

proof to establish intermittent disability commencing May 26, 2020 causally related to his accepted April 9, 2020 employment injury.

FACTUAL HISTORY

On April 14, 2020 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging on April 9, 2020 he injured both knees and elbows when he fell down steps onto concrete, while in the performance of duty. He stopped work on April 10, 2020. OWCP accepted the claim for tear of the right medial meniscus and complex tear of the posterior horn of the left medial meniscus.

Appellant initially sought treatment from Angela Severado, a nurse practitioner, on April 9, 2020 who noted that he had an open abrasion on his right knee, but denied numbness, tingling, pain, or swelling. Ms. Severado reported that his right lower extremity exhibited a two-centimeter abrasion with tenderness to vague stress, but otherwise no tenderness, heat, swelling, or redness. An x-ray of the right lower extremity demonstrated a previous ACL repair and mild osteoarthritic changes.

On April 21, 2020 Dr. Rishi Sharma, a Board-certified internist, noted appellant's history of injury on April 9, 2020 and reported that he had initially believed that his right knee was worse than his left, but that the right knee symptoms had improved. He diagnosed left knee pain with possible internal derangement.

In a June 25, 2020 report, Dr. Sharma noted examining appellant on May 20 and June 17, 2020. He reported that appellant initially experienced more severe right knee symptoms which improved, but that his left knee exhibited swelling, pain, discomfort, locking, and catching. Dr. Sharma found that appellant was partially disabled and could perform desk work only. He recommended physical therapy.

On July 6, 2020 Dr. Sharma discussed appellant's complaints of left knee swelling, pain, and discomfort. He recommended diagnostic testing. On July 6, 2020 appellant underwent a left leg venous study due to swelling.

In a report dated August 4, 2020, Dr. Brett Wolters, a Board-certified orthopedic surgeon, described appellant's history of injury on April 9, 2020 when he fell while walking down stairs in the performance of duty. He noted that appellant had prior right knee ACL surgery. Dr. Wolters diagnosed a tear of the ACL graft, a tear of the medial meniscus of the right knee, and tears of the lateral and medial menisci of the left knee. He recommended left knee surgery. Dr. Wolters recommended conservative treatment of appellant's right knee.

On August 5, 2020 Dr. Sharma discussed appellant's history of falling down stairs on April 9, 2020 landing on his knees. He diagnosed questionable internal derangement. Dr. Sharma attributed appellant's injury to falling down steps delivering mail at work. He provided an addendum after reviewing July 29, 2020 bilateral knee magnetic resonance imaging (MRI) scans. Dr. Sharma diagnosed a tear of the right medial meniscus and a complex tear of the posterior horn of the left medial meniscus with a large displaced meniscal flap fragment. He noted that appellant had a chronic tear of a right ACL graft.

On October 22, 2020 OWCP accepted appellant's claim for vertical tear of the right medial meniscus and complex tear of the posterior horn of the left medial meniscus.

Dr. Wolters examined appellant on November 3, 2020 and diagnosed a tear of the lateral meniscus of the left knee and tear of medial meniscus of the right knee.

Beginning, on December 9, 2020, appellant filed a series of claims for compensation for the periods May 26 through June 19, 2020; July 14 through 20, 2020; October 24 and 31 through November 3, 2020; January 26 through 28, 2021; February 1 through March 12, 2021; and April 1 through 9, 2021.

On February 1, 2021 Dr. Wolters performed a left knee arthroscopic partial medial meniscectomy.³

On February 10, 2021 Dr. Joshua Ellison, a Board-certified family practitioner, examined appellant and found him totally disabled following his surgery.

In a March 10, 2021 note, Dr. Wolters recommended a right knee arthroscopy due to pain and instability, since appellant's April 9, 2020 employment injury. He noted that appellant had undergone a right ACL reconstruction about 13 years earlier, and had done well until his April 9, 2020 fall. Dr. Wolters found appellant had continued instability following physical therapy. He diagnosed a tear of the medial meniscus of the right knee and a tear of the ACL graft status post work-related injury.

Appellant provided a series of physical therapy notes dated March 2 through 30, 2021.

In a March 19, 2021 development letter, OWCP informed appellant that he had not submitted the necessary evidence to establish that his requested right knee arthroscopy was causally related to his accepted employment injury. It requested additional medical evidence in support of the claim for right knee surgery and afforded 30 days for a response.

In an April 7, 2021 development letter, OWCP noted that appellant was asserting that he sustained a tear of his right anterior cruciate ligament graft as a result of his April 9, 2020 employment injury. It requested additional factual and medical evidence in support of the claim for tear of the right anterior cruciate ligament graft. OWCP afforded 30 days to respond.

On April 7, 2021 OWCP authorized wage-loss compensation for 224 hours for the period February 1 through March 10, 2021. It explained that additional medical evidence was needed to support the remaining periods of disability including the specific dates of medical appointments. OWCP afforded appellant 30 days to respond.

