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

| | | |
|---|---|---|
| **D.M., Appellant** | ) | |
| **and** | ) | **Docket No. 22-0442** |
| | ) | **Issued: September 12, 2023** |
| **U.S. POSTAL SERVICE, WAIALUA POST OFFICE, Waialua, HI, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On January 31, 2022 appellant, through counsel, filed a timely appeal from a December 21, 2021 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.

### *ISSUES*

The issues are: (1) whether appellant has met her burden of proof to establish expansion of the acceptance of her claim to include right knee osteoarthritis and/or a right meniscal tear as

[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*.

causally related to the accepted July 9, 2020 employment injury; and (2) whether appellant has met her burden of proof to establish disability from work, commencing November 7, 2020, causally related to her accepted July 9, 2020 employment injury.

## ***FACTUAL HISTORY***

On July 18, 2020 appellant, then a 68-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 2020 she sustained a right knee sprain with the immediate onset of severe pain as she walked to retrieve a parcel from the rear of her delivery vehicle while in the performance of duty. On the reverse side of the claim form, L.M., appellant's supervisor, contended that appellant had "disclosed that an underlying injury outside of work may have contributed to the injury while on duty."

On July 29 and August 7, 2020 OWCP received reports dated July 15, 2020 by Dr. Laura Winter, Board-certified in occupational medicine. Dr. Winter provided a history of injury, noting that appellant "might have been twisting at the time she began to feel the pain." She noted that appellant had preexisting osteoarthritis of the right knee. Dr. Winter obtained x-rays of the right knee, which demonstrated moderate-to-severe tricompartmental degenerative changes and soft tissue swelling. On examination she observed restricted active right knee range of motion due to pain, and that appellant walked with her right knee straight. Dr. Winter diagnosed a right knee sprain. She prescribed medication and physical therapy. Dr. Winter noted work restrictions.

In a July 29, 2020 report, Dr. Winter noted that appellant could increase activities as tolerated. She maintained appellant on light-duty work through August 31, 2020 and returned her to full duty effective September 1, 2020.

On September 1, 2020 OWCP accepted the claim for a right knee sprain.

OWCP received additional evidence. In an August 13, 2020 report, Dr. Winter noted that appellant's right knee symptoms had improved, though her knee was still bothering her at night. She maintained appellant on light-duty work through September 30, 2020, and returned her to full-duty work as of October 1, 2020.

In a November 10, 2020 report, Dr. Winter noted that appellant had been returned to full-duty work on November 1, 2020, but management maintained her on a modified route. Appellant experienced worsening right knee pain, stopped work, and sought treatment at a hospital emergency department on November 9, 2020. Dr. Winter held her off work.

In a November 13, 2020 report, Dr. Winter diagnosed a right knee sprain, osteoarthritis of the right knee, loose body in right knee, right popliteal cyst, and a right complex lateral meniscus tear. She held appellant off work.

Appellant stopped work on November 13, 2020, and did not return.

On November 24, 2020 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work during the period November 7 through 20, 2020.[3]

In a development letter dated December 4, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

In a November 23, 2020 report, Dr. Jerry W. Van Meter, a Board-certified orthopedic surgeon, diagnosed severe, advanced degenerative joint disease of the lateral compartment of the right knee.

In reports dated December 9 and 22, 2020, Dr. Winter continued to hold appellant off work.

OWCP received a November 13, 2020 magnetic resonance imaging (MRI) scan of the right knee, which demonstrated moderate-to-severe tricompartmental arthritis, multiple intra-articular loose bodies in the anterior and posterior recesses of the knee joint, joint effusion, Baker's cyst, complex tear of the posterior horn and body of the lateral meniscus with an apparent displaced meniscal fragment adjacent to the lateral joint line, and an intact medial meniscus.

In reports from January 19 through February 9, 2021, Dr. Winter continued to hold appellant off work.

By decision dated March 25, 2021, OWCP denied appellant's claims for wage-loss compensation for the period November 7, 2020 and continuing as the medical evidence did not establish disability from work during the claimed period due to the accepted right knee sprain.

Appellant submitted additional evidence. In a March 9, 2021 report, Dr. Winter noted bilateral knee pain, worse on the right. She diagnosed left knee pain and held appellant off work.

In an April 2, 2021 report, Dr. Winter held appellant off work through April 5, 2021 and prescribed physical therapy.

On April 21, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant separated from the employing establishment effective April 30, 2021.

In a May 14, 2021 report, Dr. Winter noted that, while appellant had been released to full-duty work, she used leave to remain off work and was waiting to complete retirement forms.

In a July 9, 2021 work slip, Dr. Winter diagnosed right knee sprain, complex right lateral meniscus tear, loose body in right knee, and right popliteal cyst. She held appellant off work.

A hearing before a representative of OWCP's Branch of Hearings and Review was held telephonically on August 11, 2021.

[3] Appellant filed a series of CA-7 forms for the period November 21, 2020 through March 12, 2021.

On September 23, 2021 OWCP received February 8 and July 23, 2021 reports by Dr. Gary Y. Okamura, a Board-certified orthopedic surgeon, who reviewed a history of injury and treatment. Dr. Okamura diagnosed moderate-to-severe arthritis of the right knee, unilateral post-traumatic osteoarthritis of the right knee, right knee contracture, and a right lateral meniscus tear. He recommended a total right knee arthroplasty.

By decision dated October 21, 2021, OWCP's hearing representative affirmed the March 25, 2021 decision.

On December 8, 2021 appellant, through counsel, requested reconsideration.

