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

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| **S.H., Appellant** | ) | |
| **and** | ) | **Docket No. 21-0987** |
| | ) | **Issued: September 1, 2023** |
| **U.S. POSTAL SERVICE, WEST CHESTER PROCESSING & DISTRIBUTION CENTER, White Plains, NY, Employer** | ) | |

*Appearances:*
*Aaron Aumiller, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

### ***JURISDICTION***

On June 15, 2021 appellant, through counsel, filed a timely appeal from a December 17, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 December 17, 2020 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*.

## ***ISSUES***

The issues are: (1) whether OWCP properly denied appellant's request for authorization of her September 5, 2017 left knee surgery; and (2) whether appellant has met her burden of proof to establish a recurrence of disability, commencing August 31, 2017, causally related to her accepted August 1, 2009 employment injury.

## ***FACTUAL HISTORY***

On August 2, 2009 appellant, then a 38-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained right foot pain due to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment on August 1, 2009. OWCP accepted the claim for aggravation of right tarsal tunnel syndrome, right ankle sprain, and consequential left knee internal derangement and left knee torn lateral meniscus. Appellant underwent OWCP-authorized right foot surgery (tarsal tunnel release) on December 2, 2010 and authorized left knee surgery (arthroscopy for partial lateral meniscectomy and chondroplasty of patellofemoral compartment and medial femoral condyle) on November 25, 2015. OWCP paid her wage-loss compensation until her return to a full-time modified duty on May 15, 2017.

On January 12, 2017 OWCP referred appellant, along with the medical record, a series of questions, and a statement of accepted facts to Dr. Stanley Askin, a Board-certified orthopedic surgeon serving as OWCP's second opinion physician, to determine appellant's work capacity and need for medical treatment.

In a January 30, 2017 report, Dr. Askin noted that appellant returned to work on January 8, 2014 working four hours a day. He reported his examination findings and opined that she could work a full-time sedentary position with restrictions of no more than 1 hour of walking and/or standing; no more than 2 hours of operating a motor vehicle at work; and no more than 1 hour with 10 pounds of squatting, kneeling, and/or climbing. Regarding appellant's left knee, Dr. Askin noted that she had developed degenerative changes in her weight-bearing joints, which was a disease not an injury. He indicated that her arthritic condition had been accepted as work related and that she had not fully recovered from the effects of the injury. Dr. Askin noted that, if the knee arthritis was intolerable, then a total knee arthroplasty was the only effective management. He indicated that he was not recommending a total knee replacement, but was merely stating that arthroplasty was the current standard of care for appellant's condition. Dr. Askin additionally noted that he did not believe that she was a candidate for surgical treatment of her hip, low back, or feet.

On July 13, 2017 OWCP requested that Dr. Askin clarify his opinion regarding appellant's left knee condition and surgical recommendation, noting that left knee osteoarthritis/arthritis was not part of the accepted claim.

In a July 24, 2017 addendum report, Dr. Askin indicated that he had understood that appellant's left knee osteoarthritis/arthritis was not an accepted part of the claim and that he had specifically noted that the arthritis was "independent of cause." He additionally noted that his answer continues to be "no" in response to the question whether her claim should be expanded to include any additional work-related conditions. Dr. Askin explained that osteoarthritis/arthritis was a disease rather than an injury. Thus, he did not consider that the claim should be expanded

to include any additional work-related conditions. Consequently, there was no need to contemplate whether appellant's subsequently developed arthritic condition was caused, aggravated, accelerated, or precipitated as it was not work related in any matter.

In a July 24, 2017 report, Dr. Joshua Lehman, an osteopathic physician Board-certified in family medicine, noted appellant's work-related injury, that she had undergone right tarsal tunnel release, and that she had slowly developed left knee pain secondary to compensation with subsequent arthroscopic surgery on her left knee. He noted that she had returned to work and that she ambulated with a cane. Dr. Lehman reported his examination findings and provided an assessment of acute left knee meniscal tear and right tarsal tunnel syndrome. He indicated that appellant had instability in her left knee with severe arthritis and that she could tolerate a sedentary job, but had a hard time getting to and from her job and was at a high risk of falling. Dr. Lehman also indicated that she could not perform any prolonged standing due to increased pain and weakness in her right leg.

