

ISSUES

The issues are: (1) whether appellant has met his burden of proof to expand the acceptance of his claim to include right knee medial meniscus tear as causally related to his accepted March 12, 2016 employment injury; and (2) whether OWCP properly denied authorization for right knee surgeries performed on April 14, 2017 and June 21, 2018.

FACTUAL HISTORY

On March 17, 2016 appellant, then a 36-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on March 12, 2016 he injured his right knee when he slipped on metal steps as he was entering an aircraft during a fire training exercise while in the performance of duty. Appellant stopped work on that date. OWCP accepted the claim for sprain of the right knee and paid appellant wage-loss compensation. Appellant returned to light duty on April 5, 2016 and full duty on May 30, 2017.

In a report dated August 1, 2016, Dr. Richard Greenfield, a Board-certified orthopedic surgeon, reviewed appellant's history of injury on March 12, 2016 and noted that he had previously sustain a fracture of the right tibial plateau treated with surgical open reduction and internal fixation (ORIF). He diagnosed a contusion of the anterior aspect of the right knee. Dr. Greenfield related that appellant required surgery to remove the previously inserted plate and screws to reduce his pain, which had become aggravated on March 12, 2016. He attributed the need for surgery to the March 12, 2016 employment injury.

On September 8, 2016 Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), reviewed the medical record and statement of accepted facts (SOAF) and concluded that the requested right knee surgery was not causally related to the accepted March 12, 2016 right knee strain.

On October 10, 2016 Dr. Greenfield provided findings on physical examination including moderate effusion, loss of range of motion (ROM), a positive McMurray test, and medial joint line tenderness in the right knee. He diagnosed right knee pain following trauma on March 12, 2016 including tearing of the right medial meniscus, persistent effusion, pain about the metallic implant, and pain and discomfort of the right knee after the March 12, 2016 injury. Dr. Greenfield advised that appellant was partially disabled. He opined that the previously-asymptomatic metallic fixation device had become symptomatic as a result of the March 12, 2016 employment injury.

In a report dated February 9, 2017, Dr. Greenfield reviewed appellant's December 20, 2016 magnetic resonance imaging (MRI) scan of the right knee, which demonstrated a medial meniscus partially obscured by hardware artifact and mild degenerative blunting of the body of the medial meniscus with no unstable medial meniscus tear. Dr. Greenfield opined that it was medically probable that appellant tore his right medial meniscus on March 12, 2016. He determined that appellant had failed conservative care. On examination, Dr. Greenfield found positive medial joint line tenderness; a positive medial McMurray test, which was compatible with a torn medial meniscus; and limited ROM. He requested authorization for a right knee arthroscopy with partial medial meniscectomy.

In a March 3, 2017 development letter, OWCP informed appellant that the evidence of record was insufficient to authorize the proposed surgery as it did not appear to be medically necessary for and/or causally related to the accepted conditions. A copy of the DMA's report was attached for his review. OWCP requested that appellant provide a detailed narrative report from his physician explaining how the requested surgery was medically necessary for his accepted employment injury. It afforded him 30 days to submit the necessary evidence.

On July 5, 2017 appellant, through counsel, requested that OWCP expand the acceptance of his claim based on reports from Dr. Greenfield.

In an August 8, 2017 development letter, OWCP requested that appellant submit additional medical evidence to support that the additional medical diagnosis was causally related to the accepted March 12, 2016 employment injury. It afforded him 30 days to submit the requested evidence.

By decision dated November 17, 2017, OWCP denied expansion of the acceptance of the claim to include right knee meniscal tear.

On November 28, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated April 20, 2018, OWCP's hearing representative vacated the November 17, 2017 OWCP decision and remanded the claim for additional review by the DMA, and a second opinion evaluation.

On remand OWCP referred the case record, along with a SOAF, to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a DMA. In a report dated May 2, 2018, Dr. Hammel reviewed the SOAF and found that the MRI scan did not show a clear meniscal tear, and that the proposed right knee arthroscopy to include removal of screws and plates was not medically necessary as there was no indication of intra-articular pathology on the MRI scan. In a May 9, 2018 supplemental report, the DMA reviewed the medical records and continued to find that the requested right knee surgery was not medically necessary.

On May 22, 2018 OWCP referred appellant, a SOAF, and a list of questions to Dr. William P. Curran, a Board-certified orthopedic surgeon, for a second opinion examination.

