

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

V.C., Appellant)
and) Docket No. 25-0714
DEPARTMENT OF LABOR, OCCUPATIONAL)
SAFETY & HEALTH ADMINISTRATION,)
Calumet, IL, Employer)
Issued: September 19, 2025

Appearances:
Appellant, *pro se*
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 July 21, 2025 appellant filed a timely appeal from a June 25, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include aggravation of preexisting left knee conditions as causally related to, or consequential to, the accepted August 1, 2022 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 25, 2025 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.*

FACTUAL HISTORY

On October 17, 2022 appellant, then a 56-year-old safety and occupational health specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2022 her right knee struck the corner of a metal arm rest when traveling on an airplane while in the performance of duty. OWCP accepted the claim for right knee patellae chondromalacia and right knee medial meniscus derangement of the posterior horn of the medial meniscus.³ Appellant underwent a right knee arthroscopic synovectomy and partial lateral meniscectomy on December 12, 2022. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing November 16, 2022.

In a report dated November 21, 2022, Dr. Ravi M. Shah, a Board-certified family medicine physician, provided examination findings, reviewed x-ray studies, and diagnosed right knee chondromalacia patellae, right knee medial meniscus posterior horn other derangements, right knee other medial meniscus derangements, right knee medial collateral ligament sprain, right knee complex medical meniscus tear, bilateral knee villonodular synovitis (pigmented), left knee primary osteoarthritis, left knee chondromalacia patellae, left knee complex lateral meniscus tear, left knee contusion, and left knee effusion.

In reports dated December 13 and 29, 2022 and January 12, 2023, Dr. Gregory L. Primus, a Board-certified orthopedic surgeon, recounted that appellant had sustained a previous left knee employment injury and had undergone left knee surgery in 2006 or 2007. He noted that appellant related increased left knee pain since injuring her right knee, due to bearing weight on her left knee. Dr. Primus diagnosed left knee chondromalacia patellae, left knee calcific tendinitis, and left knee complex medial meniscus tear. Review of appellant's left knee x-ray revealed large ossification at superior pole of the patella, lateral joint narrowing moderate osteophytes, and no subchondral sclerosis in the lateral tibia.

In a note dated January 25, 2023, appellant explained that after her August 1, 2022 right knee injury and corrective surgery, she was provided with crutches. Use of the crutches shifted all of her weight to the left knee, which caused a further left knee injury. Appellant requested that the acceptance of her claim be expanded to include additional conditions, including a left knee injury.

In a development letter dated February 27, 2023, OWCP informed appellant of the deficiencies of her request for expansion and allotted her 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated April 20, 2023, OWCP denied appellant's request for expansion of the acceptance of her claim.

In progress notes dated May 25, 2023, Dr. Primus diagnosed left knee chondromalacia patellae, complex left knee medial meniscus tear, left knee calcific tendinitis, left knee loose body, and left knee and leg strain. On physical examination of the left knee, he observed diffuse medial, medial joint line, lateral joint line, and lateral femoral condyle tenderness. Review of appellant's

³ OWCP assigned the instant claim OWCP File No. xxxxxx125. Under OWCP File No. xxxxxx114, OWCP accepted a June 18, 2005 traumatic injury claim for left ankle tenosynovitis, left knee lateral collateral ligament sprain; left ankle repair; left ankle and foot ganglion; left ankle calcaneofibular ligament sprain; and left foot and ankle synovitis and tenosynovitis.

December 19, 2022 left knee magnetic resonance imaging scan (MRI) revealed suprapatellar effusion with an one-centimeter loose body within the lateral aspect of the suprapatellar bursa; suspected multidirectional medial meniscus posterior horn tearing.

A June 2, 2023 MRI scan of appellant's left knee revealed suprapatellar effusion with one centimeter loose body within the suprapatellar bursa lateral aspect and suspected medial meniscus posterior horn multidirectional tearing.

On July 17, 2023 appellant requested reconsideration.

