

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

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**C.R., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
WEST LOS ANGELES VA MEDICAL  
CENTER, Los Angeles, CA, Employer**

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) **Docket No. 25-0245**  
) **Issued: April 3, 2025**  
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*Appearances:*

*Brett E. Blumstein, Esq., for the appellant<sup>1</sup>  
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 24, 2025 appellant, through counsel, filed a timely appeal from a July 30, 2024 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 to prove to expand the acceptance of her claim to include additional conditions causally related to her accepted

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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.*

January 29, 2018 employment injury; and (2) whether appellant has met her burden of proof to establish disability from work commencing June 10, 2018, causally related to her accepted January 29, 2018 employment injury.

### **FACTUAL HISTORY**

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

On February 1, 2018 appellant, then a 52-year-old supervisor medical supply technician, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2018 she injured both knees and twisted her left hip when her walker became stuck under a chair and she fell to the floor while in the performance of duty. She stopped work on January 30, 2018. OWCP accepted the claim for contusions of the knees, initial encounter.

Subsequently, appellant filed several claims for compensation (Form CA-7) for disability from work for the periods June 10 through August 10, 2018, and August 31 through September 28, 2018.

Appellant submitted medical evidence in support of her claims.

OWCP, by decision dated October 4, 2018, denied appellant's claims for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work commencing June 10, 2018, causally related to her accepted January 29, 2018 employment injury.

Subsequently, OWCP received additional medical evidence.

On December 7, 2018 appellant requested reconsideration of the October 4, 2018 decision.

Thereafter, appellant filed an additional Form CA-7 claim for disability from work for the period November 9 through 23, 2018.

By decision dated February 28, 2019, OWCP denied modification of its October 4, 2018 decision.

On June 18, 2019 appellant, through counsel, appealed the February 28, 2019 decision to the Board. By decision dated January 3, 2020,<sup>4</sup> the Board affirmed OWCP's February 28, 2019 decision, finding that appellant had not met her burden of proof to establish disability from work commencing June 10, 2018 causally related to her accepted January 29, 2018 employment injury.

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<sup>3</sup> Docket No. 19-1427 (issued January 3, 2020).

<sup>4</sup> *Supra* note 3.

Thereafter, OWCP received medical evidence from Dr. Breda Whelan Carroll, an attending Board-certified physiatrist. In attending physician's supplementary reports dated January 15, March 11, and August 27, 2020, and a March 11, 2020 industrial work status report, Dr. Carroll noted a history of appellant's January 29, 2018 employment injury and medical treatment, and discussed her examination findings. She diagnosed current right and left knee medial meniscus tears, subsequent, and tendinitis of right patellar tendon. Dr. Carroll indicated that appellant was not working and advised that while she could not perform her regular work, she could perform modified-duty work with permanent work restrictions.

In a November 24, 2020 letter, appellant, through counsel, requested that the acceptance of her claim be expanded to include medial meniscus tear, right knee; chondromalacia, right knee; tear of the posterior horn of the medial meniscus, left knee; chondromalacia, medial, and lateral compartments, left knee; aggravation of previous left hip fracture; muscle tendon unit, strain of the back; and left lumbosacral plexus impingement based on an accompanying report dated October 28, 2020 from Dr. John B. Dorsey, a Board-certified orthopedic surgeon.

Also, on November 25, 2020, appellant, through counsel, requested reconsideration.

In his October 28, 2020 report, Dr. Dorsey discussed appellant's factual and medical history and detailed his physical examination findings. He requested that the acceptance of appellant's claim be expanded to include medial meniscus tear, right knee; chondromalacia, right knee; tear, posterior horn, medial meniscus, left knee; chondromalacia, medial and lateral compartments, left knee; aggravation of previous left hip fracture; muscle tendon unit, strain of back, and left lumbosacral plexus impingement. Dr. Dorsey opined that the newly diagnosed conditions were caused by her January 29, 2018 employment injury, resulting in permanent aggravation to her knees and left hip, and an injury to her low back. He further opined that appellant could return to her senior supply technician position in a sedentary status with restrictions. Dr. Dorsey advised that she had been unable to perform her regular work due to her work-related medical conditions commencing from the date of injury through the present.

