

<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.

Programs (OWCP).<sup>2</sup> Pursuant to the 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.

### **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish bilateral knee conditions causally related to the accepted December 27, 2022 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On September 3, 2023 appellant, then a 46-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 27, 2022 when walking to her truck to finish loading packages she fell on a concrete loading dock, landing on her hands and knees, while in the performance of duty. In an accompanying statement, she asserted that two coworkers witnessed her fall and assisted her to a seat. A supervisor came outside to monitor her then helped her inside. As appellant could not put any weight on her left leg, a coworker retrieved appellant's belongings and assisted appellant into her vehicle. She stopped work on December 27, 2022, and returned to work in approximately three days. Appellant claimed continuation of pay (COP).

OWCP also received a February 21, 2023 report by Dr. David Dirks, a chiropractor, who diagnosed bilateral knee osteoarthritis/degenerative joint disease, and noted restrictions.

In a September 15, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded 60 days to appellant to submit the necessary evidence.

Thereafter, OWCP received a September 24, 2023 emergency department after visit summary noting that appellant had been seen for knee pain by Dr. John David Bream, Board-certified in emergency medicine, who diagnosed osteoarthritis of the left knee, unspecified osteoarthritis type.

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<sup>2</sup> Appellant, through counsel, submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, counsel asserted that appellant had submitted medical evidence containing a diagnosis and medical rationale supporting causal relationship, but that OWCP had not performed a proper *de novo* review of such evidence. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the caserecord. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

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

In a September 27, 2023 attending physician's report (Form CA-20), Dr. Dirks diagnosed bilateral knee pain and osteoarthritis, with restrictions. He noted that she was not disabled.

In a September 28, 2023 urgent care treatment summary, A. Omar, a certified physician assistant, diagnosed unilateral primary osteoarthritis of the left knee, and left knee pain.

In a September 30, 2023 statement, the employing establishment challenged appellant's claim for COP as the claimed injury was not reported on a Form CA-1 within 30 days.

In an October 2, 2023 witness statement, appellant's coworker, W.L., recounted that on December 27, 2002, he witnessed appellant fall to her knees on the concrete loading dock. He assisted her to a bench, then helped her to her vehicle.

In a follow-up letter dated October 19, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the September 15, 2023 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.<sup>4</sup>

In an October 23, 2023 response to OWCP's development questionnaire, appellant asserted that she sought treatment from Dr. Dirks after the injury. She first developed knee pain while on a walking route in 2019 and underwent a series of knee injections. Appellant was diagnosed with knee osteoarthritis at an urgent care facility.

Thereafter, OWCP received a May 3, 2018 report wherein Lyndsay Lyall, a physician assistant, stated an impression of "likely arthritis" of the right knee. It also received a February 19, 2019 report wherein Nathan W. Heath, a physician assistant, diagnosed left knee pain.

OWCP also received reports dated January 14, 2020 through April 27, 2023, wherein Dr. Anthony F. Skalak, a Board-certified orthopedic surgeon, recounted his administration of a series of intra-articular injections.

In reports dated February 8 and July 26, 2022, Dr. Laurie Hulsman, an osteopath Board-certified in family medicine, related appellant's history of bilateral knee pain treated by a series of intra-articular injections.

In a September 24, 2023 report, Dr. Bream related appellant's history of left knee arthritis and bilateral knee pain. Bilateral knee x-rays obtained in 2020 revealed bilateral tricompartmental degenerative changes with small tricompartmental osteophytes and moderate medial compartment joint space narrowing, greater on the left, and a left-sided joint effusion.

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<sup>4</sup> By decision dated October 19, 2023, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the claimed December 27, 2022 employment injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

In reports dated October 13 and December 5, 2023, Teddie W. Gore, a family nurse practitioner (FNP), diagnosed primary osteoarthritis of the left knee caused by a fall.

In a November 20, 2023 report, Dr. Najibullah Muradi, an internist, related that appellant was admitted to the hospital in November 2023, and could return to work on December 7, 2023.

In a January 16, 2024 report, Julia Blackwell, an FNP, diagnosed an abscessed bursa in the left knee.