Appellant submitted a December 2, 2021 report by Dr. Sami E. Moufawad, Board-certified in pain management. Dr. Moufawad provided a history of the July 9, 2020 employment injury and subsequent treatment. On examination he observed diminished flexion and extension of the right knee. Dr. Moufawad also reviewed medical reports and imaging studies. He diagnosed a complex tear of the right lateral meniscus, and aggravation of right knee osteoarthritis. Dr. Moufawad opined that both diagnoses were caused by the July 9, 2020 employment injury, although it was "possible that the meniscus was starting to deteriorate prior to the injury" although appellant was asymptomatic and had full range of right knee motion. He explained that, based on x-rays and the November 13, 2020 MRI scan, appellant had preexisting osteoarthritis of the right knee that had been asymptomatic prior to the accepted right knee sprain. Dr. Moufawad noted that on July 9, 2020, when appellant reached up and pulled down the door of her delivery vehicle, she planted her right foot, which caused the femur to pivot on the planted tibial plateau, grinding and tearing the lateral meniscus between the two articular surfaces. He further explained that "when the meniscus deteriorated and tore, it stopped bearing the weight and absorbing the shock from regular walking, and that by itself led to the aggravation of the preexisting osteoarthritis." Dr. Moufawad opined, therefore, that the July 9, 2020 employment injury caused the complex lateral meniscal tear and aggravated preexisting osteoarthritis of the right knee.

By decision dated December 21, 2021, OWCP denied modification of the October 21, 2021 decision.

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

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4]

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.[5] The opinion of the physician must be based on a complete factual and medical

[4] *S.M.*, Docket No. 20-1527 (issued March 29, 2022); *D.B.*, Docket No. 20-1280 (issued March 2, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

background, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.[6]

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.[7] 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.[8] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

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. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[11]

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

The Board finds that appellant has not met her burden of proof to establish expansion of the acceptance of her claim to include right knee osteoarthritis and/or a right meniscal tear as causally related to the accepted July 9, 2020 employment injury.

---

[6] *Id*.

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

[8] *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id*.; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see also J.M.*, Docket No. 22-0939 (issued January 9, 2023).

[11] *D.B.*, *supra* note 4; *see V.K.*, Docket No. 19-0422 (issued June 10, 2020).

Dr. Winter, in reports dated November 13, 2020 and July 9, 2021, diagnosed right knee sprain, osteoarthritis of the right knee, loose body in right knee, right popliteal cyst, and a right complex lateral meniscus tear. Dr. Van Meter, in a November 23, 2020 report, diagnosed severe, advanced degenerative joint disease of the lateral compartment of the right knee. Dr. Okamura, in reports dated February 8 and July 23, 2021, diagnosed moderate-to-severe arthritis of the right knee, unilateral post-traumatic osteoarthritis of the right knee, right knee contracture, and a right lateral meniscus tear. However, none of these physicians provided an opinion on causal relationship between appellant's diagnosed conditions and the accepted July 9, 2020 employment injury. 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.[12] This evidence is, therefore, insufficient to establish expansion.

In a December 2, 2021 report, Dr. Moufawad opined that on July 9, 2020, when appellant lifted her delivery vehicle's door, she planted her right foot, causing the planted femur to grind against the lateral meniscus of the planted tibial plateau, resulting in the diagnosed meniscal tear. He noted, however, that it was also possible that the meniscus had deteriorated prior to the injury. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[13] Therefore, this evidence is insufficient to meet appellant's burden of proof.

Appellant also submitted July 15, 2020 right knee x-rays and a November 13, 2020 MRI scan of the right knee. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.[14]

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof to establish the additional conditions of right knee osteoarthritis and/or a right meniscal tear as causally related to the accepted July 9, 2020 employment injury.

## ***LEGAL PRECEDENT -- ISSUE 2***

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

[12] *See T.A.*, Docket No. 21-0798 (issued January 31, 2023); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[14] *J.M.*, *supra* note 10; *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *see Y.D.*, Docket No. 16-1896 (issued February 9, 2017).

compensation is claimed is causally related to the employment injury.[15] 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.[16] 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.[17]

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.[18] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[19]

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 their disability and entitlement to compensation.[20]

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

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing November 7, 2020, causally related to her accepted July 9, 2020 employment injury.

Dr. Winter held appellant off work in reports dated from November 10, 2020 through April 2, 2021, and from July 9, 2021 and continuing. Although she diagnosed a right knee sprain, Dr. Winter did not provide medical rationale explaining how and why the accepted employment

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

[16] *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

[17] 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[18] *Id.* at § 10.5(f); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018).

[19] *Id.*

[20] *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

injury would disable appellant for work during the claimed period.[21] Thus, Dr. Winter's reports are insufficient to establish the claim.

Dr. Van Meter, in his November 23, 2020 report, Dr. Okamura, in his February 8 and July 23, 2021 reports, and Dr. Moufawad, in his December 2, 2021 report, did not address whether appellant was disabled for work commencing November 7, 2020. The Board has previously explained that a medical report which does not address the period of disability claimed lacks probative value to establish disability.[22]

As the medical evidence of record is insufficient to establish disability from work commencing November 7, 2020, causally related to the accepted July 9, 2020 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 appellant has not met her burden of proof to establish expansion of the acceptance of her claim to include right knee osteoarthritis and/or a right meniscal tear as causally related to the accepted July 9, 2020 employment injury. The Board further finds that appellant has not met her burden of proof to establish disability from work commencing November 7, 2020, causally related to her accepted July 9, 2020 employment injury.[23]

[21] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining causal relationship between the accepted work factors and a diagnosed condition/disability).

[22] *J.R.*, Docket No. 23-0215 (issued July 28, 2023).

[23] Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013). *See also J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.V.*, Docket No. 19-1575 (issued June 11, 2020); *William A. Archer*, 55 ECAB 674 (2004).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 21, 2021 decision of the Office of Workers' Compensation is affirmed.

Issued: September 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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