

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

S.S., Appellant)	
)	
and)	Docket No. 23-0391
)	Issued: October 24, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
ALEXANDRIA VA MEDICAL CENTER,)	
Pineville, LA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 24, 2023 appellant, through counsel, filed a timely appeal from a January 9, 2023 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.³

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 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.*

³ The Board notes that, following the January 9, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted December 27, 2016 employment injury.

FACTUAL HISTORY

On December 28, 2016 appellant, then a 54-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 27, 2016 she injured her shoulders, knees, and right lower back when she tripped and fell on a loading dock while in the performance of duty. She did not immediately stop work. OWCP accepted appellant's claim for abrasions of the right knee and right hand, contusion of the right knee, left knee, right hand, and left hand, complex tear of the medial meniscus of the left knee, and other tear of the lateral meniscus of the right knee. It paid her wage-loss compensation on the supplemental rolls, effective February 14, 2017.

On December 27, 2016 Dr. Efrain Padilla-Guzman, a family practitioner and employing establishment physician, treated appellant for knee and hand injuries that occurred when appellant tripped and fell on a loading dock at work striking her knees and hands. He noted findings on physical examination of mild abrasion of the anterior of the right knee and palmar region of the right hand. Dr. Padilla-Guzman diagnosed contusions of both knees and hands, and abrasions of the right knee and right hand. He opined that appellant's medical condition was caused or aggravated by an employment activity, indicating that she tripped and fell on a loading dock at work. In a December 28, 2016 narrative report, Dr. Padilla-Guzman noted that appellant presented with right knee pain, radiating low back pain, left and right shoulder pain radiating into each arm, and right palm pain. He reported that appellant had good range of motion of the bilateral shoulders. Dr. Padilla-Guzman diagnosed "trip/fall" and knee contusion, and noted that appellant's condition was caused or aggravated by an employment activity. In a December 28, 2016 form report, he checked a box indicating that appellant's injury was work related and recommended light-duty work.

Dr. Otis Drew, a Board-certified orthopedist, treated appellant on February 14, 2017 for bilateral knee pain and left shoulder pain after a fall at work on December 27, 2016. Appellant reported tripping and falling and landing on her knees with her left hand outstretched. Dr. Drew diagnosed acute meniscal tear of the knee and complete rotator cuff tear of the left shoulder.

On April 25 and August 18, 2017 Dr. Drew treated appellant for persistent bilateral knee pain and left shoulder pain that began after a work-related trip and fall. He diagnosed tear of the

medial meniscus of the left knee, acute medial meniscus tear of the right knee, osteochondral lesion, and morbid obesity, and recommended arthroscopic surgery of the left knee.⁴

On December 6, 2017 Dr. Val Irion, a Board-certified orthopedist, treated appellant for bilateral knee pain that began in December 2016 after she tripped and fell at work. He noted that x-rays of the knees revealed arthritic changes in the patellofemoral regions. Dr. Irion diagnosed bilateral knee patellofemoral pain and degenerative joint disease, and recommended bilateral patellofemoral arthroplasty. He continued to treat appellant on February 12, March 13, April 2, April 30, and June 11, 2018 for bilateral knee, hip, and shoulder pain, and diagnosed bilateral knee patellofemoral degenerative joint disease. In a March 13, 2018 report, Dr. Irion requested that the recommended bilateral patellofemoral arthroplasty be approved by OWCP for her work-related degenerative knee condition. In April 2 and 30, 2018 reports, he requested the expansion of the acceptance of appellant's claim to include both hips and bilateral shoulder conditions, and that the recommended bilateral patellofemoral arthroplasty be approved by OWCP. Dr. Irion indicated that appellant had reported that her knees had been hurting her more than her shoulders so she deemphasized her shoulder complaints to address the injury to her knees.

In an April 24, 2018 report, Dr. Irion related that on December 27, 2016 appellant fell at work and injured her bilateral knees and left shoulder. He indicated that MRI scans of both knees revealed meniscal tears, and he recommended patellofemoral arthroplasty. Dr. Irion noted that appellant complained of bilateral hip pain, and opined that this condition was secondary to her altered gait due to her bilateral knee pain. He requested expansion of appellant's claim to include bilateral osteoarthritis of the knees and trochanteric bursitis of both hips. In a June 12, 2018 report, Dr. Irion requested the expansion of the acceptance of appellant's claim to include bilateral shoulder conditions. He noted that appellant mentioned to him in April 2018 that she was experiencing bilateral shoulder pain, but reported that she had bilateral shoulder pain since the December 27, 2016 employment injury. Dr. Irion indicated that appellant "has not really focused on the shoulders because they were not as painful as her knees and subsequently her hips."

On June 22, 2018 appellant requested expansion of the acceptance of her claim to include bilateral osteoarthritis of the knees, trochanteric bursitis of both hips, SLAP tear of the left shoulder, and right shoulder pain.

