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B.H., Appellant	)	
	)	
and	)	Docket No. 26-0415
	)	Issued: July 24, 2026
DEPARTMENT OF JUSTICE, EXECUTIVE	)	
OFFICE OF IMMIGRATION REVIEW,	)	
Falls Church, VA, Employer	)	
	)	

Case Submitted on the Record

Office of Solicitor, for the Director

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

On April 1, 2026 appellant, through his representative, filed a timely appeal from a January 28, 2026 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.

The issues are: (1) whether OWCP properly denied authorization of appellant's March 4, 2020 right knee arthroscopic surgical procedure; and (2) whether appellant met his burden of proof

² 5 U.S.C. § 8101 *et seq.*

to establish disability from work during the period March 4 through August 10, 2020 causally related to the accepted October 18, 2019 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior order and decision are incorporated herein by reference. The relevant facts are as follows.

On October 30, 2019 appellant then a 51-year-old legal assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2019 he experienced pain in his right knee and back, and numbness in his back and leg, when his left knee gave out and he fell as he was descending stairs while in the performance of duty. He stopped work on October 18, 2019.

In a December 16, 2019 report, Dr. Aravind Athiviraham, a Board-certified orthopedic surgeon, recounted appellant's medical history, provided examination findings, and reviewed diagnostic tests. He related that a magnetic resonance imaging (MRI) scan of appellant's right knee demonstrated a complex, but predominantly horizontal tear of the posterior horn and body of the medial meniscus. Dr. Athiviraham diagnosed right knee medial meniscus complex tear and noted that appellant was given a right knee cortisone injection and was referred for physical therapy. He concluded that if appellant had no improvement, he should consider right knee arthroscopic surgery, partial medial meniscectomy vs repair.

Appellant underwent arthroscopic surgery on March 4, 2020 for repair of the right medial meniscus.

On June 27, 2023 OWCP accepted the claim for right knee medial meniscus tear.

On July 21, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work during the period October 19, 2019 through August 10, 2020.

By decision dated September 22, 2023, OWCP denied appellant's claim for wage-loss compensation for the period October 19, 2019 through August 10, 2020, finding that the medical evidence of record was insufficient to establish disability from work causally related to his accepted employment injury.

On October 17, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated December 13, 2023, OWCP's hearing representative affirmed the September 22, 2023 decision in part, finding that the medical evidence of record was insufficient

³ *Order Remanding Case, B.H.*, Docket No. 24-0297 (issued September 26, 2024); Docket No. 21-0183 (issued December 7, 2021).

to establish disability from work for the period October 19, 2019 through March 3, 2020.⁴ The hearing representative, however, also set aside the September 22, 2023 decision in part, finding that further development was required to determine whether appellant's March 4, 2020 surgical procedure was medically necessary for treatment of appellant's accepted employment injury, and whether appellant had resulting disability from March 4 through August 10, 2020. The case was remanded for OWCP to obtain the operative report from appellant's March 4, 2020 right knee surgery and to further develop the evidence regarding whether the surgery was necessary due to the accepted employment injury.

OWCP subsequently received a March 4, 2020 surgical report reflecting that appellant underwent right knee arthroscopic medial meniscal repair and removal of loose bodies for a diagnosed tear of the medial meniscus of the right knee, which was performed by Dr. Athiviraham.

By *de novo* decision dated April 9, 2024, OWCP denied authorization of appellant's March 4, 2020 right knee arthroscopic surgical procedure, finding that the medical evidence of record was insufficient to establish that the requested procedure was medically necessary and causally related to the accepted employment injury. It also denied appellant's claim for wage-loss compensation for disability from work during the period March 4 through August 10, 2020, finding that the medical evidence of record was insufficient to establish disability during the claimed period causally related to the accepted employment injury.

On May 8, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 16, 2024.

By decision dated November 5, 2024, OWCP's hearing representative vacated the April 9, 2024 decision and remanded the case for further development with regard to the March 4, 2020 surgery and disability from work during the period March 4 through August 10, 2020, followed by a *de novo* decision.

On March 17, 2025 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Arthur S. Harris, an OWCP district medical adviser (DMA), to address whether the March 4, 2020 surgery by Dr. Athiviraham was medically necessary and causally related to appellant's accepted condition, and to determine the nature and extent of any attendant disability. It requested that the DMA "review and specifically comment on the opinion of Dr. Athiviraham in the report dated March 4, 2020." If the DMA disagreed with the opinion of Dr. Athiviraham, he was to "thoroughly discuss any points of disagreement."