In his June 19, 2018 report, Dr. Curran provided appellant's history of injury and his review of the medical evidence, including the results of diagnostic studies. He found a small partial tear of the lateral meniscus on the March 21, 2018 MRI scan. Dr. Curran diagnosed tricompartmental osteoarthritis of the right knee and a contusion of the right knee causally related to a March 12, 2016 employment injury. He opined that appellant's employment injury caused a right knee contusion and a temporary aggravation of appellant's preexisting, asymptomatic tricompartmental osteoarthritis without causing damage to his preexisting right knee hardware. Dr. Curran opined that the temporary aggravation should have resolved within six to eight weeks. He further opined that appellant did not sustain a tear of his right medial meniscus on March 12, 2016 as there was no evidence on MRI scan or physical examination of a torn meniscus. Dr. Curran attributed the right knee surgery to appellant's preexisting tricompartmental osteoarthritis changes in the right knee and his previous knee surgery rather than the accepted

March 12, 2016 employment injury. He concluded that he would eventually require total right knee arthroplasty due to the progressive deterioration of appellant's tricompartmental arthritis.

By decision dated July 2, 2018, OWCP denied both appellant's request to expand the acceptance of his claim to include right knee medial meniscus tear and his request for authorization for right knee surgery.

On July 6, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 8, 2018.

Thereafter, appellant submitted an operative report from his April 14, 2017 right knee arthroscopy with partial meniscectomy, debridement, and removal of one screw. The preoperative notes dated April 13, 2017, indicate that he had sustained a new injury snowboarding a few months earlier. On June 21, 2018 appellant underwent additional right knee surgery including right knee diagnostic arthroscopy, right knee partial lateral meniscectomy, right knee removal of deep hardware, and scar revision.

By decision dated January 23, 2019, OWCP's hearing representative vacated the July 2, 2018 OWCP decision and remanded the case for OWCP to prepare an updated SOAF that included appellant's surgical history and obtain a supplemental report from Dr. Curran.

In his February 26, 2019 supplemental report, Dr. Curran indicated that he had reviewed additional medical records, including operative reports dated April 14, 2017 and June 21, 2018. He again opined that on March 12, 2016 appellant sustained a contusion to his right knee. Dr. Curran attributed the partial tear of the lateral meniscus to traumatic arthritis as a result of the nonemployment-related tibial plateau fracture in 2010 and to a snowmobile accident in 2017 that had occurred after the employment injury. He found that the 2010 right lateral tibial plateau fracture caused appellant to develop right knee osteoarthritis which was temporarily aggravated for one to two months by the March 12, 2016 employment injury.

By decision dated May 13, 2019, OWCP again denied both appellant's request to expand the acceptance of his claim to include right knee medial meniscus tear and authorization for right knee surgery.

On May 20, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 9, 2019, OWCP's hearing representative set aside the May 13, 2019 decision. She found that a conflict existed between Dr. Curran and Dr. Greenfield of whether appellant sustained a right knee medial meniscus tear causally related to the March 12, 2016 employment injury and whether appellant's April 14, 2017 and June 21, 2018 surgeries were medically necessary and causally related to the accepted employment injury.

On September 13, 2019 OWCP referred appellant, a SOAF, and a series of questions to Dr. Neil J. Halbridge, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated October 15, 2019, Dr. Halbridge, serving as the impartial medical examiner (IME), provided his review of the SOAF and the medical reports of record. He noted that appellant had undergone an internal fixation for a lateral tibial plateau fracture and proximal fibular fracture of the right knee in April 2010 and had sustained a snowboarding injury to his right knee in February 2017. Dr. Halbridge observed that a December 20, 2016 MRI scan failed to demonstrate a right knee medial meniscal tear and thus determined that this condition had not been established as employment related. He opined that the right knee medial meniscal injury was not medically connected to the March 12, 2016 employment injury. Dr. Halbridge related that appellant had sustained “a contusion of the right knee in the specific work injury of March 12, 2016, but absent the underlying post-traumatic arthritis resulting from the lateral tibia plateau fracture that [appellant] sustained and for which he underwent surgery in April 2010, the contusion would have resolved and become asymptomatic in six to eight weeks.” He also diagnosed right knee strain due to the February 2017 snowboarding accident. Dr. Halbridge determined that appellant had an underlying preexisting condition involving an intraarticular fracture of the lateral tibial plateau of his right knee with resulting mild osteoarthritis in the medial and lateral femoral condyles. He opined that appellant’s April 14, 2017 and June 21, 2018 surgeries were not medically necessary to treat the March 12, 2016 employment injury. Dr. Halbridge found that appellant had no employment-related residuals.