On July 9 and August 20, 2018 Dr. Irion treated appellant for bilateral knee pain and diagnosed bilateral knee patellofemoral pain syndrome and degenerative joint disease. He recommended right partial knee replacement. On August 20, 2018 Dr. Irion performed bilateral knee intra-articular injections and released appellant to limited-duty work on August 27, 2018. On October 25 and November 26, 2018 he diagnosed bilateral knee patellofemoral pain syndrome and degenerative joint disease, and advised that appellant had reached maximum medical improvement (MMI).

⁴ A magnetic resonance imaging (MRI) scan of the right knee dated March 10, 2017 revealed mild myxoid degeneration of the posterior horns of the menisci with small radial tear of the lateral meniscal body and multicompartement articular cartilage thinning. An MRI scan of the left knee of even date revealed small complex tear involving posterior horn of the medial meniscus and multicompartement articular cartilage thinning. A March 31, 2017 MRI scan of the left shoulder revealed moderate osteoarthritis of the acromioclavicular (AC) joint with inferior spurring, hypertrophy of the coracoacromial ligament, bicipital tendinosis, suspected superior labral anterior posterior (SLAP) tear and tendinosis involving the supraspinatus tendon.

Dr. Irion continued to treat appellant on October 5, 2020 and diagnosed bilateral hip trochanteric bursitis, bilateral hand contusions, bilateral knee patellofemoral pain/degenerative joint disease, and bilateral shoulder strain/rotator cuff tendinitis/bursitis. He noted that appellant's bilateral shoulder pain and bilateral hip pain were due to gait changes secondary to her knees. On October 13, 2020 and April 28, 2021 Dr. Irion related a history of the December 27, 2016 employment injury to the bilateral knees and left shoulder. He noted that appellant complained of bilateral hip pain and opined that this condition was secondary to her altered gait due to her bilateral knee pain. Dr. Irion requested the expansion of appellant's claim to include bilateral osteoarthritis of the knees, trochanteric bursitis of both hips, bilateral shoulder bursitis, and bilateral rotator cuff tendinitis.

On May 13, 2021 appellant, through counsel, requested the expansion of the acceptance of her claim to include bilateral hip trochanteric bursitis, bilateral knee patellofemoral pain and degenerative joint disease, and bilateral shoulder strain/rotator cuff tendinitis/bursitis.

On June 9, 2021 OWCP routed a December 20, 2017 statement of accepted facts (SOAF) and the case file to Dr. Michael M. Katz, a Board-certified orthopedist serving as a district medical adviser (DMA), for review and a determination of whether the acceptance of appellant's claim should be expanded to include additional conditions other than those already accepted. It requested that Dr. Katz review Dr. Irion's reports and indicate whether he agreed with his findings regarding appellant's conditions related to the December 27, 2016 employment injury.

In a report dated June 10, 2021, Dr. Katz reviewed the SOAF and medical record. He diagnosed abrasion of the right knee and right hand, contusion of the bilateral knees, contusion of the right and left hands, complex tear of the medial meniscus of the left knee, and other tear of the lateral meniscus of the right knee. Dr. Katz noted reviewing the April 25, 2017 report wherein Dr. Drew described the mechanism of injury as a fall forward onto both knees and the outstretched left hand. He opined that findings did not support the presence of any "significant, lasting injury to the right shoulder" and therefore did not support expansion to include any conditions for the right shoulder. Based on the medical record, Dr. Katz opined that Dr. Irion's proposed conditions of tendinitis and bursitis of the left shoulder were caused by the employment injury. He noted that the MRI scans of each knee demonstrated arthritic changes, which were present prior to the employment injury. Dr. Katz determined that the employment injury was competent to cause a permanent aggravation of bilateral osteoarthritis of the knees. He referenced the late arrival of the hip symptoms, and opined that the mechanism of development of bilateral trochanteric bursitis was not supported by the records, and the patellofemoral pathology would not have been sufficient to cause the substantial alteration of the gait to provoke a hip pathology.

By decision dated July 8, 2021, OWCP denied appellant's request to expand the acceptance of her claim to include bilateral osteoarthritis of the knee, trochanteric bursitis of both hips, bilateral shoulder bursitis, and bilateral rotator cuff tendinitis causally related to the December 27, 2016 employment injury.

On July 15, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated September 21, 2021, after a preliminary review, the hearing representative found that the case was not in posture for decision and vacated OWCP's July 8, 2021 decision. The hearing representative remanded the case and instructed OWCP to provide an

updated SOAF with a description of the injury that occurred on December 27, 2016 and the medical record to Dr. Katz, serving in his capacity as a DMA, for a report to explain whether the December 27, 2016 employment injury contributed by direct cause, aggravation, acceleration, or precipitation to development of bilateral osteoarthritis of the knee, bilateral hip trochanteric bursitis, bilateral shoulder bursitis, and bilateral rotator cuff tendinitis. Following any further development deemed necessary, OWCP was to issue a *de novo* decision.

