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<b>N.O., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0478</b>
	)	<b>Issued: August 22, 2025</b>
	)	
<b>U.S. POSTAL SERVICE, QUINCY POST</b>	)	
<b>OFFICE, Quincy, IL, Employer</b>	)	
	)	

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

## DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On December 31, 2019 appellant, through counsel, filed a timely appeal from an October 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the

<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 an 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> By order dated March 10, 2023, the Board dismissed appellant's December 31, 2019 appeal. *Order Dismissing Appeal*, Docket No. 20-0478 (issued March 10, 2023). On March 17, 2023 appellant, through her representative, filed a petition for reconsideration. On August 22, 2025, the Board granted appellant's petition for reconsideration and reinstated her appeal. *Order Granting Petition for Reconsideration and Reinstating Appeal*, Docket No. 20-0487 (issued August 22, 2025).

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a left knee condition as causally related to, or consequential to, the accepted October 18, 2010 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 decisions and prior order are incorporated herein by reference.<sup>5</sup> The relevant facts are as follows.

On October 19, 2012 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging bilateral knee conditions due to factors of her federal employment, including walking with a heavy mailbag on uneven surfaces.<sup>6</sup> She noted that she first became aware of her condition on October 18, 2010 and realized its relation to her federal employment on July 5, 2012. Appellant did not stop work.

In support of her claim, appellant submitted a medical report dated July 5, 2012 and a narrative report dated December 10, 2012 by Dr. David Bingham, an osteopathic physician, who recounted a worsening of bilateral knee pain for four to five years, which she attributed to carrying her mailbag while walking on uneven surfaces and traversing stairs. On physical examination he observed limited range of motion in her right knee, significant patellar crepitus bilaterally, and strongly positive patellar grind test on the right. Dr. Bingham reviewed x-rays and diagnosed bilateral knee osteoarthritis, which he noted was advanced for someone appellant's age. He opined

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the October 3, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>5</sup> Docket No. 13-2117 (issued February 18, 2014); Docket No. 15-1844 (issued January 21, 2016); *Order Remanding Case*, Docket No. 18-0833 (issued April 18, 2019).

<sup>6</sup> OWCP assigned the present claim OWCP File No. xxxxxx493. Appellant previously filed a May 1, 2004 traumatic injury (Form CA-1) claim, which OWCP accepted for back and neck strains and right knee osteochondritis dissecans under OWCP File No. xxxxxx081. Under OWCP File No. xxxxxx081, appellant underwent an OWCP authorized right knee chondroplasty of patella and medial femoral condyle on September 1, 2004. She also filed a Form CA-1 for a September 29, 2006 traumatic injury, which OWCP accepted for right knee sprain and medial collateral ligament sprain under OWCP File No. xxxxxx841. Under OWCP File No. xxxxxx841, appellant underwent an OWCP authorized arthroscopy of the right knee with removal of multiple loose bodies, partial medial meniscectomy, chondroplasty of the medial femoral condyle and tibial plateau, patella, and trochlear groove on January 31, 2017. She also filed a Form CA-1 for a February 8, 2010 right knee injury, under OWCP File No. xxxxxx803 and for a May 1, 2012 left knee injury, under OWCP File No. xxxxxx140. Appellant noted that she originally filed the present claim as a recurrence of a May 2012 employment injury.

that carrying heavy loads up and down stairs was “a significant contributing factor” and “major exacerbating factor” to her bilateral knee arthritis.

Appellant also submitted statements, wherein she indicated that she worked for the employing establishment for 31 years and had been a letter carrier for 28 years. She asserted that she was required to walk on uneven ground, up and down steps, and through ice and snow, and carry a heavy mailbag, which weighed up to 30 pounds, for six hours per day while walking 6 to 10 miles.

By decision dated January 24, 2013, OWCP denied appellant’s occupational disease claim finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of her federal employment.

On February 1, 2013 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

In a narrative report dated March 26, 2013, Dr. Bingham indicated that he was unable to provide a specific cause or relationship of appellant’s osteoarthritis. He opined that there was a possibility that her mail carrying was a contributing factor, but that he could not state that this was the only or even a dominant factor. Dr. Bingham explained that there are many possible causes of osteoarthritis.

