

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

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D.F., Appellant)	
)	
and)	Docket No. 26-0058
)	Issued: April 27, 2026
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Winchester, VA, Employer)	
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Appearances:
Andrew Douglas, Esq., for the appellant¹
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 October 30, 2025 appellant, through counsel, filed a timely appeal from an October 6, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the October 6, 2025 decision, appellant submitted additional evidence to OWCP and with her appeal to the Board. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include left knee meniscus tear as causally related to, or consequential to, the accepted October 11, 2018 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 15, 2018 appellant, then a 53-year-old analyst, filed a traumatic injury claim (Form CA-1) alleging that, on October 11, 2018, she injured her right ankle, knee, neck, back, and ribcage when she slipped on water as she entered a bathroom while in the performance of duty. She explained that, when she slipped, her right ankle turned and she heard a "pop" in her right knee. As she grabbed for the wall, appellant hit her head, wrists, and upper body on the wall. She stopped work that day. OWCP accepted the claim for right knee complex tear of medial meniscus, effusion, contusion, and chondromalacia. Appellant underwent a right knee arthroscopy on January 21, 2019 and a right total knee replacement on May 19, 2020. She had previously undergone surgery for right torn anterior cruciate ligament (ACL) with chondromalacia medial femoral condyle on November 25, 2008. OWCP paid appellant wage-loss compensation benefits on the supplemental rolls effective November 26, 2018, and on the periodic rolls effective April 28, 2019.

In a July 19, 2019 report, Dr. Robert T. Smith, a Board-certified orthopedic surgeon, related that appellant's right knee buckled and gave out on July 4, 2019, causing her to fall. He provided examination findings regarding appellant's right knee and ordered additional testing. In a September 30, 2019 report, Dr. Smith noted that appellant did well after her right knee surgery for a meniscus tear until her right knee buckled and gave out during the weekend of July 4, 2019. He opined that the July 4, 2019 episode was related to appellant's original injury.

In an October 7, 2019 report, Dr. Nigel M. Azer, a Board-certified orthopedic surgeon, noted appellant's October 11, 2018 injury and her subsequent right knee medical treatment. He related that her right knee gave out on the weekend of July 4, 2019, which caused her to fall. Dr. Azer noted that he had previously diagnosed post-traumatic arthritis of appellant's right knee, for which knee replacement surgery was recommended. He advised that, while appellant had a history of an ACL surgery in 2008, she was not having trouble with her knee prior to the October 11, 2018 work injury. Dr. Azer opined that there had been no new injury to her knee besides the October 11, 2018 work injury and that her subsequent fall on July 4, 2019 was secondary to the work injury.

On April 18, 2023 appellant, through counsel, requested expansion of the acceptance of her claim to include a left knee meniscus tear.

In support thereof, counsel submitted medical evidence, including a March 22, 2023 report, wherein Dr. Janelle Snoddy, a Board-certified anesthesiologist, requested that appellant's case be

⁴ Docket No. 20-0690 (issued June 2, 2022).

expanded to include left knee conditions. She indicated that appellant, while undergoing initial treatment of her right knee, developed left knee pain due in part to the added weight onto the left lower extremity necessary to offload the weakness and pain of the right extremity, and the cane appellant used to ambulate. As a result of improper rehabilitation and early discharge from treatment of the right lower extremity, appellant's altered gait and a worsening of the right lower extremity, Dr. Snoddy opined that appellant fell onto both knees in July 2019. She indicated that a magnetic resonance imaging (MRI) scan of appellant's left knee demonstrated subtle free edge fraying/degenerative tearing of the body/posterior horn of the medial meniscus with grade 1 chondrosis of medial compartment and scattered areas of grade 2-4 chondrosis of the patellofemoral compartment.

On November 2, 2023 OWCP referred appellant along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. James R. Schwartz, a Board-certified orthopedic surgeon, for a second opinion examination and reasoned opinion regarding whether the acceptance of the claim should be expanded to include right knee osteoarthritis and left knee meniscus tear due to the accepted October 11, 2018 employment injury.