On October 5, 2021 OWCP routed an updated SOAF dated October 5, 2021 and the case file to Dr. Katz, serving as DMA, for review and a determination of whether OWCP should expand the acceptance of appellant's claim.

In an addendum report dated October 14, 2021, Dr. Katz reviewed the SOAF and medical record. He addressed trochanteric bursitis of the hips and indicated that Dr. Drew, in reports from 2017, did not note an abnormal limp or gait, and that multiple reports from Dr. Irion did not document definitive antalgic or Trendelenburg gait. Dr. Katz indicated that the bilateral knee arthritis was primarily patellofemoral, and would not have been expected to cause a significant gait issue or gait disturbance. He opined that it could not be reasonably assumed that the trochanteric bursitis was a direct and natural result of the injury to the knees.

By decision dated November 2, 2021, OWCP expanded the acceptance of appellant's claim to include bicipital tendinitis of the left shoulder, bursitis of the left shoulder, and bilateral primary osteoarthritis of the knees. It did not expand the acceptance of her claim to include trochanteric bursitis of either hip or any right shoulder conditions.

OWCP received additional evidence. An MRI scan of the left shoulder dated June 10, 2022 revealed AC joint hypertrophy with impingement, supraspinatus and infraspinatus tendinosis, superior labral tear compatible with SLAP tear, subacromial/subdeltoid bursitis, and biceps tendinosis. Dr. Irion treated appellant on August 8, 2022 for right shoulder and bilateral hip pain. He diagnosed bilateral hip pain/trochanteric bursitis and right shoulder impingement bursitis.

On September 12, 2022 appellant, through counsel, requested reconsideration.

By decision dated September 21, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On October 11, 2022 appellant, through counsel, requested reconsideration and submitted additional evidence. In a report dated September 29, 2022, Dr. Irion diagnosed trochanteric bursitis and mild degenerative changes to the hip. He opined that the change in appellant's gait caused by the injuries to her knees created issues with her hip and bursitis pain. With regard to the right shoulder, Dr. Irion indicated that she was relying on her right shoulder secondary to her left shoulder injury, which caused right shoulder injuries despite the fact that she did not have right shoulder pain after the employment injury.

Appellant submitted November 7, 2022 MRI scans of the right shoulder and both hips, which revealed that she had, *inter alia*, a SLAP tear of the right shoulder and strains/tendinopathy of both hips.

By decision dated January 9, 2023, OWCP denied modification of the decision dated November 2, 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 employment injury.⁵ To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.⁶ 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.⁷

In connection with an expansion claim, the claimant bears the burden of proof to establish a claim for any consequential injury.⁸ In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted December 27, 2016 employment injury.

In support of her claim, appellant submitted reports dated December 27 and 28, 2016 wherein Dr. Padilla-Guzman diagnosed contusions of the knees and hands, and abrasions of the right knee and right hand. Dr. Padilla-Guzman noted that her medical condition was caused or aggravated by an employment activity indicating that she tripped and fell on a loading dock at work. On February 14, April 25, and August 18, 2017 Dr. Drew diagnosed acute meniscal tear of the left knee, complete rotator cuff tear of the left shoulder, acute medial meniscus tear of the right knee, and osteochondral lesion. Reports from Dr. Irion from December 6, 2017 through November 26, 2018 diagnosed bilateral knee patellofemoral pain and degenerative joint disease. However, these reports primarily addressed conditions that were ultimately accepted by OWCP, and failed to address the additional conditions she believed were work related, including trochanteric bursitis of both hips and multiple right shoulder conditions. Although Dr. Drew diagnosed a complete rotator cuff tear of the left shoulder and an osteochondral lesion, he did not

⁵ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁶ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁷ *T.K., id.; I.J.*, 59 ECAB 408 (2008).

⁸ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁹ *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

provide an opinion that these conditions were work related. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.¹⁰ For these reasons, this evidence is insufficient to establish appellant's expansion claim.

