

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

with surgery and/or right knee osteoarthritis as causally related to his accepted January 8, 2015 employment injury.

### **FACTUAL HISTORY**

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

On January 9, 2015 appellant, then a 52-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2015 he injured his left knee when he slipped and fell on snow covered ice while in the performance of duty. On February 9, 2015 OWCP accepted the claim for a left lower leg contusion. On May 28, 2015 it expanded the acceptance of the claim to include the additional condition of permanent aggravation of degenerative left knee arthritis. OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls as of February 21, 2015.<sup>4</sup>

In a July 6, 2015 report, Dr. David Garelick, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed appellant's medical record. He noted that a February 20, 2015 magnetic resonance imaging scan (MRI) of appellant right knee revealed a right degenerative meniscal tear and other degenerative changes. Dr. Garelick opined that appellant's right knee condition was degenerative in nature and not consequential to his left knee condition. The DMA further found no evidence of an aggravation of appellant's preexisting degenerative right knee condition.

On November 2, 2015 OWCP determined that a conflict in the medical opinion evidence existed between Dr. Bartucci and the DMA regarding whether appellant sustained a right knee consequential injury as a consequence of his January 8, 2015 employment injury. It referred appellant for an impartial medical examination in order to resolve the conflict of medical opinion.

In a December 6, 2015 report, Dr. Kevin Walsh, a Board-certified orthopedic surgeon serving as an impartial medical examiner (IME), noted his review of an August 5, 2015 statement

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<sup>3</sup> *Order Remanding Case*, Docket No. 21-0065 (issued February 4, 2022).

<sup>4</sup> Under OWCP File No. xxxxx952, OWCP previously accepted that on February 22, 2010 appellant sustained a traumatic injury, which caused left knee sprain, sprain of left knee cruciate ligament tear and a left knee medial meniscus tear. On April 29, 2010 he underwent an arthroscopy, partial medial meniscectomy, chondral shaving of the left knee. On March 20, 2015 appellant filed an occupational disease claim alleging that on January 8, 2015 he injured his left knee and consequently he favored his right knee, which caused a tear of the right meniscus. OWCP assigned that claim OWCP File No. xxxxxx065. It suspended development of that claim. On August 24, 2019 appellant filed a traumatic injury claim alleging that he injured his left knee and left toe while ascending stairs in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx954 and accepted this claim for left knee effusion, left knee derangement, and left knee sprain. Under OWCP File No. xxxxx768, OWCP accepted that on January 25, 2022 appellant sustained a traumatic injury when he was struck by a vehicle as he was crossing a street. It accepted, among other conditions, a right knee patellar fracture, contusion of right knee, right knee internal derangement, right knee anterior cruciate ligament and posterior cruciate ligament tear, right knee medial meniscus and later meniscus tear, and effusion of the right knee. OWCP administratively combined all of these files with the current OWCP File No. xxxxxx947, with OWCP File No. xxxxx768 ultimately designated as the master case file.

of accepted facts (SOAF)<sup>5</sup> and the medical record. He set forth his December 3, 2015 physical examination findings of appellant's lower extremities. Dr. Walsh diagnosed bilateral knee osteoarthritis. He opined that the right knee meniscus tear and knee arthroscopy were degenerative, not posttraumatic, in nature. Dr. Walsh opined that appellant's right knee conditions did not result from and were not aggravated by the left knee work-related injury or from overuse of the accepted left knee conditions.

On January 7, 2016 appellant underwent an OWCP-approved left total knee replacement, which Dr. Bartucci performed. OWCP paid him appropriate compensation on its periodic compensation rolls from March 6 through June 25, 2016 and resumed payment on its supplemental compensation rolls thereafter. It updated the SOAF on February 2, 2016.<sup>6</sup>

By decision dated March 31, 2016, OWCP denied expansion of the acceptance of appellant's claim to include a consequential right knee degenerative meniscal tear with surgery or right knee osteoarthritis. It found that the special weight of the medical evidence rested with the December 6, 2015 report of Dr. Walsh, the IME.

On April 20, 2016 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on November 9, 2016. By decision dated December 20, 2016, the hearing representative affirmed OWCP's March 31, 2016 decision.

Appellant, through counsel, submitted additional requests for reconsideration. By decisions dated March 23, 2018, August 1, 2019, and September 30, 2020, OWCP denied modification.

On October 21, 2020 appellant, through counsel, appealed to the Board. In an order dated February 4, 2022, the Board set aside OWCP's September 30, 2020 decision and remanded the case for further development. This included having OWCP to administratively combine the current case record with other relevant files, update the SOAF, and request another IME to resolve the conflict in medical opinion.<sup>7</sup>

On March 17, 2022 OWCP updated the SOAF, combined relevant files, referred appellant to Dr. Jeffrey Kazaglis, a Board-certified orthopedic surgeon serving as the new IME, to resolve the conflict in medical opinion evidence between Drs. Bartucci and Garelick.