In a January 29, 2024 report, Dr. Skalak recommended total left knee arthroplasty to address near complete loss of the medial compartment joint space.

In a February 8, 2024 report, Dr. Skalak held appellant off work pending total left knee arthroplasty.<sup>5</sup>

By decision dated February 23, 2024, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted December 27, 2022 employment incident.

On February 21, 2024 appellant underwent left knee arthroplasty.

On February 29, 2024 appellant requested reconsideration.

By decision dated March 6, 2024, OWCP denied modification.

On April 30, 2024 appellant requested reconsideration.

Thereafter, OWCP received a second February 8, 2024 report wherein Dr. Skalak held appellant off work pending surgery.

In an April 30, 2024 report, Dr. Connie Locklear-Jones, a family practitioner, recounted treating appellant commencing on April 1, 2024 for bilateral lower extremity pain. She noted reviewing the October 2, 2023 coworker witness statement and printed images of knee x-rays. Dr. Locklear-Jones opined that appellant's job functions of carrying heavy satchels, bending, stooping, and twisting may have progressively worsened her knee pain and "worn down the cartilage of her knees."

By decision dated May 2, 2024, OWCP denied modification.

On May 20, 2024, appellant requested reconsideration. She submitted photographs of footwear, the location where she fell, and meteorologic data for the location of the employing establishment.

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<sup>5</sup> OWCP also received December 29, 2023, and February 9, 2024 appointment slips. In a February 15, 2024 statement, appellant noted that she had filed a separate claim under OWCP File No. xxxxxx859 for a reaction to medication prescribed for her knee.

OWCP also received a May 17, 2024 report by Tonya Archer, an FNP, who recounted a history of bilateral knee osteoarthritis prior to the December 27, 2022 employment incident.

By decision dated May 28, 2024, OWCP denied modification.

On July 11, 2024 appellant requested reconsideration. She submitted a July 9, 2024 report by Ms. Archer, countersigned by a physician whose signature is illegible.

By decision dated July 12, 2024, OWCP denied modification.

In a September 4, 2024 report, Dr. William A. Somers, a Board-certified orthopedic surgeon, recounted a history of the December 27, 2022 employment incident, and reviewed medical records and imaging studies. On examination, he noted that both knees were stable, with mild-to-moderate medial joint line and medial collateral ligament tenderness on the left, and well-healed surgical scars. Dr. Somers opined that appellant “suffered a permanent aggravation of her preexisting degenerative osteoarthritis of both knees” related to the December 27, 2022 employment incident.

On September 10, 2024 appellant, through counsel, requested reconsideration. He asserted that Dr. Somers’ September 4, 2024 report was new, relevant evidence warranting a merit review of the claim.

By decision dated October 8, 2024, OWCP denied modification.

In an October 17, 2024 report, Dr. Somers recounted that in 2018, appellant underwent a series of intra-articular injections to her knees every three months to treat bilateral knee osteoarthritis. She was also treated with Visco supplementation, and oral and topical medications. Dr. Somers explained that arthritis was a failure and loss of articular cartilage surface, clearly impacted by traumatic events such as the December 27, 2022 employment injury. Such an impact loading event will “cause and accelerate the progression of arthritis through a process of chronic inflammation,” as in appellant’s case. Prior to the December 27, 2022 employment incident, appellant was able to perform full-time, full-duty work. Dr. Somers opined that there was a causal relationship between the December 27, 2022 “work-related fall, the clear aggravation of the underlying bilateral degenerative osteoarthritis in her knees, and the subsequent disability,” as her knee pain increased after the December 27, 2022 claimed injury and prior to a subsequent September 24, 2023 injury. He explained that the September 24, 2023 “injury would not in any way diminish or nullify the causal relationship between the [December 27, 2022] work-related fall, the clear aggravation of the underlying bilateral degenerative osteoarthritis in her knees, and the subsequent disability, especially when the medical records document that the exacerbation of the knee pain began after the [December 27, 2022] fall and before any [September 24, 2023] injury.” Dr. Somers noted that appellant’s medical records supported that the accepted December 27, 2022 employment injury “was the disabling event, because it marks the moment that her knee pain became unmanageable,” such that she was no longer able to work full time. He also noted that Dr. Skalak’s January 2023 report documented appellant’s lack of response to intra-articular injections, eight months before the September 24, 2023 injury. Based on appellant’s history and symptoms, Dr. Somers opined that the December 27, 2002 “injury alone permanently aggravated her bilateral knee osteoarthritis” as medical management following the injury did not provide relief.

