

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

O.S., Appellant)	
)	
and)	Docket No. 23-0364
)	Issued: October 19, 2023
U.S. POSTAL SERVICE, OGDEN PARK POST)	
OFFICE, Chicago, IL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 16, 2023 appellant filed a timely appeal from a January 4, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional medical conditions as causally related to the accepted December 3,

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 4, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

2020 employment injury resulting in disability from work commencing August 9, 2021 causally related to his accepted December 3, 2020 employment injury.

FACTUAL HISTORY

On December 8, 2020 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2020 he sustained injuries from a motor vehicle accident when his parked postal vehicle was struck on the driver's side by another vehicle while in the performance of duty. He stopped work on December 4, 2020. By decision dated January 11, 2021, OWCP accepted the claim for spine facet syndrome of the thoracic, cervical, and lumbar regions, contusion of the right shoulder, and contusion of the left knee. It paid appellant wage-loss compensation on the supplemental rolls, effective January 8, 2021. Appellant returned to full-time light duty on June 2, 2021.

The record reflects that following his December 3, 2020 employment injury, appellant sought medical treatment with Dr. Aleksandr Goldvekht, a Board-certified physiatrist, and Dr. Edward Forman, a Board-certified orthopedic surgeon.

On December 8, 2020 appellant underwent a magnetic resonance imaging (MRI) scan of the left knee. Dr. Gregory Goldstein, a Board-certified radiologist, noted complaints of knee pain following a December 3, 2020 work-related motor vehicle accident. He indicated that correlation was made with a prior January 29, 2018 MRI scan but images were not available for direct comparison. Dr. Goldstein discussed his impressions, finding small effusion; tri-compartment osteoarthritis most severely affecting the medial compartment with prominent chondromalacia, which was also described in the previous report; abnormal signal involving the posterior horn of the medial meniscus at the junction with the body of the meniscus likely representing partial maceration or multidirectional tear; and postsurgical changes with hardware within the proximal tibia, to be correlated with surgical history. On December 8, 2020 appellant underwent an MRI scan of the lumbar spine.

On January 5, 2021 appellant underwent an electromyogram/nerve conduction velocity (EMG/NCV) study of the lower extremities. Dr. Goldvekht reported that the study revealed abnormal findings consistent with mild right L5 radiculopathy with no evidence of significant peripheral neuropathy.

Appellant stopped work on August 9, 2021.

In an August 18, 2021 report, Dr. Forman reported that on December 3, 2020 appellant was the driver of a postal vehicle that was struck on the driver's side by another car. He complained of left knee pain since the motor vehicle accident, explaining that he was sitting in the left-sided driver's seat of his vehicle when the other car ran into him. Appellant's postal vehicle was not drivable, and he was taken to a local hospital *via* emergency paramedic services. Dr. Forman noted that appellant reported a prior left knee tibial injury and osteotomy surgery in 2018. He reported physical examination findings, including moderate tenderness along the medial joint line, positive McMurray test, and discussed appellant's left knee diagnostic studies. Dr. Forman diagnosed unspecified internal derangement of left knee and unilateral primary osteoarthritis of left knee. He discussed the left knee treatment plan for internal derangement with early degenerative joint

disease (DJD), recommending a left knee arthroscopy to address the meniscal pathology and arthritic changes. Appellant confirmed that he would like to move forward with the surgery.

In an August 18, 2021 letter, Dr. Forman's office requested that OWCP expand the acceptance of appellant's claim to include unilateral primary osteoarthritis of left knee and other tear of the medial meniscus of the left knee as causally related to the accepted December 3, 2020 employment injury.

On August 19, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period August 9 through 13, 2021. He later filed Form CA-7 claims for the period August 14, 2021 and continuing.

In a development letter dated August 23, 2021, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation commencing August 9, 2021. It advised him of the type of medical evidence needed and afforded him 30 days to respond.