A hearing was held on May 17, 2013.

By decision dated August 1, 2013, OWCP’s hearing representative affirmed the January 24, 2013 decision.

On September 13, 2013 appellant, through counsel, appealed the August 1, 2013 decision to the Board.

By decision dated February 18, 2014,<sup>7</sup> the Board affirmed OWCP’s August 1, 2013 decision.

On November 19, 2014 appellant, through counsel, again requested reconsideration. In support thereof, appellant submitted an additional report from Dr. Bingham dated May 20, 2014, who diagnosed severe tricompartmental osteoarthritis of both knees with near complete loss of joint space, periarticular osteophytes, and subchondral sclerosis in all three compartments. Dr. Bingham opined that “While I cannot definitively pinpoint a definitive cause of the beginning of arthritis, certainly the speed of her progress and the severity of her presentation at 52 years old is abnormal for her age. In my medical opinion, the nature of her work is a significant contributing factor to the progression of her osteoarthritis.”

By decision dated April 17, 2015, OWCP denied modification of the August 1, 2013 decision.

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<sup>7</sup> Docket No. 13-2117 (issued February 18, 2014).

On September 9, 2015 appellant, through counsel, appealed the April 17, 2015 decision to the Board.

By decision dated January 21, 2016,<sup>8</sup> the Board affirmed OWCP's April 17, 2015 decision.

On August 18, 2016 appellant, through counsel, again requested reconsideration. In support thereof, she submitted a narrative medical report by Dr. Seth L. Sherman, a Board-certified orthopedic surgeon, who noted that appellant related complaints of bilateral knee pain, which she attributed to her employment duties, including work-related injuries to her right knee in 2004 and 2006 for which she underwent arthroscopic surgeries. Dr. Sherman indicated that appellant returned to full-duty work after each of the right knee surgeries and developed worsening right and left knee pain. He also noted that appellant attributed her left knee complaints to overcompensation following the 2004 and 2006 right knee injuries. Dr. Sherman documented physical examination findings and reviewed diagnostic studies. He opined that appellant's "work-related injuries did contribute to the degenerative changes that have ensued in her knee since 2004, and that led at least, in part to her requirement for a total joint replacement on the right in 2013." Regarding the left knee, Dr. Sherman opined "while there is no specific work injury to the left knee, this was likely related to several decades of wear and tear on the knee through her rigorous occupation, and also due in part to compensation for the right knee injuries."

By decision dated November 9, 2016, OWCP denied modification of the April 17, 2015 decision.

On November 7, 2017 appellant, through counsel, requested reconsideration of OWCP's November 9, 2016 decision. In support thereof, appellant submitted a narrative report by Dr. Sherman dated October 27, 2017, who opined that "one of the factors contributing to this patient's osteoarthritis were [sic] her occupational functions of repetitive walking, standing, and carrying over many years. These functions lead [sic] to a contribution and acceleration of her condition and symptoms by repetitive wearing out of the joints." Dr. Sherman also noted that continued strain on the right knee placed "increased strain on her left knee, leading to an exacerbation of her previously asymptomatic arthritis leading to her left total joint arthroplasty."

By decision dated February 2, 2018, OWCP denied modification of its November 9, 2016 decision.

On March 13, 2018 appellant, through counsel, appealed the February 2, 2018 decision to the Board.

By order dated April 18, 2019,<sup>9</sup> the Board set aside the February 2, 2018 decision and remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx081 and xxxxxx841 with the present claim to be followed by a *de novo* decision.

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<sup>8</sup> Docket No. 15-1844 (issued January 21, 2016).

<sup>9</sup> *Order Remanding Case*, Docket No. 18-0833 (issued April 18, 2019).

On August 9, 2019 OWCP administratively combined the present claim with OWCP File Nos. xxxxxx841, xxxxxx803, xxxxxx140, and xxxxxx081, with the latter serving as the master file.