By decision dated December 10, 2019, OWCP again denied both expansion of the acceptance of the claim to include right knee medial meniscus tear and authorization for right knee surgery.

On December 17, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. A telephonic hearing was held on April 7, 2020.

By decision dated June 4, 2020, OWCP’s hearing representative affirmed OWCP’s December 10, 2019 decision, finding that the October 15, 2019 report from Dr. Halbridge, the IME, was entitled to the special weight of the evidence.

On February 10, 2021 appellant, through counsel, requested reconsideration of the June 4, 2020 decision. In support of his request, he provided an October 21, 2020 report from Dr. Chad Elsner, a Board-certified orthopedic surgeon, who found mild joint effusion, Baker’s cyst, and edema compatible with a strain. Dr. Elsner noted that diagnostic testing demonstrated chronic tearing of the anterior horn, body, and posterior horn of the lateral meniscus as well as areas of high-grade full and near full-thickness cartilage loss along the lateral aspects of the femoral condyle. He did not address the need for surgery on April 14, 2017 and June 21, 2018.

By decision dated May 7, 2021, OWCP denied modification of its June 4, 2020 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.³

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁴ 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 complete factual and medical background.⁵ 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.⁶

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.⁷ 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.⁸

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁹ This is called an impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁰ Where a case is referred to an IME for

³ *G.C.*, Docket No. 21-0527 (issued September 20, 2021); *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).

⁴ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *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).

⁶ *Id.*

⁷ *G.C.*, Docket No. 21-0176 (issued July 6, 2022); *R.K.*, Docket No. 21-0387 (issued May 20, 2022); *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

⁸ *Id.*

⁹ 5 U.S.C. § 8123(a).

¹⁰ 20 C.F.R. § 10.321; *L.R.*, Docket No. 21-0018 (issued February 17, 2023); *J.K.*, Docket No. 21-0007 (issued July 30, 2021); *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include right knee medial meniscus tear as causally related to his accepted March 12, 2016 employment injury.

OWCP properly determined that a conflict in medical opinion existed between Dr. Greenfield, appellant's treating physician, and Dr. Curran, who provided a second opinion examination, regarding whether the acceptance of appellant's claim should be expanded to include a right knee medial meniscal tear due to his accepted March 12, 2016 employment injury that necessitated surgeries. It referred appellant to Dr. Halbridge, a Board-certified orthopedic surgeon, for an impartial medical examination pursuant to 5 U.S.C. § 8123(a).¹²

In his October 15, 2019 report, Dr. Halbridge described the March 12, 2016 work injury and noted that appellant had preexisting knee conditions including post-traumatic arthritis. He opined that the right knee medial meniscal injury was not medically connected to the March 12, 2016 employment injury. Dr. Halbridge explained that appellant had sustained a contusion of the right knee on March 12, 2016, and that absent the underlying post-traumatic arthritis resulting from the previous lateral tibia plateau fracture, the contusion would have resolved and become asymptomatic in six to eight weeks. Thus, he concluded that there was no evidence of a right medial meniscal injury causally related to the accepted March 12, 2016 employment injury.

The Board finds that Dr. Halbridge accurately described the accepted employment injury and noted his review of the medical record. Dr. Halbridge performed a thorough clinical examination and provided detailed findings. He provided a rationalized opinion regarding whether appellant's claim should be expanded, finding that there was no evidence to find causal relationship between the right medial meniscal injury and the accepted employment injury.¹³ Dr. Halbridge's opinion, as set forth in his October 15, 2019 report, constitutes probative and reliable evidence. The Board, therefore, finds that his opinion is entitled to the special weight accorded to an IME with regard to the issue of whether acceptance of appellant's claim should be expanded to include additional right knee meniscal injuries.¹⁴

In his October 21, 2020 report, Dr. Elsner provided findings including mild joint effusion, Baker's cyst, and edema compatible with a strain. He noted that diagnostic testing demonstrated chronic tearing of the anterior horn, body, and posterior horn of the lateral meniscus as well as

¹¹ *V.K.*, Docket No. 18-1005 (issued February 1, 2019); *D.M.*, Docket No. 17-1411 (issued June 7, 2018).