On August 15, 2017 OWCP received requests for authorization for additional left knee surgery. Evidence received in support of the surgical request included June 28 and July 29, 2017 diagnostic reports and an August 2, 2017 preoperative report from Dr. Gwo Chin Lee, a Board-certified orthopedic surgeon. In his August 2, 2017 report, Dr. Chin Lee related an impression of left knee degenerative arthritis with degenerative medial and lateral complex tears of the lateral meniscus and medial meniscus, and status postmeniscectomy. He noted that appellant's left knee conditions were an acute exacerbation of a work injury, which caused displacement of the tears.

In an August 15, 2017 letter, OWCP advised appellant that the requested additional left knee surgery could not be authorized as the medical evidence of record did not establish the medical necessity for the requested procedure. It afforded her 30 days to submit additional evidence.

Appellant subsequently filed a Form CA-2a notice of recurrence, dated August 14, 2017, claiming wage-loss compensation and medical treatment due to a change or worsening of her accepted work-related conditions. She noted a recurrence date of July 28, 2017 and that she stopped work on August 31, 2017.

In another August 2, 2017 progress report, Dr. Lee reported that appellant fell almost on a daily basis and that she had recently fallen because her knee suddenly buckled from twisting. He provided an impression of degenerative arthritis of the left knee with degenerative medial and lateral meniscal tears "causing mechanical symptoms, acute exacerbation following a work injury causing displacement of the tears." Dr. Lee recommended an arthroscopy to eliminate some of the mechanical symptoms, noting that appellant would still be limited by arthritis symptoms in the future.

On August 24, 2017 Dr. Lee reported that it was medically necessary for appellant to undergo a left knee arthroscopy for meniscal debridement. He noted that the July 28, 2017 magnetic resonance imaging (MRI) scan showed complex left knee lateral meniscus tear and evidence of synovitis and that her August 2, 2017 examination revealed significant effusion and lateral and medial joint line tenderness. Dr. Lee advised that, while appellant had evidence of some mild cartilage loss, the goal of surgery was to diminish her mechanical symptoms and to prevent her from suffering due to her knee pain and buckling. He also noted that she had undergone a course of physical therapy which was unsuccessful.

OWCP also received a May 11, 2017 report from Dr. Laura E. Ross, an osteopathic physician Board-certified in orthopedic surgery. Dr. Ross recommended that appellant consult with Dr. Lee for unicompartmental arthroplasty of the left knee which she opined that was medically necessary and causally related to the work injury. She also recommended that appellant remain off work.

In an August 29, 2017 development letter, OWCP advised appellant of the deficiencies of her recurrence claim. It advised her of the type of medical evidence needed to support her recurrence claim and afforded her 30 days to respond.

OWCP also received a July 29, 2017 MRI scan of appellant's left knee.

In an August 15, 2017 report, Dr. Ross diagnosed left knee complex posterior horn of the medial meniscus with Baker's cyst and recommended that appellant undergo further evaluation for proposed arthroscopic surgery with Dr. Lee. She noted that appellant's recommended work status was full-time full duty.

In an August 28, 2017 report, Dr. Lehman noted that appellant ambulated with a cane. He reported examination findings and provided an assessment of acute left knee lateral meniscal tear and right tarsal tunnel syndrome. Dr. Lehman indicated that appellant had instability in her left knee with severe arthritis and that she could only tolerate a sedentary job; however, she was at high risk of falling. He also indicated that she was a good candidate for left knee arthroscopic surgery. With regard to the right tarsal tunnel syndrome, Dr. Lehman indicated that appellant could not perform any prolonged standing with her job secondary to increased chronic pain and weakness in the right lower extremity.

On September 5, 2017 appellant underwent an unauthorized left knee arthroscopic surgery performed by Dr. Lee.

By decision dated October 10, 2017, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish disability from work due to a material change/worsening of her accepted work-related conditions. It noted that her work restrictions were outlined in Dr. Askin's January 30, 2017 second opinion report, but that Dr. Ross had recommended on August 15, 2017 that appellant could perform full-time full-duty work. OWCP also found that the recommended left knee surgery appeared to be due to her arthritis, and not the accepted conditions. Thus, it was unclear as to why appellant stopped work, and why the surgery was work related.

