

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

D.M., Appellant	)	
	)	
and	)	Docket No. 24-0512
	)	Issued: December 9, 2024
U.S. POSTAL SERVICE, WAIALUA POST	)	
OFFICE, Waialua, HI, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 18, 2024 appellant, through counsel, filed a timely appeal from a December 21, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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

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<sup>1</sup> 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.

<sup>2</sup> 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**

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>3</sup> The relevant facts are as follows.

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."

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 maintained appellant on light-duty work through August 31, 2020 and returned her to full-duty work effective September 1, 2020.

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

Thereafter, OWCP received an August 13, 2020 report, wherein 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 the employing establishment 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.

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<sup>3</sup> Docket No. 22-0442 (issued September 12, 2023).

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.<sup>4</sup>

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 appellant 30 days to respond.

OWCP received a November 23, 2020 report by Dr. Jerry W. Van Meter, a Board-certified orthopedic surgeon, wherein he 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 also 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.

OWCP continued to receive 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.

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<sup>4</sup> Appellant filed a series of CA-7 forms for the period November 21, 2020 through March 12, 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.

An oral hearing before a representative of OWCP's Branch of Hearings and Review was held on August 11, 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.

OWCP received 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," and 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.

Appellant appealed to the Board. By decision dated September 12, 2023,<sup>5</sup> the Board affirmed OWCP's December 21, 2021 decision. The Board found that appellant had not met her burden of proof to establish expansion of the acceptance of her claim to include right knee

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<sup>5</sup> *Supra* note 3.

osteoarthritis and/or a right meniscal tear. The Board further found that she had not established disability from work, commencing November 7, 2020, causally related to the accepted July 9, 2020 employment injury.

In a September 29, 2023 report, Dr. Moufawad clarified his December 20, 2021 opinion to indicate that he “did not mean to create an uncertainty or doubt” regarding the causal relationship between the accepted July 9, 2020 employment injury and a complete right lateral meniscus tear and aggravation of right knee osteoarthritis. He opined that based on available information and a review of medical records, the complex right lateral meniscal tear and aggravation of right knee osteoarthritis were the result of the accepted July 9, 2020 employment injury. Dr. Moufawad explained that on July 9, 2020, when appellant reached upward and pulled down her vehicle door, she planted her right leg and foot then pivoted the femur on the planted tibial plateau, which “[led] to a grinding maneuver of the femoral condyle on the tibial plateau with the menisci in between.” The torn and deteriorated meniscus stopped bearing weight and absorbing the shock of regular walking, which consequentially led to the aggravation of preexisting right knee osteoarthritis.

On October 3, 2023 appellant, through counsel, requested reconsideration.

By decision dated December 21, 2023, OWCP denied modification.

### **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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The weight of the 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.<sup>9</sup>

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

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<sup>6</sup> *L.F.*, Docket No. 20-0359 (issued January 27, 2021); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>7</sup> *L.F.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>8</sup> *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *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).

<sup>9</sup> *See D.T.*, *id.*; *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

subsequent injury or aggravation related in some way to the primary injury. 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.<sup>10</sup>

In a 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.<sup>11</sup>

### ANALYSIS -- ISSUE 1

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

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of the December 21, 2021 decision because the Board considered that evidence in its September 12, 2023 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>12</sup>

In a September 29, 2023 report, Dr. Moufawad clarified his December 20, 2021 opinion to attribute a right meniscal tear with consequential osteoarthritis of the right knee to a “grinding maneuver of the femoral condyle on the tibial plateau with the menisci in between” when appellant reached up and pivoted to close her vehicle rear door on July 9, 2020. He explained that the physical forces generated when appellant stood with her right foot planted, reached upward, then pulled her vehicle door downward, ground the menisci between the femoral condyle and the tibial plateau. Subsequently, the damaged meniscus was unable to absorb shock or bear weight, which led to an aggravation of preexisting osteoarthritis of the right knee.

Dr. Moufawad rendered an opinion on the issue of causal relationship, provided a detailed pathophysiological explanation of the mechanism of the injury, and demonstrated a comprehensive understanding of the medical record and case history. Therefore, although his opinion is insufficiently rationalized to establish causal relationship, it is sufficient to require that OWCP further develop the medical evidence in the claim.<sup>13</sup>

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<sup>10</sup> *F.R.*, Docket No. 24-0075 (issued March 4, 2024); *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

<sup>11</sup> *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>12</sup> *M.V.*, Docket No. 24-0092 (issued March 28, 2024); *R.P.*, Docket No. 23-0638 (issued November 30, 2023); *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

<sup>13</sup> *J.K.*, Docket No. 20-0816 (issued May 4, 2022); *M.H.*, Docket No. 18-1068 (issued June 2, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>14</sup> OWCP has an obligation to see that justice is done.<sup>15</sup>

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts (SOAF), and the case record to a specialist in the appropriate field of medicine for a rationalized opinion regarding whether appellant sustained right knee osteoarthritis and/or a right meniscal tear as causally related to the accepted July 9, 2020 employment injury. If the second opinion physician disagrees with the opinion of Dr. Moufawad, he or she must provide a fully-rationalized explanation of why the accepted employment incident was insufficient to have caused or aggravated appellant's medical condition. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.<sup>16</sup>

### CONCLUSION

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

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<sup>14</sup> *Id.*; see also *C.S.*, Docket No. 24-0819 (issued October 16, 2024); *S.G.*, Docket No. 22-0330 (issued April 4, 2023); see *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978)

<sup>15</sup> See *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>16</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 9, 2024  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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