

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

|                                   |   |                       |
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| T.S., Appellant                   | ) |                       |
|                                   | ) |                       |
| and                               | ) | Docket No. 23-0175    |
|                                   | ) | Issued: June 23, 2023 |
| U.S. POSTAL SERVICE, POST OFFICE, | ) |                       |
| Muskegon, MI, Employer            | ) |                       |
|                                   | ) |                       |

*Appearances:*  
*Appellant, pro se*  
*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 November 10, 2022 appellant filed a timely appeal from an October 21, 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>

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

<sup>2</sup> The Board notes that, following the October 21, 2022 decision, OWCP received additional evidence. 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 expand the acceptance of his claim to include an additional condition causally related to his accepted June 6, 1978 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 6, 1978 appellant, then a 37-year-old letter carrier, filed a claim for traumatic injury (Form CA-1) alleging that he sustained a left knee injury on that day when his knee struck a bolt head that protruded from a dash panel in the performance of duty. OWCP accepted the claim for left knee meniscus derangement and left leg traumatic arthropathy. On January 13, 1979 appellant underwent OWCP-authorized left knee surgery which included a total medial meniscectomy. He retired from federal employment on November 2, 2002. OWCP subsequently expanded acceptance of the claim to include bilateral meniscus derangement, bilateral traumatic arthropathy of the lower legs, and right knee internal derangement, open wound of scalp without complications, left, and unspecified angina pectoris.<sup>4</sup>

By letters dated August 11 and September 4, 2019, appellant requested that his claim be expanded to include additional conditions. He indicated that on August 10, 2019 his left knee buckled while he was using his table saw. This caused appellant to fall forward and lose grip on the wood board he was cutting, which then caused the wood board to strike his left hand. He stated that he sustained a fracture and a laceration of the index and middle fingers of his left hand, and had four sutures placed in his left index finger.

In an August 11, 2019 emergency room report, Dr. Joseph A. Betcher, a Board-certified emergency medicine physician, noted the history of the August 10, 2019 incident and that he had sutured appellant's left-hand laceration. He provided impressions of laceration of left index finger and fracture of phalanx of left index finger. An August 11, 2019 x-ray of appellant's left hand indicated a comminuted fracture through the base of the proximal phalanx of the second digit.

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<sup>3</sup> Docket No. 20-0968 (issued August 17, 2021); Docket No. 16-1477 (issued December 16, 2016); Docket No. 14-1647 (issued September 18, 2014); Docket No. 14-374 (issued May 28, 2014); Docket No. 13-2135 (issued April 3, 2014); Docket No. 13-767 (issued July 8, 2013).

<sup>4</sup> Appellant has a prior claim assigned OWCP File No. xxxxxx938, wherein he alleged that on March 18, 1991 he slipped and fell and injured both shoulders while in the performance of duty. OWCP accepted that claim for the conditions of bilateral shoulder strains, fractured left humerus, lumbar strain and C6-7 herniated disc. Appellant also has a prior claim under OWCP File No. xxxxxx096 concerning a November 21, 2000 traumatic injury claim (Form CA-1). He alleged that he slipped on snow and ice while in the performance of duty. OWCP accepted that claim for aggravation of right shoulder osteoarthritis, lumbar sprain and displacement of cervical intervertebral disc without myelopathy. Appellant has a separate prior claim under OWCP File No. xxxxxx468 alleging carpal tunnel syndrome and ulnar nerve damage due to factors of his federal employment as of December 22, 2015. OWCP has administratively combined appellant's claims, with OWCP File No. xxxxxx096 serving as the master file.

In an October 3, 2019 report, Dr. Ryan P. Ter Louw, a plastic and reconstructive surgery specialist, noted the history of injury and that appellant sustained laceration to left index and middle fingers. He also noted that the x-ray showed a phalanx fracture. Dr. Louw diagnosed de Quervain's tenosynovitis, bilateral carpal tunnel syndrome, laceration of extensor muscle, fascia and tendon of right index finger at forearm level, displaced fracture of proximal phalanx of unspecified finger, left index and middle finger laceration from table saw injury and central slip injury to the left index finger. He recommended repeat x-ray and hand therapy.

In a December 12, 2019 development letter, OWCP informed appellant of the deficiencies of his claim for expansion. It advised him of the type of medical evidence necessary and provided a questionnaire for his completion. Appellant was afforded 30 days to respond.

In a December 17, 2019 statement, appellant related that his knees occasionally buckled and that he had fallen several times since 1978. He asserted that, if a member is weakened by an employable injury and later contributes to a fall or other injury, the test of whether it would be considered consequential was if the medical complications directly flow or are a natural consequence of the injury. Photographs of appellant's left hand were enclosed.

By decision dated March 2, 2020, OWCP denied appellant's claim for expansion finding that he had not met his burden of proof to establish that he sustained an additional condition due to his accepted work-related conditions. It found that the factual and medical evidence of record was insufficient to explain how the left-hand injury was causally related to his accepted June 6, 1978 employment conditions.

On March 10, 2020 appellant requested reconsideration. In a statement dated March 5, 2020, he asserted that he was not claiming a recurrence of his knee conditions; rather, he was claiming a consequential injury to his left hand when his left knee buckled on August 10, 2019 which caused him to lose control of the plywood he was cutting. Appellant quoted the FECA procedural manual for a definition of a consequential injury. In a March 9, 2020 statement, he explained that plywood he was holding kicked back and struck his left hand within a fraction of a second of his left knee buckling. Appellant provided an explanation of a table saw kick back and his calculation of the speed of the kick back. He stated that he had no time to react, and that he fell forward onto the surface of the table and running saw blade when his left knee buckled. Appellant noted the resulting injury to his left hand and the medical treatment he had undergone. A video of the table saw kick back was also submitted.