By separate decision dated October 10, 2017, OWCP denied appellant's request for authorization of additional left knee surgery. It found that the evidence of record did not support that the requested left knee surgery was medically necessary to address the effects of her August 1, 2009 employment injury as it was for treatment of arthritis and not for an accepted work-related condition.

On October 13, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 30, 2017 report, Dr. Lee noted his findings on examination and diagnosed degenerative left knee arthritis and medial meniscus tear. He indicated that appellant's clinical

symptoms had worsened following a fall. Dr. Lee also provided an August 30, 2017 note wherein he indicated that she was scheduled for surgery on September 5, 2017 and would be unable to return to work for four weeks thereafter.

A hearing was held on March 8, 2018. By decision dated April 12, 2018, OWCP's hearing representative affirmed both October 10, 2017 decisions.

On January 29, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

A September 5, 2017 surgical report documented appellant's left knee arthroscopy, which was performed by Dr. Lee. The arthroscopy involved loose body removal, partial lateral meniscectomy, and debridement chondroplasty of unstable cartilage flap of the femoral condyle.

In an October 10, 2018 report, Dr. Lee summarized appellant's examination findings and his impressions since she began treatment for her left knee on June 28, 2017. He noted that her mechanical symptoms caused several falls and that her July 29, 2017 MRI scan revealed prior surgical changes, osteoarthritis of the knee, and a complex lateral meniscal tear worse compared to prior imaging in July 2016. Dr. Lee indicated that appellant underwent a repeat left knee arthroscopy for lateral meniscus tear on September 5, 2017 per his recommendation. He opined that, while she could not return to her prior work duties, which required significant periods of standing and driving, she could perform sedentary work so long as periodic stretching to alleviate joint stiffness was allowed. Dr. Lee stated that, while appellant had undergone prior left knee surgery and history of meniscal tears and osteoarthritis, she did not have any symptoms and was working until her fall. He stated that the fall did not cause the arthritis or tear, but exacerbated her conditions to the point that they became symptomatic. Dr. Lee opined that appellant's fall had exacerbated her preexisting left knee arthritis and worsened her lateral meniscus tear and resulted in the need for subsequent arthroscopy.

By decision dated October 9, 2019, OWCP denied modification of its April 12, 2018 decision.

On September 18, 2020 appellant, through counsel, requested reconsideration.

In an August 24, 2020 report, Dr. Joshua B. Macht, a Board-certified internist, explained that the purpose of appellant's September 5, 2017 procedure was to clean up left knee degenerative changes of the lateral meniscus, degenerative changes of the articular cartilage, and to remove a loose body that had developed due to degeneration of the bone. He noted her accepted conditions and opined that the procedure was causally related to the August 1, 2009 incident as it sought to correct "internal derangement" of the left knee that developed in accelerated fashion due to favoring the right ankle which was directly injured in the August 1, 2009 work-related incident. Dr. Macht indicated that appellant's initial left knee problems developed as a compensatory injury from favoring her right ankle and underwent an accelerated progression due to continued favoring of the right ankle and by the performance of her routine work duties. He indicated that her symptoms gradually progressed in severity which led to additional surgical intervention. Dr. Macht opined that appellant was temporarily totally disabled at the time of surgery and the postoperative recovery period.

By decision dated December 17, 2020, OWCP denied modification of its prior decision.

## ***LEGAL PRECEDENT -- ISSUE 1***

Section 8103 of FECA[4] provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.[5] In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, and the only limitation on OWCP's authority is that of reasonableness.[6] Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[7]

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[8] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[9] In order to prove that the procedure is warranted, appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[10]

## ***ANALYSIS -- ISSUE 1***

The Board finds that OWCP properly denied appellant's request for authorization of her September 5, 2017 left knee surgery.

In the present case, OWCP accepted that appellant sustained an aggravation of right tarsal tunnel syndrome, right ankle sprain, and consequential left knee internal derangement and left knee torn lateral meniscus. Appellant underwent OWCP-authorized left knee surgery (arthroscopy for partial lateral meniscectomy and chondroplasty of patellofemoral compartment and medial femoral condyle) on November 25, 2015. The Board finds that OWCP properly found that she had not submitted rationalized medical evidence establishing that her September 5, 2017 left knee

[4] *Supra* note 2.