On January 27, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Frederic Nicola, a Board-certified orthopedic surgeon, for a second opinion evaluation.

By decision dated February 11, 2021, OWCP denied modification of its prior decision, finding that appellant had not submitted rationalized medical evidence sufficient to establish disability commencing June 10, 2018 due to her accepted January 29, 2018 employment injury.

In a March 18, 2021 report, Dr. Nicola noted a review of the SOAF and medical record, including Dr. Dorsey's October 28, 2018 report. He discussed his examination findings and reviewed diagnostic studies. Dr. Nicola diagnosed permanent aggravation of bilateral knee osteoarthritis and left hip that required open reduction and internal fixation on March 15, 2018 due to the accepted January 29, 2018 employment injury. He restricted appellant to sedentary work with restrictions. Dr. Nicola opined that her disability was a direct result of her accepted work-related conditions.

OWCP received reports dated August 30, 2021 wherein Dr. Carroll noted appellant's diagnosis of bilateral knee medial meniscus tear, and referred appellant for acupuncture.

In a report dated October 7, 2021, Dr. Dorsey reiterated his prior opinion that appellant's nonwork-related March 2017 left hip injury was aggravated by her January 29, 2018 employment injury and resulted in her disability from work.

On November 4, 2021 appellant requested reconsideration of the November 3, 2021 decision.

Thereafter, OWCP received reports dated December 10, 2021 from Dr. Carroll, wherein he repeated his findings and conclusions.

OWCP also received a right knee x-ray report dated December 10, 2021.

On February 1, 2022 OWCP requested that Dr. Nicola provide additional rationale to support the findings in his March 18, 2021 report.

OWCP, by decision dated February 1, 2022, denied modification of its February 11, 2021 decision, finding that Dr. Dorsey's October 7, 2021 report was insufficiently rationalized to establish that appellant's claimed disability was causally related to her accepted January 29, 2018 employment injury.

In a supplemental report dated February 7, 2022, Dr. Nicola referred to his prior answers to OWCP's questions as set forth in his March 18, 2021 report.

OWCP received additional reports dated January 25, 2023 from Dr. Carroll.

On February 1, 2023 appellant requested reconsideration of the February 1, 2022 decision.

Dr. Dorsey, in a January 27, 2023 supplemental report, continued to opine that appellant sustained the additional conditions of right knee medial meniscus tear with chondromalacia, left knee posterior horn tear with chondromalacia verified at medial and lateral compartment for chondromalacia, and left hip aggravation status post March 23, 2017 due to displaced femoral neck fracture with closed manual reduction and internal fixation percutaneous pinning due to the January 29, 2018 employment injury. He referenced medical literature in support of his opinion on causal relationship.

OWCP, by decision dated March 21, 2023, denied modification of its February 1, 2022 decision.

On March 21, 2024 appellant requested reconsideration and submitted medical records dated March 24, 2017 through March 18, 2018 pertaining to a prior nonwork-related left hip injury. These additional records included hospital records documenting appellant's March 15, 2018 left total hip replacement.

On March 28, 2024 OWCP referred appellant, along with a SOAF, the case record, and a series of questions, to Dr. Arash Dini, a Board-certified orthopedic surgeon, for a second opinion evaluation and opinions on her employment-related residuals and disability, whether she developed additional medical conditions as a result of her January 29, 2018 employment injury, and whether she was capable of returning to her date-of-injury job.