In a July 12, 2022 report, Dr. Kazaglis reviewed the March 17, 2022 SOAF and the medical record and provided examination findings. He opined that appellant's right knee diagnoses and treatment were causally related to a degenerative condition and were not caused, aggravated or accelerated by the January 8, 2015 employment injury. Dr. Kazaglis also opined that there was no

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<sup>5</sup> The SOAF noted only contusion of the left leg and permanent aggravation of degenerative left knee arthritis as the accepted conditions.

<sup>6</sup> The updated SOAF noted appellant's left knee accepted conditions under OWCP File No. xxxxxx952 and his left total knee replacement on January 7, 2016.

<sup>7</sup> *Supra* note 3.

consequential injury as review of the medical evidence revealed no evidence that appellant's right knee condition was caused by overuse or favoring the left knee, and there was no evidence that the degenerative right knee condition was aggravated or accelerated by the January 8, 2015 employment-related injury of the left knee.

By decision dated August 18, 2022, OWCP denied expansion of the acceptance of the claim to include consequential injuries and surgeries of the right knee degenerative meniscus tear due to overuse of the accepted left knee condition(s) and past right knee medial meniscectomy/arthroscopic and osteoarthritis of the right knee. It afforded the special weight of the medical evidence to the July 12, 2022 opinion of Dr. Kazaglis, the IME.

On September 13, 2022 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. By decision dated January 24, 2023, the hearing representative set aside OWCP's August 18, 2022 decision and remanded the case for further development. The hearing representative found that Dr. Kazaglis, the IME, had reviewed pertinent evidence on file but failed to provide an objective and well-rationalized medical report which supported that the claimed consequential injuries to appellant's right knee and past surgical procedures(s) were not caused, aggravated, accelerated, or precipitated in any way by the accepted January 8, 2015 employment injury. The hearing representative instructed OWCP to update the March 17, 2022 SOAF to reflect the correct master case number and to exclude the opinions of the attending physician and Dr. Walsh from the SOAF in accordance with its procedures. The hearing representative also instructed OWCP to obtain a supplemental opinion from Dr. Kazaglis concerning the relationship, if any, between the conditions of right knee degenerative meniscal tear with surgery or right knee osteoarthritis and the January 8, 2015 work-related injury either directly or through aggravation, precipitation, or acceleration, and whether the acceptance of the claim should be expanded to include such additional conditions.

On January 26, 2023 OWCP updated the SOAF and requested that Dr. Kazaglis provide an addendum report and address the relationship, if any, between the conditions of right knee degenerative meniscal tear with surgery or right knee osteoarthritis and the January 8, 2015 work-related injury either directly or through aggravation, precipitation, or acceleration.

In a March 20, 2023 addendum report, Dr. Kazaglis reviewed the January 26, 2023 SOAF, his prior report of July 12, 2022 and the medical evidence of record. He recommended denial of the expansion of the claim based on appellant's right knee degenerative meniscus tear with surgery and right knee osteoarthritis as there was no causal relationship to the accepted January 2015 work injury either directly or through aggravation, precipitation, or acceleration. Dr. Kazaglis noted that appellant injured his left knee on January 8, 2015 and subsequently developed pain in the right knee in February 2015. A February 2015 MRI scan showed a degenerative meniscus tear of the right knee and degenerative osteoarthritis of the right knee. Dr. Kazaglis noted that Dr. Florian Maranzadeth, a family medicine specialist, in his December 12, 2018 and June 10, 2020 reports, had opined that appellant's shifting of body weight from the left knee to the right knee caused injury to the right knee and exacerbated his osteoarthritis such that the meniscus tore and required surgical treatment. He indicated that Dr. Maranzadeth's opinion was not accurate as appellant did not report any pain, dysfunction or instability of the right knee at the time of the January 8, 2015 left knee injury. Dr. Kazaglis further explained that the process of simply shifting weight or using crutches on the contralateral side would temporarily increase contract pressures in the right knee,

but without a new specific injury to the right knee, the meniscus should not tear. As the record was devoid of any report of a new injury to the right knee, he opined that appellant's right knee degenerative meniscus tear was unrelated to the accepted January 8, 2015 left knee work injury. With regard to the degenerative osteoarthritis in the right knee noted on the February 2015 MRI scan, Dr. Kazaglis found the medical record was devoid of any mention of a fall, flexion rotation, or locking or mechanical episode. Thus, he opined that appellant's right knee degenerative osteoarthritis did not develop in the interval between his accepted January 8, 2015 left knee injury and the MRI scan five weeks later, and that any exacerbation of underlying osteoarthritis was unrelated to the accepted January 8, 2015 left knee work injury.