On July 21, 2023 OWCP administratively combined OWCP File Nos. xxxxxx114 and xxxxxx125, with the latter designated as the master file.

On August 2, 2023 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Matthew Squire, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding nature of her work-related condition, extent of disability, and appropriate treatment recommendations.

In a report dated August 28, 2023, Dr. Squire related that examination of appellant's left knee revealed mild-to-moderate effusion, full extension to 123 degrees of flexion, mild patellar crepitus, unremarkable ligamentous, and intact peripheral pulses and sensation. He related that appellant exhibited exaggerated pin response during the left lower extremity examination. Dr. Squire found no current diagnoses in connection with the accepted work injury. In an attached work capacity evaluation (Form OWCP-5c), he found appellant was disabled from her date-of-injury job, but capable of working in a sedentary or light-duty job. Dr. Squire opined that appellant's work-related conditions of right knee contusion and temporary aggravation of her right knee arthritis had resolved, and that her current symptoms were related to her preexisting right knee arthritis. With respect to her left knee, he noted she had preexisting knee pain due to a past motor vehicle accident (MVA), and diagnostic testing was consistent with degenerative arthritis. Dr. Squire explained that appellant's left knee arthroscopy due to a past injury was sufficient to cause left knee internal derangement and resulting chronic pain and arthritis.

By decision dated September 13, 2023, OWCP denied modification of the April 20, 2023 decision.

OWCP subsequently received progress notes dated July 20 and August 17, 2023, wherein Dr. Primus repeated his prior findings and diagnoses.

On November 27, 2023 OWCP received progress notes dated December 13 and 29, 2022, wherein Dr. Primus diagnosed left knee patellae chondromalacia, left knee complex medial meniscus tear, and left knee calcific tendinitis. It also received progress notes dated January 12, April 18, and May 25, 2023 wherein Dr. Primus repeated his prior findings and diagnoses.

In a November 18, 2023 report, Dr. Primus reviewed Dr. Squire's report. He related that, based on the medical records noted, it did not appear Dr. Squire had a complete history regarding appellant's injuries, as she had a previously accepted left knee injury. Dr. Primus also explained that based on an analysis of appellant's medical records, following her right knee surgery it was evident that her left knee symptoms had been aggravated by her overcompensating to protect her right knee. Thus, he opined that her current left knee condition was causally related to her right

knee employment injury. Dr. Primus disagreed with Dr. Squire's opinion regarding the cause of appellant's left knee arthritis, noting appellant had been asymptomatic prior to the August 1, 2022 employment injury, and her left knee x-rays showed very mild evidence of wear and tear with mild joint space narrowing. However, following the August 1, 2022 employment injury she sought medical care for her left knee. Dr. Primus concluded that the acceptance of appellant's claim should be expanded to include her current left knee conditions.

On November 27, 2023 appellant requested reconsideration of the September 13, 2023 decision.⁴

OWCP subsequently received progress notes dated June 1, September 28, November 30, and December 21, 2023 wherein Dr. Primus reiterated his prior opinion.

By decision dated February 7, 2024, OWCP denied modification of its September 13, 2023 decision.

In a report dated March 10, 2024, Dr. Primus requested expansion of appellant's claim to include her left knee conditions. Regarding appellant's right knee condition, he explained that the direct blow to her knee caused inflammation which ignited a pain stimulus which led to altered gait, function, and weakness. Dr. Primus again explained that appellant's current left knee condition was due to her overcompensating to protect her right knee. Regarding appellant's left knee, he explained that with cartilage damage or a meniscus tear the course can be progressive and every time stress or weight is placed on the knee it could cause more swelling, which could also lead to formation of a Baker's cyst. Dr. Primus related that appellant had significant effusion representing irritation and inflammation, along with evidence of loose body and meniscus tear. He reiterated that Dr. Squires' opinion was speculative, not based on review of all the medical evidence, and mischaracterized appellant's actual condition. Dr. Primus related that since appellant's left knee only became painful once she began placing all of her weight on it, he concluded that her left knee pain and condition was a consequence of her right knee injury.