By decision dated March 17, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On March 30, 2020 appellant filed an appeal to the Board and, by decision dated August 17, 2021,<sup>5</sup> the Board affirmed OWCP's March 2 and 17, 2020 decisions.

On September 13, 2021 appellant requested reconsideration. In letters dated September 2 and November 2, 6, 8 and 15, 2021, he continued to assert that the acceptance of his claim should be expanded and he cited cases from the FECA procedural manual regarding consequential injury.

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<sup>5</sup> *Supra* note 3.

In his November 15, 2021 letter, appellant noted that his August 10, 2019 consequential hand injury was adjudicated as a recurrence of the June 6, 1987 compensable left knee injury and asserted that this was error on the part of OWCP as he did not file a recurrence claim regarding his left lower extremity.

By decision dated January 31, 2022, OWCP denied modification.

On March 28 and August 4, 2022 appellant requested reconsideration. In a February 7, 2022 statement, he provided a definition of consequential injury and stated that he had compensable weakened knees, he fell at home because his weakened left knee buckled, injuring his left hand. Appellant stated that OWCP's January 31, 2022 decision did not explain why his claim was denied for a consequential injury as he provided a detailed mechanism of injury, had visible injuries, and a left-hand condition had been diagnosed by a physician. He indicated that he had provided medical reports from his initial emergency room visit from Dr. Betcher and reports from Dr. Ter Louw. In a March 22, 2022 statement, appellant requested that OWCP review all additional evidence submitted. In a September 6, 2022 statement, he asserted that he had submitted a timely request for reconsideration.

Additional medical evidence received included March 11, 2020 and August 3, 2022 diagnostic x-ray reports of appellant's knees. The March 11, 2020 x-rays revealed moderate-to-moderately severe arthritis of the knees. The August 3, 2022 x-rays related an impression of no evidence of fracture or dislocation, mild bilateral osteoarthritis, left greater than right.

In a March 11, 2020 report, Dr. Brian S. Hood, an osteopath specializing in sports medicine, noted appellant's history of injury and his medical course. Appellant reported that he had experienced knee buckling and falling because of pain in both lower extremities. He also reported that pain was worse in the right knee than the left knee, but the left knee gave out more often than the right knee. Dr. Hood diagnosed bilateral primary osteoarthritis of the knees, noting that x-rays showed moderate-to-severe osteoarthritis in both knees with essentially bone-on-bone apposition of the medial compartment of the left knee. In an August 3, 2022 report, he provided examination findings of appellant's knees and indicated that x-rays taken revealed essentially bone-on-bone apposition left knee with almost bone-on-bone apposition to the right knee. Dr. Hood diagnosed bilateral primary osteoarthritis of the knees and discussed treatment options.

By decision dated October 21, 2022, OWCP denied modification of its January 31, 2022 decision.

### **LEGAL PRECEDENT**

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.<sup>6</sup> Thus, a subsequent

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<sup>6</sup> See *I.S.*, Docket No. 19-1461 (issued April 30, 2020); see *Charles W. Downey*, 54 ECAB 421 (2003).

injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>7</sup>

The claimant bears the burden of proof to establish a claim for a consequential injury.<sup>8</sup> As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>9</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>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to expand acceptance of his claim to include an additional condition as a consequence of his accepted June 6, 1978 employment injury.

The Board notes that, with respect to appellant's burden of proof to establish an additional condition due to his accepted June 6, 1978 employment injury, it is unnecessary to consider the evidence that he submitted prior to the issuance of OWCP's March 17, 2020 decision, which was considered by the Board in its August 17, 2021 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.<sup>11</sup>

Following the Board's August 17, 2021 decision, appellant submitted medical evidence from Dr. Hood. Dr. Hood did not address how appellant's accepted bilateral knee conditions would have caused his knees to buckle, and then cause the consequential injury to his left hand. While appellant has continually alleged that he has identified the mechanism of injury, and his physicians have provided diagnoses regarding his bilateral knee and hand conditions, his physicians have not explained how the accepted knee conditions caused his knee to buckle on August 10, 2019. The Board has held that, to establish a consequential injury, the medical evidence of record must explain how the accepted injury caused the consequential condition and injury.<sup>12</sup> The medical evidence of record does not establish that appellant's knee buckled on August 10, 2019 due to his June 6, 1978 injury. In his reports, Dr. Hood diagnosed bilateral knee osteoarthritis. The Board notes that bilateral knee osteoarthritis is not an accepted condition. Without explaining physiologically how the accepted employment injury caused, contributed to,

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<sup>7</sup> *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>8</sup> *See C.H.*, Docket No. 20-0228 (issued October 7, 2020); *P.P.*, Docket No. 19-1359 (issued April 30, 2020).

<sup>9</sup> *K.W.*, Docket No. 18-0991 (issued December 11, 2018); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

<sup>10</sup> *P.M.*, *id.*

<sup>11</sup> *See L.G.*, Docket No. 21-0770 (issued October 13, 2022); *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

<sup>12</sup> *See J.G.*, Docket No. 15-0251 (issued April 13, 2015).

or aggravated the additional diagnosed conditions, Dr. Hood's opinion is of limited probative value and insufficient to establish the claim.<sup>13</sup>

OWCP also received x-ray reports. However, diagnostic studies, standing alone lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.<sup>14</sup>

As the medical evidence of record is insufficient to establish causal relationship between an additional condition and the accepted June 6, 1978 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 expand the acceptance of his claim to include an additional condition as a consequence of his accepted June 6, 1978 employment injury.

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<sup>13</sup> See *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

<sup>14</sup> See *M.D.*, Docket No. 21-1270 (issued March 21, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 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