On August 23, 2023 OWCP accepted additional conditions of generalized anxiety disorder and major depressive disorder, single episode, moderate and undifferentiated somatoform disorder on December 14, 2023.

In a report dated January 17, 2024, Dr. Schwartz noted his review of the SOAF, appellant's history of injury, and the medical evidence of record. He also provided his findings on examination. Dr. Schwartz related that appellant had sustained permanent aggravation of her right knee osteoarthritis due to her October 11, 2018 injury. He found no indication of injury to the left knee. Dr. Schwartz opined that altered gait to the contralateral side was not accepted in medical literature as causing injury. Therefore, he opined that appellant's left knee meniscus tear was not related to the October 11, 2018 employment injury.

On February 27, 2024 OWCP expanded the acceptance of the claim to include permanent aggravation of lumbar intervertebral disc degeneration, and right knee unilateral primary osteoarthritis.

By decision dated February 27, 2024, OWCP denied expansion of the acceptance of appellant's claim to include the diagnosis of left knee meniscus tear as causally related to, or consequential to, the accepted October 11, 2018 employment injury. It accorded the weight of the medical evidence to Dr. Schwartz' January 17, 2024 second opinion report.

On March 25, 2024 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

On April 8, 2024 OWCP expanded its acceptance of the claim to include spondylosis without myelopathy or radiculopathy, cervical region permanent aggravation.

By decision dated June 17, 2024, OWCP's hearing representative set aside OWCP's February 27, 2024 decision and remanded the case for OWCP to request a supplemental report from Dr. Schwartz regarding the July 4, 2019 alleged mechanism of injury.

On July 10, 2024 OWCP requested that Dr. Schwartz provide a supplemental report as to whether the claim should be expanded to include left knee meniscus tear based on the July 4, 2019 alleged mechanism of injury.

In a July 14, 2024 supplemental report, Dr. Schwartz requested that he be supplied with additional medical records. He also recommended that he be authorized to perform another second opinion examination.

On August 21, 2024 OWCP referred appellant to Dr. Schwartz for a second opinion evaluation.

In a September 25, 2024 report, Dr. Schwartz noted his review of the medical evidence of record, including the additional medical reports submitted in support of appellant's left knee expansion claim. He provided his findings on examination. Dr. Schwartz related that appellant's history suggested a degenerative joint disease of the left knee unrelated to the October 11, 2018 injury. He noted that the July 4, 2019 episode wherein that right knee gave way and appellant fell on both her knees was substantiated in the medical records; however, there was no indication of a left knee injury for several years after July 2019. Appellant was seen within two weeks of the incident in 2019, but subsequent evaluations by both Dr. Smith and Dr. Azer did not mention any left knee symptoms. Appellant's treatment was confined to her right knee injury. Dr. Schwartz opined the mechanism of injury, *i.e.*, direct fall onto the knee ordinarily would not be expected to produce a meniscus tear. He indicated that appellant did not have an appropriate history regarding symptoms of a meniscus tear, *i.e.*, catching, popping, locking, *etc.*, only of pain; and her MRI scan did not suggest any significant meniscus tear, only some fraying of the leading edge. Dr. Schwartz indicated there was no corroborating medical evidence of an injury to the left knee in July 2019 and there was no clinical evidence of meniscal pathology for a meniscal tear for a long period of time following the injury. Thus, he concluded that the claim should not be expanded to include left knee meniscal tear.

By *de novo* decision dated December 3, 2024, OWCP denied expansion of the acceptance of appellant's claim to include the diagnosis of left knee meniscus tear as causally related to, or consequential to, the accepted October 11, 2018 employment injury. It accorded the weight of the medical evidence to Dr. Schwartz' September 25, 2024 second opinion report.

On January 1, 2025 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received additional evidence, including April 29, 2024 left knee x-rays, which related an impression of left knee contusion with medial meniscus tear and aggravation of chondromalacia.