In an April 25, 2024 report, Dr. Dini noted appellant's history of injury and his review of the medical record. He discussed his findings on physical examination and diagnosed right and left knee medial meniscal tears. Dr. Dini opined that the diagnosed conditions were not causally related to appellant's hip injuries, as they were separate and distinct injuries attributable entirely to her work exposure. He further opined that she had residuals of her accepted bilateral knee conditions. Dr. Dini advised that appellant was unable to perform the duties of her date-of-injury position as a medical supply technician. Additionally, he advised that she was disabled from work due to her accepted conditions from the date she initially sought medical treatment and for the rest of her life. In an accompanying work capacity evaluation (Form OWCP-5c) dated April 25, 2024, Dr. Dini indicated that appellant was unable to perform her usual job, but she could work eight hours per day with permanent restrictions.

By letter dated June 10, 2024, OWCP requested that Dr. Dini clarify his opinion on the causal relationship between appellant's right and left knee medial meniscal tears and her accepted January 29, 2018 employment injury, and provide medical rationale in support of his opinion.

In a report dated July 11, 2024, Dr. Dini advised that appellant's diagnosed right and left knee medial meniscal tears were directly caused by her January 29, 2018 employment injury. He explained that the mechanism of injury, when her walker became stuck under a chair causing her to fall forward onto her knees and twist her left hip, was consistent with the forces required to cause meniscal tears. Dr. Dini related that during such a fall, the knees can experience significant compressive and torsional forces, leading to the tearing of the meniscus, especially in an individual with preexisting chondromalacia and compromised knee stability. He advised that the accepted condition of bilateral knee contusions had not fully resolved and "could have" contributed to the worsening of appellant's preexisting meniscal tears by causing ongoing inflammation and stress on the knee joints as the medical records indicated persistent pain and limited range of motion (ROM), suggesting that the accepted knee condition did not fully resolve and "may" have exacerbated the underlying meniscal pathology. Dr. Dini related that based on appellant's current knee condition she could not return to her medical supply technician job without significant restrictions. He advised that the January 29, 2018 employment injury aggravated her preexisting chondromalacia of the knees, noting that the additional trauma from the work-related fall "likely" increased the degeneration of the articular cartilage, contributing to greater pain and functional impairment. This aggravation "appeared" to be permanent, as evidenced by the consistent reports of persistent pain, crepitus, and decreased ROM in the medical records. In addition, the work-related fall accelerated the degenerative process, making it a significant contributing factor to the current condition of the knees. Dr. Dini noted that the January 29, 2018 work-related fall permanently aggravated appellant's preexisting chondromalacia and meniscal pathology in both knees based on the chronic nature of the symptoms and lack of resolution over time. The persistent pain, limited ROM, and crepitus were indicative of ongoing and irreversible joint damage. Dr. Dini indicated that appellant's left hip condition was not part of her current claim, and it was expected to reach MMI within a week.

OWCP, by decision dated July 30, 2024, denied modification of its March 21, 2023 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.<sup>5</sup> The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. 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 accepted employment injury.<sup>6</sup>

## **ANALYSIS -- ISSUE 1**

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

In an April 25, 2024 report, Dr. Dini, OWCP's second opinion physician, noted his review of the SOAF and the medical record discussed, and performed a physical examination. He diagnosed right and left knee medial meniscal tears. Dr. Dini opined that the diagnosed conditions were entirely attributable to appellant's work exposure and not to her preexisting hip injuries. He noted that appellant had residuals of her accepted condition of contusions of the knees. Dr. Dini, in a supplemental report dated July 11, 2024, clarified that appellant's diagnosed right and left knee medial meniscal tears were directly caused by the January 29, 2018 employment injury. He explained how the mechanism of injury was consistent with the forces required to cause meniscal tears. Dr. Dini further explained how the unresolved accepted condition of bilateral knee contusions "could have" contributed to the worsening of appellant's preexisting meniscal tears, which suggested that the accepted knee condition did not fully resolve and "may" have exacerbated the underlying meniscal pathology. He advised that the January 29, 2018 employment-related fall injury permanently aggravated appellant's preexisting chondromalacia of the knees and "likely" increased the degeneration of the articular cartilage contributing to greater pain and functional impairment. Dr. Dini noted that this aggravation "appeared" to be permanent based on consistent reports of persistent pain, crepitus, and decreased ROM in the medical records. He noted that the work-related fall accelerated the degenerative process and was a significant contributing factor to the current condition of appellant's knees. Dr. Dini advised that it permanently aggravated her preexisting chondromalacia and meniscal pathology in both knees based on the chronic nature of the symptoms and lack of resolution over time. The Board finds that Dr. Dini's opinion is speculative in nature as he did not definitively opine on whether appellant sustained consequential right and left knee medial meniscal tears.<sup>7</sup>

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<sup>5</sup> *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).

