United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 26-0479**
	)	**Issued: August 25, 2026**
DEPARTMENT OF VETERANS AFFAIRS, TIBOR RUBIN VA MEDICAL CENTER, Long Beach, CA, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 29, 2026 appellant, through counsel, filed a timely appeal from an April 7, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 April 7, 2026 decision, appellant submitted additional evidence to OWCP. 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 his burden of proof to expand the acceptance of his claim to include a left knee condition as causally related to, or consequential to, the accepted July 25, 2023 employment injury.

FACTUAL HISTORY

On January 30, 2024 appellant, then a 59-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2023 he twisted/rolled his right ankle on uneven pavement when pushing a patient in a wheelchair while in the performance of duty. OWCP accepted the claim for right ankle sprain, right osteochondral injury of the anterior tibial plafond, right partial-thickness injury to the anterior tibio-fibular ligament, right sinus tarsi syndrome, and right tibio-talar joint effusion. It paid appellant wage-loss compensation.[4]

In a February 2, 2024 report, Dr. William Warden, a Board-certified orthopedic surgeon, noted that appellant was treated for left knee pain. He related that appellant had a prior history of four left knee arthroscopic surgeries. Dr. Warden further related that appellant had a previously accepted work-related right ankle injury, and that his left knee became more painful, with episodes of swelling, as he compensated for his right ankle injury. He noted physical examination findings, reviewed x-rays, and provided an assessment of primary localized osteoarthritis of left knee. In a February 8, 2024 attending physician's report (Form CA-20), Dr. Warden opined that appellant's left knee lateral compartment arthritis, status post meniscectomy surgery, was aggravated by altered weight bearing due to his right ankle pathology.

On May 23, 2025 appellant, through counsel, requested expansion of the acceptance of his claim to include left knee tricompartmental osteoarthritis and patellar tendinosis with prepatellar bursitis.

In support thereof, appellant submitted a February 19, 2025 note, wherein Dr. Glenna Tolbert, a Board-certified physiatrist, related that appellant initially continued to work after his July 25, 2023 right ankle injury, but his condition worsened. Dr. Tolbert diagnosed left knee conditions of tricompartmental osteoarthritis and patellar tendinosis with potential prepatellar bursitis. She opined that appellant's right ankle injury and the significant worsening of his left knee osteoarthritis were directly related to the July 25, 2023 work incident. Dr. Tolbert explained that appellant's right ankle injury led to an altered walking pattern that placed excessive stress on the left knee and accelerated the wear and tear on an already compromised joint. She asserted that her conclusion was backed by the principles of biomechanics and appellant's recent x-rays which showed moderate degenerative changes.

In a June 20, 2025 development letter, OWCP informed appellant of the deficiencies of his request for expansion. It advised him of the type of medical evidence needed and allotted him 30 days to submit the necessary evidence.

[4] OWCP assigned the present claim OWCP File No. xxxxxx823. Under OWCP File No. xxxxxx040, OWCP accepted a January 9, 2020 traumatic injury claim for right ankle sprain; other specific joint derangements of right shoulder; cervical radiculopathy; cervical sprain; and pain due to internal orthopedic prosthetic devices, implants and grafts. The claims have not been administratively combined.

In a July 14, 2025 note, Dr. Tolbert reported that appellant had a previously accepted right ankle injury resulting in longstanding nonweight-bearing status and functional restrictions. He was initially employed in a nurse educator position, which was largely sedentary and allowed for adherence to medical accommodations, including frequent positional changes and restricted ambulation. However, on August 17, 2023, appellant was reassigned to a limited-duty case manager role which imposed increased physical demands including frequent travel across a hospital campus (five to six times daily) using a knee scooter, prolonged telehealth sessions with extended sitting, repetitive sit-to-stand transitions, and inadequate ergonomic support. She opined that the position was incompatible with appellant's medical restrictions and led to progressive mechanical dysfunction, pain escalation and deconditioning. Dr. Tolbert concluded that appellant was temporarily totally disabled from work as of May 5, 2025.

On a July 8, 2025 progress note, Dr. Tolbert related appellant's continuing right ankle and left knee complaints. She also noted that his right ankle injury impacted his left knee and altered his biomechanics as he had to use his left leg to ambulate on the scooter. In a July 30, 2025 progress note, Dr. Tolbert noted that appellant's left knee pain persisted which she "described as compensatory from altered gait mechanics." In an August 19, 2025 progress note, she noted that appellant continued to have right ankle pain and limited ankle mobility, in addition to secondary left knee pain.