In an October 9, 2022 report, Dr. Azer noted that appellant's right knee had given way and she fell. He indicated that appellant had intermittent pain in her left knee, the left knee locked, caught, and buckled on occasion. Dr. Azer indicated the June 24, 2022 radiology report showed a tear of the medial meniscus with some grade 2 through grade 4 chondromalacia of the patellofemoral joint. He provided examination findings of the bilateral knees and, in relevant part, diagnosed chondromalacia left knee with medial meniscus tear. In June 20, 2022 and February 8, 2023 reports, Dr. Azer noted appellant's progress following her right total knee replacement for post-traumatic arthritis. He also assessed chondromalacia left knee with medial meniscus tear. In

an August 21, 2024 report, Dr. Azer related that appellant's left knee MRI scan showed significant patellofemoral arthritis, cartilage fissuring in the medial lateral compartment, inflammation and pes anserine bursitis, and a tear of the medial meniscus. He presented left knee examination findings and provided an impression of synovitis left knee, tricompartmental degenerative arthritis and medial meniscus tear left knee. In a September 18, 2024 report, Dr. Azer noted that during the course of appellant's recovery from her October 11, 2018 right knee injury, she fell on July 4, 2019 onto her left knee. Since that time appellant experienced problems with her left knee. Dr. Azer concluded that the July 4, 2019 fall likely aggravated and exacerbated appellant's left knee condition of post-traumatic arthritis of the left knee with meniscus tear. In an April 29, 2024 report, he reported appellant had an April 4, 2024 fall and sustained injury to her left shoulder, left knee and left hand.

In a September 11, 2024 report, Dr. Sabeeha Chowdhury, an interventional radiologist, noted that appellant had a fall at work in 2018 and again in 2019 when she fell on both knees. In pertinent part, she reviewed the results of appellant's left knee MRI scan and provided an impression of left knee osteoarthritis.

By decision dated April 2, 2025, OWCP's hearing representative affirmed the December 3, 2024 decision.

On September 19, 2025 appellant, through counsel, requested reconsideration.

A May 9, 2025 left knee MRI scan indicated new small focus of bone marrow edema within the anterior aspect of the lateral tibial plateau without discrete fracture may represent a contusion; complex tearing of the body and posterior horn of the medial meniscus; high grade partial thickness cartilage loss of the patellofemoral compartment.

In a May 12, 2025 report, Dr. Azer indicated that appellant was status post right total knee replacement. With regard to the left knee, he indicated that appellant's left knee had been bothering her since July 4, 2019 when her right knee gave way and she fell on her left knee. Since that time appellant's left knee had been buckling and locking. Dr. Azer noted that appellant had requested that her left knee condition be considered a consequential injury to the right knee. He also indicated that she was likely going to require a left knee arthroscopy and possible eventual knee replacement.

In an August 20, 2025 report, Dr. Azer provided an impression of status post right total knee replacement and traumatic chondromalacia and meniscus tear left knee. He opined that appellant injured her left knee on July 4, 2019 when her right knee gave out. Dr. Azer indicated that she had been compensating and placing a lot of weight on her left knee and the altered gait aggravated and exacerbated her chondromalacia as well as the meniscus tears. He indicated that appellant required a total left knee replacement, which was consequential to her 2018 work-related injury due to the instability and pain that she experienced in her right knee.

In a September 10, 2025 report, Dr. Azer stated that he had been treating appellant since August 2019. He noted that appellant's claim for her October 11, 2018 fall at work had been accepted for many conditions, including a right medial meniscus tear and right knee osteoarthritis. Dr. Azer noted that she underwent a right knee arthroscopy on January 21, 2019 and a right total knee replacement on May 19, 2020. He noted that a prior second opinion examiner had indicated in April 25 and June 10, 2019 reports, that it was not appropriate for appellant to have been