In April 2 and 30, 2018 reports, Dr. Irion requested expansion of the acceptance of appellant's claim to include bilateral hip and bilateral shoulder conditions. In these reports, he indicated that she had reported that her knees had been hurting her more than her shoulders, so she deemphasized her shoulder complaints to address the injury to her knees. In an April 24, 2018 report, Dr. Irion noted that appellant complained of bilateral hip pain and opined that this condition was secondary to her altered gait due to her bilateral knee pain. He requested that the expansion of her claim to include bilateral osteoarthritis of the knees and trochanteric bursitis of the bilateral hips. In a June 12, 2018 report, Dr. Irion requested the expansion of the acceptance of appellant's claim to include bilateral shoulder conditions. He noted that she mentioned to him in April 2018 that she was experiencing bilateral shoulder pain, but reported that she had bilateral shoulder pain since the December 27, 2016 employment injury. Dr. Irion indicated that appellant "has not really focused on the shoulders because they were not as painful as her knees and subsequently her hips." However, he provided only a conclusory opinion on causal relationship. Dr. Irion did not provide medical rationale explaining, physiologically, how appellant's additional diagnosed conditions were caused or aggravated by the accepted December 27, 2016 employment injury.¹¹ As he failed to provide rationale in support of causal relationship between the additional diagnosed conditions and the accepted December 27, 2016 employment injury, this evidence is of limited probative value and is insufficient to establish expansion of the claim.¹²

On October 5, 2020 Dr. Irion diagnosed bilateral hip trochanteric bursitis, bilateral hand contusions, bilateral knee patellofemoral pain/degenerative joint disease, and bilateral shoulder strain/rotator cuff tendinitis/bursitis. He noted that appellant's bilateral shoulder pain and bilateral hip pain were due to gait changes secondary to her knees. On October 13, 2020 and April 28, 2021 Dr. Irion indicated that appellant complained of bilateral hip pain and opined that this condition was secondary to her altered gait due to her bilateral knee pain. He requested the expansion of her claim to include bilateral osteoarthritis of the knees, trochanteric bursitis of the bilateral hips, bilateral shoulder bursitis, and bilateral rotator cuff tendinitis. In a report dated September 29, 2022, Dr. Irion diagnosed trochanteric bursitis and mild degenerative changes to the hip, and opined that the change in appellant's gait caused by the injuries to her knees created issues with her hip and bursitis pain. With regard to the right shoulder, he indicated that she was relying on her right shoulder secondary to her left shoulder injury, which caused right shoulder injuries despite the fact that she did not have right shoulder pain after the work injury. In these reports, Dr. Irion again failed to explain how the mechanism of injury would have physiologically caused or aggravated these additional diagnosed conditions such that they would constitute work-related conditions. As he again failed to provide medical rationale in support of causal relationship between additional diagnosed conditions and the accepted December 27, 2016 employment injury,

¹⁰ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

¹² *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

these reports are of limited probative value and are insufficient to meet appellant's burden of proof.¹³

In a December 6, 2017 report, Dr. Irion recommended that appellant undergo bilateral patellofemoral arthroplasty. In reports dated February 12, March 13, and June 11, 2018, he treated her for bilateral knee, hip, and shoulder pain. On August 8, 2022 Dr. Irion diagnosed bilateral hip pain/trochanteric bursitis and right shoulder impingement bursitis. However, these reports are of no probative value regarding appellant's claim for expansion of the accepted conditions as they did not provide an opinion that she had additional medical conditions causally related to the December 27, 2016 employment injury. As noted above, the Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.¹⁴ Thus, this evidence is of no probative value and is insufficient to establish expansion of the acceptance of appellant's claim.

Appellant also submitted diagnostic testing reports. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused or aggravated any of the additional diagnosed conditions.¹⁵

OWCP further developed the issue of whether to expand the acceptance of appellant's claim to include trochanteric bursitis of both hips and right shoulder conditions by referring her records to Dr. Katz in his capacity as DMA. In a report dated June 10, 2021, Dr. Katz found that the records did not support the presence of any significant, lasting injury to the right shoulder and therefore did not support expansion to include any conditions for the right shoulder. He referenced the late arrival of the hip symptoms and opined that the mechanism of development of bilateral trochanteric bursitis was not supported by the records and the patellofemoral pathology would not have been sufficient to cause the substantial alteration of the gait to provoke a hip pathology. In an October 14, 2021 addendum report, Dr. Katz addressed trochanteric bursitis of the hips and indicated that Dr. Drew, in reports from 2016, did not note an abnormal limp or gait, and other multiple reports from Dr. Irion did not document definitive antalgic or Trendelenburg gait. He indicated that the bilateral knee arthritis was primarily patellofemoral and would not be expected to cause a significant gait issue or gait disturbance. Dr. Katz opined that it could not be reasonably assumed that the trochanteric bursitis was a direct and natural result of the injury to the knees on December 27, 2016. As his reports were well-reasoned and based on a complete and accurate history, the Board finds that Dr. Katz' reports constitute the weight of the medical evidence.¹⁶

As the medical evidence of record is insufficient to establish causal relationship between additional diagnosed conditions and the accepted December 27, 2016 employment injury, the Board finds that appellant has not met her burden of proof to establish her expansion claim.

¹³ See *supra* notes 11 and 12.

¹⁴ *Supra* note 10.

¹⁵ *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁶ See *L.L.* Docket No. 21-1319 (issued September 7, 2023).

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 her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted December 27, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 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