On September 20, 2021 OWCP referred the case record and a January 17, 2019 statement of accepted facts (SOAF) to Dr. Todd Fellars, a Board-certified orthopedic surgeon, serving as an OWCP district medical adviser (DMA). It noted that treating physician, Dr. Forman, opined that appellant's left knee osteoarthritis and internal derangement were due to the December 3, 2020 employment injury. OWCP requested that Dr. Fellars review the SOAF and medical record to determine if consequential injuries of the left knee were related to the December 3, 2020 employment injury.

In a September 28, 2021 report, Dr. Fellars noted that examination findings revealed tenderness along the medial joint line of appellant's left knee. He reported evidence of a meniscal tear based on an MRI scan, as well as evidence of previous surgery. Dr. Fellars opined that the acceptance of appellant's claim should not be expanded to include left knee arthritis and meniscal tearing because these conditions were likely associated with his prior surgical history rather than the accepted December 3, 2020 employment injury.

In an October 19, 2021 duty status report (Form CA-17), Dr. Goldvekht placed appellant off work.

On October 25, 2021 OWCP referred appellant, the medical record, an October 25, 2021 SOAF, and a series of questions to Dr. Benjamin Domb, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in medical opinion between Dr. Fellars, the OWCP DMA, and Drs. Forman and Goldvekht, appellant's treating physicians, regarding the nature and extent of the employment-related conditions and any attendant disability, and whether the acceptance of appellant's claim should be expanded to include any additional left knee conditions as causally related to the accepted December 3, 2020 employment injury.

In a May 10, 2022 report, Dr. Domb noted that appellant reported that on December 3, 2020 he was sitting idle in a postal vehicle that was struck on the driver's side by another car. Appellant further reported hitting his left knee against the steering column. Dr. Domb referenced appellant's previous left knee partial meniscectomy in 2014 and left knee high tibial osteotomy in 2018, preexisting tricompartmental osteoarthritis which was most severe in the medial compartment, and a partial medial meniscus tear which was noted on an MRI scan from

December 8, 2021. He reported the findings of his physical examination of appellant's left knee, noting mild effusion, mild tenderness of the interior pole of the patella, and moderate tenderness of the medial joint line, medial collateral ligament, patella tendon, and medial femoral condyle. Appellant exhibited moderate pain upon range of motion of the left knee, 1+ valgus stress at 30 degrees on the left, and medial pain upon McMurray's test on the left.

Dr. Domb opined that "the sole diagnosis resulting from the injury on December 3, 2020" was a contusion of the left knee, which resolved shortly after appellant received a January 7, 2021 intra-articular injection as he reported the left knee felt much better after the injection. He found that appellant's left unilateral primary arthritis, left knee internal derangement, and tear of the left medial meniscus were not related to his work-related injury. Rather, they were related to preexisting conditions "as evidenced by findings of tricompartmental osteoarthritis noted when comparing the MRI [scan] of the left knee on [December 8, 2020] to an MRI [scan] from [January 29, 2018]." Dr. Domb advised that appellant had a surgical history of left knee partial meniscectomy in 2014 and left knee-high tibial osteotomy in 2018. He indicated that there was no evidence of ecchymosis or localized tenderness of the left knee in objective findings during office visits. Dr. Domb found that appellant's "claimed three conditions" of the left knee, *i.e.*, left unilateral primary arthritis, left knee internal derangement, and tear of the left medial meniscus, were related to his preexisting left knee condition and previous left knee surgical history. He noted, "[t]he injury on [December 3, 2020] did not cause these three conditions. The osteoarthritis is not work-related, but he is disabled from it."

By decision dated May 24, 2022, OWCP denied appellant's claim for disability for the period August 19, 2021 and continuing.³ It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period due to his accepted December 3, 2020 employment injury. OWCP further denied appellant's claim finding that he had not met his burden of proof to expand the acceptance of his claim to include additional conditions as causally related to the December 3, 2020 employment injury. It determined that the May 10, 2022 opinion of Dr. Stewart, serving as the impartial medical examiner (IME), carried the special weight of the medical evidence.