Dr. Primus, in progress notes dated March 20, 2024, noted that, since appellant's last visit, her left knee symptoms had minimally worsened. He related unchanged examination findings.

On March 22, 2024 appellant requested reconsideration regarding the denial of expansion of her claim for her left knee conditions.

By decision dated March 28, 2024, OWCP denied modification of its February 7, 2024 decision.

In a May 22, 2024 report, Dr. Primus reiterated his disagreement with Dr. Squire's opinion that appellant's left knee condition was preexisting without any relationship to the August 1, 2022

⁴ By decision dated November 30, 2023, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that Dr. Squire's opinion constituted the weight of the medical opinion evidence, establishing that appellant no longer had disability or residuals causally related to the accepted March 10, 2021 employment injury. Appellant subsequently requested reconsideration. By decision dated February 18, 2025, OWCP vacated the decision terminating appellant's compensation benefits. OWCP found that Dr. Squire's opinion was insufficiently rationalized as he did not rely upon the SOAF in forming his opinion. OWCP noted that a review of the file indicated that appellant had returned to full-time limited duty work on November 30, 2023 and, thus, any claim for wage-loss compensation after that date would be considered as a claim for recurrence of disability.

employment injury. He asserted that Dr. Squire failed to fully review appellant's MRI scans or her complete medical record.

On June 15, 2024 appellant requested reconsideration regarding the denial of her request for expansion to include left knee conditions.

By decision dated June 24, 2024, OWCP denied modification of its March 28, 2024 decision.

On September 3, 2024 appellant requested reconsideration of the June 24, 2024 decision and resubmitted a November 18, 2023 report from Dr. Primus.

By decision dated September 5, 2024, OWCP denied appellant's request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

OWCP subsequently received progress notes dated August 20, October 1, and November 1, 2024 wherein Dr. Primus reiterated his opinion.

In a report dated November 21, 2024, Dr. Primus explained that appellant underwent corrective right knee surgery which caused tremendous change to her right knee and body. He concluded that her right knee would never return to its original state and she would always have some level of aggravation or discomfort.

On February 21, 2025 appellant requested reconsideration of OWCP's denial of expansion to include a consequential left knee condition.

On March 17, 2025 OWCP referred appellant, along with a SOAF, series of questions, and medical record, to Dr. Joshua Alpert, a Board-certified orthopedic surgeon, for an updated medical opinion on the issue of whether appellant developed a consequential aggravation of her preexisting left knee condition(s).⁵

An April 3, 2025 report from Dr. Primus was unchanged from prior reports.

In a report dated April 14, 2025, Dr. Alpert recounted appellant's history of right and left knee injuries. He reviewed her medical record and the SOAF. Dr. Alpert related that appellant had not had medical treatment for her left knee for about a year prior to her August 1, 2022 injury, and she had been cleared for full duty. He noted that the October 19, 2022 MRI scan of appellant's left knee showed joint space narrowing, articular cartilage thinning, multidirectional tearing of the meniscus, chondromalacia with a 1-cam loose body within the lateral aspect of the bursa. On physical examination of appellant's left knee, he found full flexion and extension; well healed old surgical site ports; negative varus and valgus stress tests, and no obvious swelling or instability. Dr. Alpert opined that appellant's left knee condition was due to a progression of her degenerative condition. He related that he did not see how her right knee injury could be a contributing factor

⁵ On February 27, 2025 OWCP found a conflict in the medical opinion evidence between Dr. Primus, appellant's treating physician, and Dr. Squire on the issue of whether appellant's claim should be expanded to include left knee conditions. On March 13, 2025 OWCP found the case was not currently in posture for an impartial medical examination and that the February 27, 2025 referral for an impartial medical examination should be disregarded.

for her left knee complaints. Dr. Alpert concluded that more likely than not appellant had a manifestation of her left knee arthritic condition and prior treatment.