discharged three months after her January 21, 2019 surgery. Dr. Azer indicated that appellant's right knee then gave out on July 4, 2019 and she fell on both knees. He opined that the July 4, 2019 fall was related to her October 11, 2018 work injury. Dr. Azer summarized appellant's symptoms to the left knee and medical course, noting that she did not initially get treated for the left knee as there was concern for reinjury to her right meniscus, which had been repaired six months prior. He opined that appellant injured her left knee on July 4, 2019 when her right knee gave out stating that she had been compensating and placing a lot of weight on her left knee which resulted in an aggravation and exacerbation of her chondromalacia as well as the meniscal tears. Dr. Azer opined that this altered gait aggravated and exacerbated her left knee meniscus tear and arthritis. He disagreed with Dr. Schwartz that the altered gait was not accepted as having any causal relationship. Dr. Azer explained that shifting of weight to the left knee due to the injured right knee increased the load on the left knee and resulted in an exacerbation. In addition, he opined that a direct fall onto the knee, such as the July 4, 2019 fall, was sufficient to cause damage. Dr. Azer also stated that appellant has a documented history of catching, popping or locking in the left knee, which were documented in his reports since appellant's visit on August 28, 2019.

By decision dated October 6, 2025, OWCP denied modification.

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.⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹

Section 8123(a) of FECA provides, in pertinent part: "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 a referee physician or an impartial medical

⁵ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁶ *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).

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

⁸ *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁹ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

examiner (IME)) who shall make an examination.”¹⁰ This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹¹ When there exist opposing medical 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.¹²

ANALYSIS

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

In a January 17, 2024 report, Dr. Schwartz, OWCP’s second opinion physician, concluded that appellant’s left knee meniscus tear was not caused by altered gait following her accepted October 11, 2018 right knee injury. OWCP subsequently requested a supplemental report from Dr. Schwartz clarifying whether appellant’s July 4, 2019 fall onto both knees caused a consequential left knee injury. In a September 25, 2024 report, Dr. Schwartz, explained that a direct fall onto the knee ordinarily would not be expected to produce a meniscus tear. He also noted that appellant did not have contemporaneous left knee complaints following the July 4, 2019 fall, and appellant’s left knee MRI scan did not suggest any significant meniscus tear, only some fraying of the leading edge.

In multiple reports, including a September 10, 2025 report, appellant’s treating physician Dr. Azer, related that he had treated appellant since August 2019 and she had a documented history of catching, popping or locking of the left knee, since her initial visit. He noted appellant’s history or medical treatment, including her right knee arthroscopy on January 21, 2019 and that she had not fully recovered from this surgery by July 4, 2019. Dr. Azer opined that appellant’s July 4, 2019 fall onto both knees was related to her October 11, 2018 work injury, and was sufficient to cause injury. He explained that appellant was not initially treated for her left knee complaints as there was concern for reinjury to her right meniscus, which had been repaired six months prior. Dr. Azer opined that appellant injured her left knee on July 4, 2019 when her right knee buckled and she fell which resulted in an aggravation and exacerbation of her chondromalacia as well as left knee meniscal tear. He also disagreed with Dr. Schwartz that appellant’s altered gait did not cause contralateral injury. Dr. Azer explained that shifting of weight to the left knee due to the injured right knee increased the load on the left knee and resulted in an exacerbation.

As noted above, if there is a disagreement between an employee’s physician and an OWCP physician, OWCP will appoint an IME who shall make an examination.¹³ The Board finds that a

¹⁰ 5 U.S.C. § 8123(a).

¹¹ 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

¹² See *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹³ 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).

conflict in medical opinion exists between Dr. Schwartz and Dr. Azer as to whether appellant sustained a left knee injury consequential to her accepted October 11, 2018 right knee injury.

The case shall, therefore, be remanded for OWCP to refer appellant to an IME for resolution of the conflict in medical opinion evidence. On remand, OWCP shall refer appellant, along with the case record and an updated SOAF, to a specialist in the appropriate field of medicine, to serve as an IME, for a reasoned medical opinion regarding whether appellant sustained a left knee meniscus tear causally related to, or consequential to, her accepted October 11, 2018 right knee injury.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 October 6, 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: April 27, 2026
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 *S.W.*, Docket No. 22-0917 (issued October 26, 2022); *K.D.*, Docket No. 19-0281 (issued June 30, 2020).