By decision dated May 23, 2023, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence did not demonstrate that the right knee degenerative osteoarthritis and right knee degenerative meniscus tear with surgery were caused by any weakness or impairment from the January 8, 2015 accepted employment injury. It afforded the special weight of the medical evidence to the March 20, 2023 opinion of Dr. Kazaglis, the IME.

On June 12, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 25, 2023, an OWCP hearing representative affirmed OWCP's May 23, 2023 decision.

### **LEGAL PRECEDENT**

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>8</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>9</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>10</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>11</sup>

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<sup>8</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>9</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>10</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>11</sup> *See D.T.*, *id.*; *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

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 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>12</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>13</sup>

Section 8123(a) provides that, 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.<sup>14</sup> OWCP's implementing regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>15</sup> Where a case is referred to an impartial medical specialist for 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.<sup>16</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional or consequential conditions of right knee degenerative meniscal tear with surgery and/or right knee osteoarthritis as causally related to his accepted January 8, 2015 employment injury.

On September 30, 2020 the Board remanded the case for further development. Upon return of the case record, OWCP referred appellant to Dr. Kazaglis serving as the new IME. In a July 12, 2022 report, Dr. Kazaglis opined that appellant's right knee conditions were degenerative not traumatic. He explained that appellant did not have a consequential injury as neither the degenerative meniscus tear and surgery or osteoarthritic condition were caused, aggravated, or accelerated by the January 8, 2015 employment injury.

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<sup>12</sup> V.K., Docket No. 19-0422 (issued June 10, 2020); K.S., Docket No. 17-1583 (issued May 10, 2018).

<sup>13</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>14</sup> 5 U.S.C. § 8123(a).

<sup>15</sup> 20 C.F.R. § 10.321.

<sup>16</sup> A.R., Docket No. 18-0441 (issued February 19, 2020); V.K., Docket No. 18-1005 (issued February 1, 2019); D.M., Docket No. 17-1411 (issued June 7, 2018); Darlene R. Kennedy, 57 ECAB 414, 416 (2006); James P. Roberts, 31 ECAB 1010 (1980).

In his March 20, 2023 addendum report, Dr. Kazaglis reviewed the January 26, 2023 SOAF, his prior report of July 12, 2022, and the medical evidence of record. He recommended denial of the expansion of the claim for right knee degenerative meniscus tear with surgery and right knee osteoarthritis as there was no causal relationship to the accepted January 8, 2015 work injury to the left knee either directly or through aggravation, precipitation, or acceleration. In reviewing the medical evidence of record, Dr. Kazaglis found that appellant's February 2015 right knee MRI scan showed a degenerative meniscus tear and degenerative osteoarthritis of the right knee, and that appellant had not reported any pain, dysfunction, or instability of the right knee at the time of the January 8, 2015 left knee injury. He explained that the process of simply shifting weight or using crutches on the contralateral side would temporarily increase contract pressures in the right knee, but without a new specific injury to the right knee, the meniscus should not tear. As the record was devoid of any report of a new injury to the right knee, Dr. Kazaglis opined that appellant's right knee degenerative meniscus tear and subsequent surgery were unrelated to the accepted January 8, 2015 left knee work injury. With regard to the degenerative osteoarthritis in the right knee noted on the February 2015 MRI scan, he found the medical record was devoid of any mention of a fall, flexion rotation or locking or mechanical episode and the right knee degenerative osteoarthritis did not develop in the interval between the accepted January 8, 2015 left knee injury and the MRI scan five weeks later. Thus, Dr. Kazaglis opined that any exacerbation of underlying osteoarthritis was unrelated to the accepted January 8, 2015 left knee work injury.

The Board finds that Dr. Kazaglis' March 20, 2023 IME report represents the special weight of the medical opinion evidence as his opinion is based on a proper factual and medical history, and his report contains a detailed summary and explanation of why appellant's right knee degenerative meniscal tear with surgery and/or right knee osteoarthritis were not directly caused, aggravated, or accelerated by the accepted January 8, 2015 left knee injury. Dr. Kazaglis addressed the medical records and contrary opinions offered to reach a reasoned conclusion regarding causal relationship of appellant's right knee degenerative meniscal tear and right knee osteoarthritis to the accepted January 8, 2015 left knee injury.<sup>17</sup> Consequently, appellant has not met his burden of proof to expand the acceptance of his claim.

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 his burden of proof to expand the acceptance of his claim to include additional or consequential conditions of right knee degenerative meniscal tear with surgery and/or right knee osteoarthritis as causally related to his accepted January 8, 2015 employment injury.

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<sup>17</sup> See *M.B.*, Docket No. 21-0555 (issued March 4, 2022); *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *Michael S. Mina*, 57 ECAB 379 (2006); *Kathryn Haggerty*, 45 ECAB 383 (1994) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 25, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 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