from appellant's bilateral knee pain. He concluded that the December 27, 2022 employment incident caused a permanent aggravation of bilateral knee degenerative osteoarthritis with subsequent disability from work.

On October 21, 2024 appellant, through counsel, requested reconsideration, asserting that an October 17, 2024 report by Dr Somers was new, relevant evidence, which warranted a merit review of appellant's claim.

By decision dated January 17, 2025, OWCP denied modification.

On April 30, 2025 appellant, through counsel, requested reconsideration. Counsel contended that OWCP had not properly considered Dr. Somers' reports.

In a May 1, 2025 letter, counsel asserted that appellant had met her burden of proof. He attached a list of her job duties, a list of medical treatments, and a chronology of events, which he termed a "statement of accepted facts."

By decision dated May 13, 2025, OWCP denied reconsideration of the merits of appellant's claim, pursuant to 5 U.S.C. § 8128(a).

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

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>7</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

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<sup>6</sup> *Supra* note 3.

<sup>7</sup> See *S.F.*, Docket No. 23-0264 (issued July 5, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.<sup>10</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>11</sup> The opinion of the physician must be based upon a complete factual and medical background, 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 incident.<sup>12</sup>

In a case in which 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>

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

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

Dr. Somers, in his October 17, 2024 report, recounted an accurate, detailed history of injury and treatment. He explained that the September 24, 2023 “injury would not in any way diminish or nullify the causal relationship between the [December 27, 2022] work-related fall, the clear aggravation of the underlying bilateral degenerative osteoarthritis in her knees, and the subsequent disability, especially when the medical records document that the exacerbation of the knee pain began after the [December 27, 2022] fall and before any [September 24, 2023] injury.” Additionally, he differentiated between the physical effects of appellant’s preexisting bilateral knee osteoarthritis, the accepted December 27, 2022 employment incident, and a subsequent September 24, 2023 injury. Dr. Somers explained that a fall such as the December 27, 2022 employment incident was an impact loading event that caused acceleration, progression, and permanent aggravation of bilateral knee osteoarthritis through a process of chronic inflammation of the degenerated cartilage. Although Dr. Somers’ opinion is insufficiently rationalized to

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<sup>10</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> *J.H.*, Docket No. 25-0565 (issued June 24, 2025); *M.T.*, Docket No. 24-0103 (issued March 28, 2024); *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *see also Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *N.N.*, Docket No. 24-0510 (issued July 16, 2024); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

establish causal relationship, it is sufficient to require further development of the medical evidence.<sup>14</sup>

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>15</sup> OWCP has an obligation to see that justice is done.<sup>16</sup>

The Board shall, 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 reasoned opinion regarding whether appellant sustained bilateral knee conditions causally related to the accepted December 27, 2022 employment incident. If the second opinion physician disagrees with the opinion of Dr. Somers, he or she must provide a fully-rationalized explanation of why the accepted employment incident is insufficient to have caused or aggravated appellant's medical condition. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>17</sup>

### **CONCLUSION**

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

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<sup>14</sup> *L.N.*, Docket No. 25-0173 (issued March 6, 2025); *J.K.*, Docket No. 20-0816 (issued May 4, 2022); *M.H.*, Docket No. 18-1068 (issued June 2, 2020); *J.H.*, *supra* note 8; *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); *John J. Carlone*, *supra* note 10; *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>15</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>16</sup> *See J.H.*, *supra* note 12; *L.N.*, *supra* note 14; *C.M.*, *supra* note 14; *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*, *supra* note 10.

<sup>17</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.



**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2025 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. The May 13, 2025 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: August 5, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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