On June 17, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 21, 2022.

Appellant submitted additional medical evidence, including July 5, August 8, October 4, and November 8, 2022 reports in which Dr. Goldvekht reported no change in his condition.

By decision dated January 4, 2023, OWCP's hearing representative affirmed the May 24, 2022 decision.

³ The decision noted that CA-7 forms and time analysis forms (Form CA-7a) reflected claimed total disability from August 9, 2021 through May 6, 2022 except for the following dates worked: August 20 and 24, September 23, 25, and 27 through 30, October 1 and 12 through 22, and November 21, 2021.

LEGAL PRECEDENT

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 accepted employment injury.⁴

The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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.⁵

The Board has held that when the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.⁶ However, the normal progression of untreated disease cannot be stated to constitute “aggravation” of a condition merely because the performance of normal work duties reveals the underlying condition.⁷

An employee seeking benefits under FECA 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.⁸ 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.⁹ Whether a particular injury causes an 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.¹⁰

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹¹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that,

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁶ *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

⁷ *Id.*

⁸ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁰ *See* 20 C.F.R. § 10.5(f); *T.W.*, Docket No. 22-0790 (issued March 9, 2023); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹¹ 20 C.F.R. § 10.5(f).

from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹²

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.¹³ 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 specific employment factors identified by the claimant.¹⁴

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁵ Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.¹⁶ 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.¹⁷ When there exist 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 rationalized and based upon a proper factual background, must be given special weight.¹⁸

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP determined that a conflict existed between Drs. Goldvekht and Forman, appellant's treating physicians, and Dr. Fellars, an OWCP DMA, regarding whether the acceptance of appellant's claim should be expanded to include additional left knee conditions and whether

¹² See *L.S.*, Docket No. 22-0821 (issued March 20, 2023); *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹³ See *L.S., id.*; *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁴ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

¹⁵ See *N.O.*, Docket No. 22-0644 (issued March 8, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁶ *Supra* note 1 at § 8123(a); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹⁷ 20 C.F.R. § 10.321; *S.W.*, Docket No. 23-0513 (issued September 28, 2023).

¹⁸ *K.C.*, Docket No. 19-0137 (issued May 29, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

appellant was disabled from work due to any of the employment-related conditions. It properly referred him to Dr. Domb, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination.

The Board notes that to be entitled to special weight, Dr. Domb's opinion must contain clear, persuasive rationale on the critical issue in the claim.¹⁹ In his May 10, 2022 report, Dr. Domb opined that appellant's left knee osteoarthritis, left knee internal derangement, and tear of the left medial meniscus were unrelated to the December 3, 2020 employment injury. However, he did not provide sufficient rationale for his opinion. The Board has long held that a medical opinion that lacks rationale is of limited probative value.²⁰ Consequently, Dr. Domb's opinion is of diminished probative value and insufficient to resolve the conflict in the medical opinion evidence.²¹

Proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.²² It has an obligation to see that justice is done.²³ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.²⁴

The Board, therefore, finds that the case must be remanded to OWCP for further development. On remand, OWCP shall refer appellant and a SOAF to a physician in the appropriate field of medicine to resolve the issue of whether OWCP should expand the acceptance of his claim to include additional left knee conditions and whether appellant was disabled from work due to the accepted employment-related conditions. Following this and other such further development as deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁹ *A.R.*, Docket No. 17-1358 (issued February 1, 2018).

²⁰ *J.N.*, Docket No. 17-0237 (issued July 13, 2017); *A.D.*, 58 ECAB 149 (2006).

²¹ See *M.H.*, Docket No. 21-1014 (issued July 8, 2022); *F.H.*, Docket No. 21-0579 (issued December 9, 2021); *P.C.*, Docket No. 19-1468 (issued September 9, 2020).

²² See *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

²³ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

²⁴ *F.H.*, Docket No. 21-0579 (issued December 9, 2021); *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 19, 2023
Washington, DC

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

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

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