On April 6, 2021 a physical therapist treated appellant. On April 9, 2021 a physical therapist found that he was totally disabled.

³ There is no evidence in the record that OWCP authorized Dr. Wolters to perform this surgery prior to February 1, 2021. However, it subsequently authorized wage-loss compensation for the period February 1 through March 1, 2021.

Appellant continued to file Forms CA-7 requesting wage-loss compensation for disability from employment for the period April 10 through May 21, 2021.

In a May 14, 2021 development letter, OWCP requested additional medical evidence supporting appellant's claim that he was totally disabled from work for the periods claimed. It afforded 30 days for a response.

Subsequently, OWCP received an April 5, 2021 report from Dr. Wolters, who opined that appellant was totally disabled from April 1 through 9, 2021. On April 9, 2021 Dr. Wolters again opined that appellant was totally disabled. He completed a note on May 11, 2021 and advised that appellant was totally disabled pending surgery.

On May 11, 2021 Dr. Wolters diagnosed a tear of the medial meniscus of the left knee, a tear of the ACL graft, and a tear of the medial meniscus of the right knee. He reported that appellant's right knee was asymptomatic until his April 9, 2020 employment injury. Dr. Wolters indicated that appellant had right knee pain and instability since his work injury. He noted that appellant did not feel that he could return to work due to pain in his left knee and instability in his right knee. Dr. Wolters opined that appellant was totally disabled and recommended a right knee arthroscopic ACL reconstruction with bone-patellar-tendon-bone autograft for revision and medial meniscus repair.

By decision dated June 4, 2021, OWCP denied expansion of the acceptance of appellant's claim to include a right knee ACL graft rupture, finding that the medical evidence did not establish that it was causally related to his accepted employment injury.

Appellant continued to complete Forms CA-7 requesting wage-loss compensation due to disability from work from May 8 through June 4, 2021.

On June 9, 2021 Dr. Wolters opined that appellant was totally disabled. A physical therapist completed a work capacity evaluation (Form OWCP-5c) on June 11, 2021 indicating that he was totally disabled from employment.

By decision dated June 16, 2021, OWCP denied appellant's claims for compensation for the periods May 26 through June 19, 2020; July 14 through 20, 2020; October 24 and 31 through November 3, 2020; January 26 through 28, 2021; April 1 through 9, 2021; and commencing April 24, 2021, as he failed to establish that he was disabled due to the accepted April 9, 2020 employment injury.

OWCP continued to receive medical evidence. On April 9, 2021 Dr. Ellison noted that appellant had increased pain and instability in both knees. In a May 11, 2021 report, Dr. Wolters opined that appellant's right knee was fine until his April 9, 2020 employment injury. On June 9, 2021 Dr. Ellison reported that appellant's right knee was painful and continued to buckle. He also noted that appellant reported increasing left lower extremity numbness following his employment injury. Dr. Ellison opined that appellant was totally disabled and recommended a right knee arthroscopic ACL reconstruction and medial meniscus repair.

On July 1, 2021 appellant requested reconsideration of the June 16, 2021 decision. He provided a June 30, 2021 statement asserting that he was totally disabled due to his left knee surgery and resulting complications. Appellant resubmitted the June 11, 2021 OWCP-5c form.

On July 14, 2021 Dr. Wolters reported that appellant's left knee caused pain with numbness down to his toes. He also found instability in the right knee with pain.

Appellant provided a July 30, 2021 statement describing the events following his April 9, 2020 employment injury. He asserted that he sustained bilateral knee damage with swelling in both knees and difficulty walking. Appellant worked intermittently throughout 2020 due to his April 9, 2020 injury. He alleged that, due to OWCP's delay in accepting his claim, he developed consequential hip and lower back conditions. Appellant asserted that, following his February 1, 2021 left leg surgery, physical therapy exacerbated his left leg symptoms and he was not able to return to work.

On August 17, 2021 Dr. Wolters found that appellant was totally disabled until further notice.

On August 26, 2021 OWCP referred appellant, along with a statement accepted facts (SOAF), and a copy of the case record for a second opinion examination with Dr. Michael H. Ralph, a Board-certified orthopedic surgeon, to determine the nature of appellant's condition, the extent of disability, and appropriate treatment recommendations.

In an August 27, 2021 development letter, OWCP informed appellant that he had established that authorization of aspiration and injection of a Baker's cyst was medically necessary. It requested additional medical evidence and afforded 30 days for a response.

OWCP continued to receive duplicate physical therapy notes dated March 2 through 30, 2021.

By decision dated September 29, 2021, OWCP denied modification of the June 16, 2021 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.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

⁴ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *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).

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.⁷

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include a right knee ACL graft rupture as causally related to his accepted April 9, 2020 employment injury.