[5] 5 U.S.C. § 8103(a); *see L.K.*, Docket No. 18-1183 (issued May 12, 2020); *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

[6] *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *see also Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

[7] *See D.S.*, Docket No. 18-0353 (issued May 18, 2020); *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *L.W.*, 59 ECAB 471 (2008).

[8] *See R.M.*, Docket No. 19-1319 (issued December 10, 2019); *Debra S. King*, 44 ECAB 209 (1992).

[9] *B.I., supra* note 6; *see also K.W.*, Docket No. 18-1523 (issued May 22, 2019); *Bertha L. Arnold*, 38 ECAB 282 (1986).

[10] S*ee T.A.*, Docket No. 19-1030 (issued November 22, 2019); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

arthroscopic procedure was medically necessary and causally related to the accepted employment injury.[11]

In his July 24, 2017 report, Dr. Askin related that appellant's arthritis was "independent of cause" as it was a disease not an injury, therefore, there was no need to consider whether her arthritic condition was caused, accelerated, or precipitated by her work-related injury. The Board finds that he sufficiently responded to OWCP's request for clarification. In his combined reports, Dr. Askin reviewed appellant's history of injury and treatment along with the medical and diagnostic reports in her record. He also performed a physical examination and provided a rationalized explanation that her left knee arthritic condition was a disease and was, therefore, not due to her accepted injury. Accordingly, Dr. Askin's opinion is sufficiently rationalized and constitutes the weight of the medical evidence.[12]

In his August 2, 24, and 30, 2017 reports, Dr. Lee related that appellant's left knee conditions of degenerative arthritis with degenerative medial and lateral complex tears of the lateral meniscus and medial meniscus, and status postmeniscectomy were an acute exacerbation of a work injury which caused displacement of the tears, he did not provide medical rationale which explained how the work injury caused an acute exacerbation of her degenerative knee arthritis and displacement of the tears. Furthermore, he described the lateral meniscal tear as progressive, but offered no rationale as to how a worsening lateral meniscal tear was attributable to her accepted employment injury. The Board has held that conclusory opinions are insufficient to meet a claimant's burden of proof.[13] In his October 10, 2018 report, Dr. Lee noted that, while appellant had undergone prior left knee surgery and had a history of meniscal tears and osteoarthritis, she was asymptomatic and working prior to her fall. He concluded that her fall exacerbated her arthritic and tear conditions to the point that they became symptomatic. However, the Board has held that an opinion that a condition is causally related to an employment incident simply because the employee was asymptomatic before the injury, is insufficient, without adequate rationale, to establish causal relationship.[14] Consequently, Dr. Lee's reports lacks probative value regarding the issue of whether the requested procedure was medically necessary due to the accepted employment injury.[15]

In her May 11, 2017 report, Dr. Ross opined that the recommended unicompartmental arthroplasty of appellant's left knee was medically necessary and causally related to the work injury. This opinion, however, is conclusory as she did not provide medical rationale explaining how the additional knee surgery was causally related to the accepted August 1, 2009 employment

[11] *See A.K.*, Docket No. 22-1213 (issued April 27, 2023); *P.S.*, Docket No. 20-0075 (issued July 12, 2021).

[12] *S.K*, Docket No. 22-0950 (issued June 23, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[13] *D.R.*, Docket No. 21-1056 (issued April 13, 2023); *J.O.*, Docket No. 19-0326 (issued July 16, 2019).

[14] *See D.V.*, Docket No. 21-1259 (issued March 15, 2022); *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *F.H.*, Docket No. 18-1238 (issued January 18, 2019).