By decision dated June 25, 2025, OWCP denied modification of the June 24, 2024 decision denying expansion of the acceptance of appellant's claim to include aggravation of preexisting left knee conditions as causally related to, or consequential to, the accepted August 1, 2022 employment injury.

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.⁶ 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.⁷ 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.⁸

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the accepted employment injury, an employee must submit rationalized medical evidence.⁹ 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.¹⁰

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.¹¹

ANALYSIS

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

⁶ *D.F.*, Docket No. 25-0528 (issued June 9, 2025); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁷ See *D.F.*, *id.*; *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).

⁸ *D.F.*, *id.*; *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁹ See *D.F.*, *id.*; *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹⁰ *D.F.*, *id.*; *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

¹¹ *D.F.*, *id.*; 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).

A conflict in medical opinion evidence exists between the reports of Dr. Primus, appellant's treating physician, and Dr. Alpert, OWCP's second opinion physician, regarding whether the acceptance of the claim should be expanded to include aggravation of a preexisting left knee condition as causally related to, or consequential to, the accepted August 1, 2022 employment injury.

In reports dated December 13 and 29, 2022, and January 12, 2023, Dr. Primus noted that appellant related increased left knee pain since injuring her right knee, due to bearing weight on her left knee. Dr. Primus diagnosed left knee chondromalacia patellae, left knee calcific tendinitis, and left knee complex medial meniscus tear. Review of appellant's left knee x-ray revealed large ossification at superior pole of the patella, lateral joint narrowing moderate osteophytes, and no subchondral sclerosis in the lateral tibia. In a November 18, 2023 report, Dr. Primus explained that based on an analysis of appellant's medical records, following her right knee surgery it was evident that her left knee symptoms had been aggravated by her overcompensating to protect her right knee. Thus, he opined that her current left knee conditions were causally related to her accepted employment injury. In a report dated March 10, 2024, Dr. Primus requested expansion of appellant's claim to include her left knee conditions. Regarding appellant's right knee condition, he explained that the direct blow to her knee caused inflammation which ignited a pain stimulus which led to altered gait, function, and weakness. Dr. Primus explained that appellant's current left knee condition was due to her overcompensating to protect her right knee, as with cartilage damage or a meniscus tear the course can be progressive and every time stress or weight is placed on the knee it could cause more swelling, which could also lead to formation of a Baker's cyst. Dr. Primus related that appellant had significant effusion representing irritation and inflammation, along with evidence of loose body and meniscus tear. Dr. Primus further related that since appellant's left knee only became painful once she began placing all of her weight on it, he concluded that her left knee pain and condition was a consequence of her right knee injury.

In his April 14, 2025 report, on the other hand, Dr. Alpert related appellant's history of injury on August 1, 2022 and her prior left knee injuries. He related that appellant had not had medical treatment for her left knee for approximately one year prior to her August 1, 2022 employment injury, and that she had been cleared for full duty. Dr. Alpert noted that the October 19, 2022 MRI scan of appellant's left knee showed joint space narrowing, articular cartilage thinning, multidirectional tearing of the meniscus, chondromalacia with a 1-cam loose body within the lateral aspect of the bursa. He concluded that appellant's left knee condition was due to a progression of her degenerative condition. Dr. Alpert noted that he did not see how her right knee injury could be a contributing factor for her left knee complaints.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or impartial medical specialist who shall make an examination.¹² The Board finds that a conflict in medical opinion exists between Dr. Primus, for appellant, and Dr. Alpert, for the government, regarding whether the acceptance of appellant's claim should be expanded to include aggravation of preexisting left knee conditions as causally related to, or consequential to the accepted employment injury.¹³

¹² 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).

¹³ See *S.T.*, Docket No. 21-0906 (issued September 2, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

The Board shall, therefore, remand the case for OWCP to refer appellant to a specialist in the appropriate field of medicine for an impartial medical examination and resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).¹⁴ Following 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.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 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.

Issued: September 19, 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

¹⁴ See *D.W.*, Docket No. 24-0157 (issued March 26, 2024); *Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).