In reports dated March 10 and May 11 and 21, 2021, Dr. Wolters diagnosed a prior right ACL graft with a tear and reported that appellant had done well, and his right knee was asymptomatic until his April 9, 2020 employment injury. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹ Although Dr. Wolters opined that appellant may have sustained a tear of his right ACL graft during his April 9, 2020 employment incident, he did not explain how he reached this conclusion, and thus his report is insufficient to meet appellant's burden of proof.¹⁰

On August 4, 2020 Dr. Wolters diagnosed a tear of the ACL graft, but offered no opinion on causal relationship. On August 5, 2020 Dr. Sharma diagnosed a chronic tear of a right ACL graft, but did not address the cause of the diagnosed condition. 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.¹¹ There reports are therefore insufficient to establish expansion of the claim.

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).

⁷ *Id.*

⁸ *J.W.*, Docket No. 20-1249 (issued February 9, 2021); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *V.L.*, Docket No. 19-0069 (issued February 10, 2020); *J.B.*, Docket No. 19-1101 (issued November 20, 2019); *J.L.*, Docket No. 18-1804 (issued April 12, 2019); *Leon D. Faidley*, 41 ECAB 104 (1989).

¹⁰ *See K.C.*, Docket No. 22-0212 (issued June 14, 2022).

¹¹ *See S.D.*, Docket No. 21-0085 (issued August 9, 2021); *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant also submitted reports from a nurse practitioner and physical therapists. As nurse practitioners and physical therapists are not considered physicians as defined under FECA, their medical findings and opinions are insufficient to establish entitlement to compensation benefits.¹²

Appellant provided right knee x-rays, and MRI scans. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries caused the diagnosed conditions.¹³

As the medical evidence of record is insufficient to establish causal relationship between appellant's right ACL graft tear and the accepted April 9, 2020 employment incident, the Board finds that he has not met his burden of proof to establish expansion of acceptance of his claim.¹⁴

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

An employee seeking benefits under FECA¹⁵ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁶ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁷ Whether a particular injury causes an

¹² Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). See also *W.Z.*, Docket No. 20-0191 (issued July 31, 2020) (a nurse practitioner is not considered a physician under FECA).

¹³ See *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *D.M.*, Docket No. 20-0548 (issued November 25, 2020); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

¹⁴ See *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *S.S.*, Docket No. 21-1140 (issued June 29, 2022).

¹⁵ *Supra* note 1.

¹⁶ See *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁷ See *L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁸

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.²⁰

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.²¹ The opinion of the physician 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 specific employment factors identified by the employee.²²

The Board has interpreted section 8103, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services.²³ An employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment. The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.²⁴ For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed.²⁵

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision with regard to appellant's disability claim.

¹⁸ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁹ *Id.* at § 10.5(f); see, e.g., *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²⁰ *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

²¹ See *M.H.*, Docket No. 22-1178 (issued April 25, 2023); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

²² *M.B.*, Docket No. 22-0422 (issued April 3, 2023); *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

²³ *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *Y.H.*, Docket No. 17-1303 (issued March 13, 2018).

²⁴ *Id.*

²⁵ See *supra* note 12 at Chapter 2.901.19(c) (February 2013); see also *L.K.*, *supra* note 16; *K.A.*, Docket No. 19-0679 (issued April 6, 2020).

On August 26, 2021 OWCP referred appellant, along with a SOAF, and a copy of the case record to Dr. Ralph, for a second opinion evaluation regarding the nature of appellant's employment-related conditions, the extent of his disability, and appropriate treatment recommendations. Before Dr. Ralph provided a second opinion report, OWCP issued its September 29, 2021 decision denying appellant's claimed periods of disability.

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.²⁶ It has an obligation to see that justice is done.²⁷ Accordingly, once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.²⁸

Thus, the Board will remand the case to OWCP for consideration of the requested second opinion report in order to determine whether his disability from work beginning May 26, 2020 was due to his April 9, 2020 employment injuries. On remand, OWCP must consider Dr. Ralph's report and determine whether he fully addressed the issue of appellant's periods of disability.²⁹ Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's disability claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include the additional condition of right knee ACL graft rupture as causally related to his accepted April 9, 2020 employment injury. The Board further finds the case not in posture for decision regarding his disability claim.

²⁶ See *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

²⁷ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

²⁸ See *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, *id.*

²⁹ See *A.H.*, Docket No. 17-0035 (issued June 22, 2018) (finding that OWCP must undertake additional development when the second opinion report does not address the pertinent issues). *M.N.*, Docket No. 17-1729 (issued June 22, 2018); *M.A.*, Docket No. 17-0331 (issued June 15, 2018) (finding that as OWCP referred appellant to a second opinion physician, it had the responsibility to obtain a report to resolve the issue).

ORDER

IT IS HEREBY ORDERED THAT the June 4 decision of the Office of Workers' Compensation Programs is affirmed. The September 29, 2021 decision is set aside and this case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: October 10, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board