[15] *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.M.*, Docket No. 19-0563 (issued August 1, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

injury.[16] Consequently, Dr. Ross' report is insufficient to establish that the requested surgical procedure is causally related to the accepted employment injury.[17]

In a July 24, 2017 report, Dr. Lehman noted that appellant had slowly developed left knee pain secondary to compensation for her right ankle condition. While he provided an assessment of acute left meniscal tear and indicated that she had instability in her knee with severe arthritis, he offered no rationalized opinion explaining the cause of her conditions. Dr. Lehman's report is, therefore, insufficient to establish the requested surgical procedure is causally related to the accepted employment injury.[18]

In an August 24, 2020 report, Dr. Macht advised that the purpose of appellant's September 5, 2017 procedure was to clean up degenerative changes of the left lateral meniscus and articular cartilage and to remove a loose body that had developed due to degeneration of the bone. He opined that the September 5, 2017 procedure was causally related to the August 1, 2009 incident as it sought to correct "internal derangement" of the left knee that developed in accelerated fashion due to favoring the right ankle which was directly injured in the August 1, 2009 incident. Dr. Macht, however, failed to explain the pathophysiological process of how the accepted employment injury contributed to the acceleration of appellant's degenerative changes.[19] Therefore, he failed to provide a clear rationalized medical opinion and his opinion is insufficient.[20]

The record also contains several diagnostic studies. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[21]

The only limitation on OWCP's authority to authorize medical treatment is one of reasonableness.[22] As the medical evidence does not establish that appellant's September 5, 2017 left knee surgery was medically necessary and causally related to the accepted conditions under this claim, the Board finds that OWCP acted reasonably in denying her request for surgical authorization.

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[16] *P.S.*, *supra* note 11; *J.O.*, Docket No. 19-0326 (issued July 16, 2019).

[17] *P.S.*, *id.*; *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

[18] 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. *See C.R.*, Docket No. 23-0330 (issued July 28, 2023); *S.J.*, Docket No. 19-0696 (issued August *23*, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[19] *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[20] *R.L.*, Docket No. 23-0098 (issued June 20, 2023); *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *C.H.*, Docket No. 19-0409 (issued August 5, 2019).

[21] *See C.S.*, Docket No. 22-0545 (issued March 22, 2023); *H.E.*, Docket No. 22-1129 (issued December 16, 2022); *M.S.*, Docket No. 22-0586 (issued July 12, 2022); *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

[22] *D.C.*, Docket No. 20-0854 (issued July 19, 2021); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, *supra* note 18.

## ***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 environment.[23] 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. Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[24]

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence for which he or she claims compensation is causally related to the original injury.[25] This burden of proof requires that a claimant furnish medical evidence from a qualified physician who concludes that the recurrent disability is causally related to employment injury.[26] The physician's opinion must be based on a complete and accurate factual and medical history and it must be supported by sound medical reasoning.[27] Where no such rationale is present, the medical evidence is of diminished probative value.[28]

## ***ANALYSIS -- ISSUE 2***

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing August 31, 2017, causally related to her accepted August 1, 2009 employment injury.

Dr. Lehman opined in his August 28, 2017 report, that appellant could tolerate a sedentary job without any prolonged standing due to increased pain and weakness in her right leg. He, however, offered no explanation that she had objective findings from her accepted right tarsal tunnel syndrome which caused total disability as of August 31, 2017. The Board has held that a report that does not provide an opinion on causal relationship is of no probative value.[29] Dr. Lehman's report is, therefore, insufficient to establish appellant's recurrence claim.

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[23] 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[24] *R.H.*, Docket No. 21-0717 (issued June 12, 2023); *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004). *See also Albert C. Brown*, 52 ECAB 152 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[25] *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *S.S.*, 59 ECAB 315, 218-19 (2008).

[26] *Id.*

[27] *Id.*

[28] *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

[29] *See L.B.* and *D.K. supra* note 18.

Dr. Ross, in her August 15, 2017 report, had opined that appellant's work status should be full-time full duty. She, therefore, negated a finding that appellant was totally disabled due to a recurrence of disability as of August 31, 2017.[30]

As the medical evidence of record is insufficient to establish a recurrence of disability commencing August 31, 2017 causally related to the accepted August 1, 2009 employment injury, the Board finds that appellant has not met her 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 OWCP properly denied appellant's request for authorization of her September 5, 2017 left knee surgery. The Board further finds that she has not met her burden of proof to establish a recurrence of disability, commencing August 31, 2017, causally related to her accepted August 1, 2009 employment injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 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

[30] *Id.*