Appellant submitted undated statements. He related that his light-duty work assignment of August 17, 2023 led to a new left knee injury because his work duties were inconsistent with his medical restrictions. In the second statement, appellant related that he had undergone six left knee arthroscopies between 2005 and 2008. He alleged that Dr. Warden had documented that his right ankle injury contributed to the worsening of his left knee condition.

In an October 25, 2023 report, Dr. Manijeh Berenji, a general surgeon, noted that appellant, was treated for left knee pain and swelling that began on October 5, 2023. Appellant related that he was compensating for a previous right ankle work injury and was placing more weight on his left knee. He informed Dr. Berenji that an orthopedic/medical device he needed to support his right ankle remained unavailable. Dr. Berenji noted appellant's physical examination findings and provided an assessment of left knee pain and sprain of unspecified site of left knee. In a November 1, 2023 report, she noted that appellant had begun using a right ankle cam boot and he reported that he could not walk the usual way, which affected normal joint flexibility and placed increased stress on his left foot/ankle. Dr. Berenji diagnosed left knee pain, pain in left ankle and joints of left foot, and strain of unspecified ligaments of left ankle. She opined that appellant could continue to work with restrictions.

Medical progress notes dated December 18, 2023 through March 25, 2024 from Anthony R. Gauthier, a physician's assistant, were also received.

In a follow-up development letter dated February 26, 2026, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It requested additional evidence from appellant and afforded him 30 days to respond. 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 further evidence was received.

By decision dated April 7, 2026, OWCP denied expansion of the acceptance of appellant's claim to include left knee conditions as causally related to, or consequential to, the accepted 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.[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]

ANALYSIS

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

In support of his expansion claim, appellant submitted a February 19, 2025 note, wherein Dr. Tolbert related that appellant initially continued to work after his July 25, 2023 right ankle injury, but his condition worsened. Dr. Tolbert diagnosed left knee conditions of tricompartmental osteoarthritis and patellar tendinosis with potential prepatellar bursitis. She opined that appellant's right ankle injury and the significant worsening of his left knee osteoarthritis were directly related to the July 25, 2023 work incident. Dr. Tolbert explained that appellant's right ankle injury led to an altered walking pattern that placed excessive stress on the left knee and accelerated the wear and tear on an already compromised joint. She asserted that her conclusion was backed by the principles of biomechanics and appellant's recent x-rays which showed moderate degenerative changes.

[5] *See N.M.*, Docket No. 26-0021 (issued March 11, 2026); *S.P.*, Docket No. 25-0669 (issued November 25, 2025); *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).

In a July 14, 2025 note, Dr. Tolbert reported that appellant had a previously accepted right ankle injury resulting in longstanding nonweight-bearing status and functional restrictions. He was initially employed in a nurse educator position, which was largely sedentary and allowed for adherence to medical accommodations, including frequent positional changes and restricted ambulation. However, on August 17, 2023, appellant was reassigned to a limited-duty case manager role which imposed increased physical demands including frequent travel across a hospital campus (five to six times daily) using a knee scooter, prolonged telehealth sessions with extended sitting, repetitive sit-to-stand transitions, and inadequate ergonomic support. She opined that the position was incompatible with appellant's medical restrictions and led to progressive mechanical dysfunction, pain escalation, and deconditioning. Dr. Tolbert concluded that appellant was temporarily totally disabled from work as of May 5, 2025.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility for the development of the evidence and to see that justice is done.[10]

While the Board finds that the February 19 and July 14, 2025 reports from Dr. Tolbert are not fully rationalized, taken together, they are sufficient to require further development of the evidence.[11]

On remand, for full and fair adjudication, OWCP shall administratively combine OWCP File Nos. xxxxxx040 and xxxxxx823. It shall then refer appellant to a specialist in the appropriate field of medicine, along with the case record and an updated statement of accepted facts, for an evaluation and a well-rationalized opinion as to whether any diagnosed condition is causally related to, or consequential to, the accepted July 25, 2023 employment injury.[12] If the physician opines that there is no diagnosed condition causally related to, or consequential to, the accepted July 25, 2023 injury, he or she must provide a rationalized explanation as to why their opinion differs from those articulated by Dr. Tolbert. 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.

[10] *See A.K.*, Docket No. 20-1426 (issued March 8, 2021); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *Id.*

[12] *See J.K.*, Docket No. 20-0816 (issued May 4, 2022); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2026 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 25, 2026
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board