In a report dated March 23, 2025, Dr. Harris noted that on March 4, 2020 appellant underwent right knee arthroscopic medial meniscal repair and removal of loose bodies and that appellant was treated by Dr. Athiviraham on June 18, 2020, who documented appellant's postoperative course of treatment. He related that the evidence of record lacked preoperative reports documenting objective findings, appellant's subjective complaints, the failure of

⁴ On January 31, 2024 appellant, through counsel, appealed the December 13, 2023 decision to the Board with regard to the denial of disability for the period October 19, 2019 through March 3, 2020. By order dated September 26, 2024, the Board set aside the December 13, 2023 decision, finding that OWCP's hearing representative failed to consider all the relevant evidence received prior to issuance of the December 13, 2023 decision. Thus, the case was remanded for OWCP to review all evidence of record, followed by a *de novo* decision. The Board notes that OWCP, to date, has not issued a *de novo* decision on that issue as previously ordered by the Board.

conservative care, or any explanation for the need for surgery. Dr. Harris further related that there was insufficient information in the medical records to recommend a retrospective authorization for the March 4, 2020 knee repair procedure. However, he indicated that there was sufficient information that the claimed period of disability from March 4 through August 10, 2020 was the direct result of the March 4, 2020 surgery for treatment of appellant's work injury. Thus, Dr. Harris opined that this period of disability would be directly related to the accepted October 18, 2019 employment injury.

By *de novo* decision dated September 12, 2025, OWCP denied authorization of appellant's March 4, 2020 right arthroscopic surgical procedure. It also denied appellant's claim for disability from work during the period March 4 through August 10, 2020.

On October 10, 2025 appellant, through counsel, requested a review of the written record by OWCP's Branch of Hearings and Review.

By decision dated January 28, 2026, OWCP hearing representative affirmed the September 12, 2025 decision.

LEGAL PRECEDENT – ISSUE 1

Section 8103(a) of FECA⁵ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.⁶ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.⁷ The only limitation on OWCP's authority is that of reasonableness.⁸

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.⁹ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁰ In order for a surgical procedure to be authorized, appellant must establish that the procedure was for a condition causally related to the

⁵ 5 U.S.C. § 8103(a).

⁶ *Id.* See *S.T.*, Docket No. 24-0571 (issued June 14, 2024); *C.L.*, Docket No. 24-0249 (issued April 15, 2024); *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *Thomas W. Stevens*, 50 ECAB 288 (1999).

⁷ *S.T.*, *id.*; *C.L.*, *id.*; *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-812 (issued April 3, 2009).

⁸ *S.T.*, *id.*; *C.L.*, *id.*; *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

⁹ *S.T.*, *id.*; *C.L.*, *id.*; *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

¹⁰ *S.T.*, *id.*; *C.L.*, *id.*; *K.W.*, Docket No. 18-1523 (issued May 22, 2019); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

employment injury and that the procedure was medically warranted.¹¹ Both of these criteria must be met in order for OWCP to authorize payment.¹²

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹³

ANALYSIS -- ISSUE 1

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

On March 17, 2025 OWCP referred the case record and SOAF to Dr. Harris as the OWCP DMA, to address whether the March 4, 2020 surgery was medically necessary and causally related to appellant's accepted conditions, and to determine the nature and extent of any attendant disability. It requested that the DMA "review and specifically comment on the opinion of Dr. Athiviraham in the report dated March 4, 2020." If the DMA disagreed with the opinion of Dr. Athiviraham, he was to "thoroughly discuss any points of disagreement."

In a report dated March 23, 2025, Dr. Harris related that appellant underwent right knee arthroscopic medial meniscal repair and removal of loose bodies on March 4, 2020 and was seen for postoperative evaluation by Dr. Athiviraham on June 18, 2020. He related that the evidence of record was insufficient to recommend retrospective authorization for the March 4, 2020 surgery due to the lack of preoperative reports documenting objective findings, appellant's subjective complaints, the failure of conservative care, or any explanation for the need for surgery. Dr. Harris, however, did not indicate whether he had reviewed any of Dr. Athiviraham's reports, nor did he explain any disagreement with Dr. Athiviraham's opinion.

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 in the development of the evidence.¹⁴ It has an obligation to see that justice is done.¹⁵ As OWCP undertook development of the evidence by requesting the DMA address whether March 4, 2020 surgery was medically necessary and causally related to appellant's accepted

¹¹ *S.T., id.; C.L., id.; T.A.*, Docket No 19-1030 (issued November 22, 2019); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

¹² *S.T., id.; C.L., id.; J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

¹³ *S.T.; C.L., id.; D.S.*, Docket No. 18-0353 (issued February 18, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹⁴ See *S.F.*, Docket No. 23-0509 (issued January 24, 2024); *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); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁵ See *S.F., id.; A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

employment injury it had the duty to secure an appropriate report based on an accurate factual and medical background.¹⁶

Accordingly, this case must be remanded to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a SOAF, the medical record, and series of questions, to a specialist in the appropriate field of medicine for a second opinion regarding whether appellant's March 4, 2020 surgical procedure was medically necessary and causally related to the accepted October 18, 2019 employment injury, and whether appellant was disabled from work during the period March 4 through August 10, 2020 causally related to the accepted October 18, 2019 employment injury. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁷

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 28, 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: July 24, 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

¹⁶ See *S.F., id.*; *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

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