¹² *G.B.*, Docket No. 19-1510 (issued February 12, 2020); *R.H.*, 59 ECAB 382 (2008).

¹³ *See L.R.*, Docket No. 21-0018 (issued February 17, 2023); *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *see also D.S.*, Docket No. 18-0353 (issued February 18, 2020).

¹⁴ *L.R.*, *F.A.*, *id.*; *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *M.M.*, Docket No. 16-1655 (issued April 4, 2018).

areas of high-grade full and near full-thickness cartilage loss along the lateral aspects of the femoral condyle. However, Dr. Elsner did not provide an opinion on causal relationship between the additional conditions claimed and the accepted employment injury. His opinion, therefore, is insufficient to expand the acceptance of appellant's claim.¹⁵

As the medical evidence of record is insufficient to overcome the weight accorded to the IME, Dr. Halbridge, or to create an additional conflict in medical opinion, the Board finds that appellant has not met his burden of proof to expand the acceptance of his claim.¹⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA 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.¹⁷ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.¹⁸ OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally 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.¹⁹

While OWCP is obligated to pay for treatment of employment-related conditions, a claimant has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.²⁰ Causal relationship requires supporting rationalized medical evidence.²¹ Therefore, in order to prove that, a procedure is warranted, a claimant must establish that the procedure was for a condition causally related to the employment

¹⁵ *R.P.*, Docket No. 22-1349 (issued June 12, 2023); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *R.P.*, *id.*; *D.L.*, Docket No. 22-0161 (issued March 10, 2023).

¹⁷ 5 U.S.C. § 8103(a); *see L.R.*, *supra* note 13; *A.N.*, Docket No. 20-0320 (issued March 31, 2021); *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

¹⁸ *Id.* at § 8103.

¹⁹ *L.R.*, *A.N.*, *supra* note 17; *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

²⁰ *See L.R.*, *A.N.*, *id.*; *L.S.*, Docket No. 18-1746 (issued April 9, 2019); *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

²¹ *L.R.*, *A.N.*, *id.*; *K.W.*, Docket No. 18-1523 (issued May 22, 2019).

injury and that the procedure was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.²²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied authorization for the right knee surgeries performed on April 14, 2017 and June 21, 2018.

As found above, OWCP properly found a conflict in the medical opinion evidence relating to whether appellant's claim should be expanded to include right knee medial meniscal tear. In his October 15, 2019 report, Dr. Halbridge, the IME, opined that the acceptance of his claim should not be expanded to include right knee medial meniscal conditions causally related to his accepted employment injury and that right knee surgeries was not necessary or appropriate to treat his accepted work-related conditions. His opinion is entitled to the special weight accorded to an IME with regard to the authorization for the right knee surgeries performed on April 14, 2017 and June 21, 2018.²³

The Board further finds that Dr. Elsner's October 21, 2020 report did not address the issue of whether the right knee surgeries performed on April 14, 2017 and June 21, 2018 were causally related to the accepted March 12, 2016 employment injury.²⁴ This report is therefore insufficient to overcome the special weight accorded to the IME, Dr. Halbridge or to create an additional conflict in medical opinion.²⁵

As the conditions for which surgery was requested are not employment related, the procedure was not medically warranted.²⁶ The only limitation on OWCP's authority in approving or denying service under FECA is one of reasonableness.²⁷ OWCP obtained an impartial medical examination by Dr. Halbridge who opined that the April 14, 2017 and June 21, 2018 right knee surgeries was not causally related to the accepted employment conditions. It, therefore, had sufficient evidence upon which to deny surgery and did not abuse its discretion.²⁸

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.

²² *Id.*

²³ See *L.R.*, *supra* note 13; *Y.I.*, Docket No. 20-0263 (issued November 30, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

²⁴ *J.B.*, Docket No. 21-0854 (issued May 18, 2023).

²⁵ *Supra* note 16.

²⁶ *Id.*

²⁷ See *J.B.*, *supra* note 24; *T.A.*, Docket No. 19-1030 (issued November 22, 2019); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

²⁸ *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include an additional condition of right knee medial meniscus tear as causally related to his accepted March 12, 2016 employment injury. The Board further finds that OWCP properly denied his authorization for the right knee surgeries performed on April 14, 2017 and June 21, 2018.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2021 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

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