On August 28, 2019 OWCP referred the medical record and a statement of accepted facts (SOAF) to Dr. Nathan Hammel, serving as an OWCP district medical adviser (DMA), to determine whether the conditions of permanent aggravation of bilateral knee osteoarthritis should be accepted and whether total bilateral knee arthroplasty should be authorized as work related.

In a September 26, 2019 report, Dr. Hammel recommended that appellant's claim be accepted for right knee arthritis. He explained that she had accepted work injuries to the right knee that led to partial meniscectomy surgery, which was well known to contribute to the development of knee arthritis. Regarding the left knee, Dr. Hammel noted the development of arthritis without a specific injury and recommended that appellant's claim not be expanded to include a left knee condition. He explained that "there is no generally accepted medical practice which supports occupational contribution of knee arthritis outside of very specific circumstances of repetitive kneeling and squatting which is not the case."

By decision dated October 3, 2019, OWCP vacated the February 2, 2018 decision and accepted appellant's occupational disease claim for aggravation of osteoarthritis right knee. However, it denied expansion of the acceptance of the claim to include a left knee condition as causally related to, or consequential to, the accepted October 18, 2010 employment injury.<sup>10</sup>

### **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>11</sup> When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.<sup>12</sup> Thus, a subsequent injury, be it 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>13</sup>

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence.<sup>14</sup> The opinion of the physician must be based on a complete factual and medical

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<sup>10</sup> By separate decision also dated October 3, 2019, OWCP formally accepted appellant's occupational disease claim for aggravation of osteoarthritis right knee.

<sup>11</sup> *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>12</sup> See *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); see also *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>13</sup> *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>14</sup> See *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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>15</sup>

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.<sup>16</sup>

Section 8123(a) of FECA which 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 known as an impartial medical examiner (IME) who shall make an examination.<sup>17</sup> 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>18</sup> The Board has long held that an OWCP DMA may create a conflict in medical opinion with an examining physician.<sup>19</sup> When there exists opposing reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>20</sup>

### ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the April 17, 2015 OWCP decision because the Board considered that evidence in its February 18, 2014 and January 21, 2016 decisions. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>21</sup>

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<sup>15</sup> *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

<sup>16</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>17</sup> 5 U.S.C. § 8123(a); *J.K.*, Docket No. 20-0907 (issued February 12, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

<sup>18</sup> 20 C.F.R. § 10.321; *R.C.*, 58 ECAB 238 (2006).

<sup>19</sup> *See G.W.*, Docket No. 16-0525 (issued August 2, 2017); *Harold Travis*, 30 ECAB 1071 (1979); *see* 20 C.F.R. § 10.321(b).

<sup>20</sup> *See J.K.*, *supra* note 17; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>21</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).

In an October 27, 2017 report, Dr. Sherman opined that appellant's occupational functions, including repetitive walking, standing, and carrying over many years, contributed to or aggravated her bilateral knee osteoarthritis. He explained that her work activities likely accelerated the wearing out of the joints and contributed to the degenerative changes that ensued in her knees since 2004. Dr. Sherman also opined that the injuries to appellant's right knee put increased strain on her left knee, leading to an exacerbation of her previously asymptomatic arthritis and left total joint arthroplasty.

In his September 26, 2019 report, Dr. Hammell, OWCP's DMA, recommended that the claim be accepted for right knee arthritis, but not a left knee condition. He explained that there was no generally accepted medical practice which supported occupational contribution of knee arthritis outside of very specific circumstances of repetitive kneeling and squatting, which were not present in appellant's case.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.<sup>22</sup> The Board finds that a conflict in medical opinion exists between Dr. Sherman and Dr. Hammell regarding whether appellant's claim should be expanded to include a left knee condition causally related to, or as a consequence of, the accepted October 18, 2010 employment injury.<sup>23</sup>

The Board, therefore, shall remand the case for OWCP to refer appellant to an IME for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).<sup>24</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>22</sup> See *E.B.*, Docket No. 23-0169 (issued August 24, 2023); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

<sup>23</sup> See *J.H.*, Docket No. 22-0981 (issued October 30, 2023).

<sup>24</sup> *Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2019 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: August 22, 2025  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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