<sup>6</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>7</sup> *T.B.*, Docket No. 22-1170 (issued April 24, 2023); *J.A.*, Docket No. 22-0989 (issued January 13, 2023); *N.W.*, Docket No. 21-0653 (issued September 30, 2021); *R.T.*, Docket No. 20-0081 (issued June 24, 2020); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *F.D.*, Docket No. 18-1596 (issued June 18, 2019); *Deborah T. Lyon*, Docket No. 05-116 (issued December 9, 2005).

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.<sup>8</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>9</sup> Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>10</sup> Because Dr. Dini, serving as OWCP's second opinion physician, did not provide sufficient rationale regarding whether appellant's additional conditions are causally related to the January 29, 2018 employment injury, the case must be remanded to OWCP for further development of the medical evidence.

On remand, OWCP shall request that Dr. Dini provide a supplemental report explaining, with rationale, whether the acceptance of appellant's claim should be expanded to include additional conditions. If Dr. Dini is unavailable or unwilling to clarify his opinion, or, if the supplemental report is vague, speculative, or lacking rationale, OWCP must refer appellant, the case record, and detailed SOAF, to another second opinion specialist in the appropriate field of medicine for a rationalized medical opinion on the issue.<sup>11</sup> Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

An employee seeking benefits under FECA<sup>12</sup> has the burden of proof to establish the essential elements of his or her claim,<sup>13</sup> including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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<sup>8</sup> *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>9</sup> *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>10</sup> *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

<sup>11</sup> *L.N.*, Docket No. 24-0690 (issued November 4, 2024); *D.D.*, Docket No. 24-0203 (issued May 2, 2024); *J.W.*, Docket No. 22-0223 (issued August 23, 2022); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

<sup>12</sup> *Supra* note 2.

<sup>13</sup> *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

<sup>14</sup> *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

<sup>15</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>16</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.<sup>17</sup>

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 his or her disability and entitlement to compensation.<sup>18</sup>

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

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

In an April 25, 2024 report, Dr. Dini, OWCP's second opinion physician, opined that appellant was unable to perform her usual job as a medical supply technician, but she could perform full-time work with restrictions. He completed a Form OWCP-5c report releasing her to full-time work with restrictions. Dr. Dini, however, was not asked to address the specific claimed period of disability.<sup>19</sup>

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>20</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>21</sup>

On remand, OWCP shall request a supplemental opinion from Dr. Dini clarifying whether appellant was disabled from work commencing June 10, 2018 causally related to the accepted January 29, 2018 employment injury.<sup>22</sup> Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

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<sup>17</sup> See *B.P.*, Docket No. 23-0909 (issued December 27, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>18</sup> See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 16 at 293.

<sup>19</sup> *D.F.*, Docket No. 25-0111 (issued December 17, 2024); *J.A.*, Docket No. 24-0889 (issued December 11, 2024); *M.R.*, Docket No. 24-0562 (issued September 26, 2024).

<sup>20</sup> See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

<sup>21</sup> *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

<sup>22</sup> See *M.S. and E.B.*, *supra* note 20; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).



### **CONCLUSION**

The Board finds that the case is not in posture for decision with regard to whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her accepted January 29, 2018 employment injury. The Board further finds that the case is not in posture for decision with regard to whether appellant has met her burden of proof to establish disability from work commencing June 10, 2018, causally related to her accepted January 29, 2018 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 30, 2024 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 3, 2025  
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