medical record, and his findings on examination. Dr. Kemmler reached a reasoned conclusion regarding whether the acceptance of appellant's claim should be expanded, noting that there was no evidence supporting a degenerative left knee condition. Thus, his opinion is entitled to the special weight of the medical evidence with regard to the issue of whether the acceptance of appellant's claim should be expanded to include left knee arthritis.¹⁴

In a September 22, 2020 report, Dr. Fielder disagreed with Dr. Kemmler's conclusions. He advised that traumatic arthritis could progress, and that appellant should have x-rays. However, Dr. Fielder failed to provide a reasoned opinion relating the diagnosed traumatic arthritis to the accepted employment injury. Further, he was on one side of the conflict resolved by Dr. Kemmler. The Board has held that reports from a physician who was on one side of a medical conflict are generally insufficient to overcome the special weight accorded to the IME, or to create a new conflict.¹⁵ Dr. Fielder's report is thus insufficient to overcome the special weight accorded to Dr. Kemmler's opinion, or to create a new conflict in medical opinion.¹⁶

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.

LEGAL PRECEDENT -- ISSUE 2

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

¹³ *Id.*

¹⁴ *See T.P.*, Docket No. 20-0970 (issued June 16, 2022); *W.N.*, *supra* note 7.

¹⁵ *See N.U.*, Docket No. 20-1022 (issued January 25, 2022); *W.C.*, Docket No. 19-1740 (issued June 4, 2020).

¹⁶ *Id.*

environment.¹⁷ 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.¹⁸

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness, rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.¹⁹

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, based on a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.²⁰ Where no such rationale is present, the medical evidence is of diminished probative value.²¹

Section 8123(a) of FECA provides in pertinent part that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.²² This is called a referee examination, and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.²³ When there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.²⁴

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

¹⁸ *Id.*

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *P.R.*, Docket No. 20-0596 (issued October 6, 2020); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

²⁰ *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

²¹ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

²² 5 U.S.C. § 8123(a).

²³ 20 C.F.R. § 10.321.

²⁴ *See R.H.*, Docket No. 21-0493 (issued March 4, 2022); *K.S.*, Docket No. 19-0082 (issued July 29, 2019).

When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in medical opinion, and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.²⁵

If the IME is unable to clarify or elaborate on his original report, or if his supplemental report is vague, speculative, or lacking in rationale, OWCP shall refer appellant to a new IME.²⁶

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision regarding whether appellant has met his burden of proof to establish a recurrence of disability from October 10, 2015 through March 29, 2016 causally related to his accepted August 16, 2014 employment injury.

OWCP properly found a conflict in medical opinion between Dr. Fielder and Dr. Fogt regarding whether appellant sustained a recurrence of disability during the period October 10, 2015 through March 29, 2016. It referred him to Dr. Kemmler for an impartial medical examination to resolve the conflict in medical opinion pursuant to 5 U.S.C. § 8123(a).

In an October 13, 2019 report, Dr. Kemmler opined that appellant was disabled from August 16, 2014, the date of injury, until he returned to his usual employment on July 6, 2015. He noted that he had stopped work two months after his return. Dr. Kemmler asserted that appellant had stopped work for subjective reasons, and that the evidence failed to support disability after July 6, 2015. OWCP's hearing representative, by decision dated May 7, 2020, found that Dr. Kemmler had not sufficiently addressed whether objective evidence supported that appellant was unable to work beginning October 10, 2015. In a supplemental report dated July 7, 2020, Dr. Kemmler again indicated that appellant had no disability after he had resumed work on July 6, 2015. He did not, however, provide any rationale for his opinion, or address whether objective evidence supported disability from work from October 10, 2015 through March 29, 2016. The Board has found that, when an IME fails to provide medical reasoning to support his conclusory statements about a claimant's condition, his opinion is insufficient to resolve a conflict in the medical evidence.²⁷

The case must therefore be remanded for further development. As OWCP has already sought clarification from Dr. Kemmler, on remand OWCP shall refer appellant, together with an updated SOAF and the medical record, to a new IME in the appropriate field of medicine to resolve the recurrence of disability issue.²⁸ Following this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

²⁵ See *T.K.*, Docket No. 22-0334 (issued July 13, 2022); *R.T.*, Docket No. 20-0081 (issued June 24, 2020); *Raymond A. Fondots*, 53 ECAB 637, 641 (2002).

²⁶ See *C.E.*, Docket No. 19-1923 (issued March 30, 2021); *M.S.*, Docket No. 18-1228 (issued March 8, 2019); *R.H.*, Docket No. 17-1903 (issued July 5, 2018).

²⁷ *R.G.*, Docket No. 21-0812 (issued February 28, 2022); *K.C.*, *supra* note 11.

²⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(e) (September 2010); *E.N.*, Docket No. 20-1171 (issued April 20, 2022); *R.W.*, Docket No. 18-1457 (issued February 1, 2019); *Harold Travis*, 30 ECAB 1071 (1979).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his claim should be expanded to include left knee arthritis causally related to his accepted August 16, 2014 employment injury. The Board further finds that the case is not in posture for decision regarding whether appellant has met his burden of proof to establish a recurrence of disability from October 10, 2015 to March 29, 2016 causally related to his accepted August 16, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 26, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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