United States Department of Labor
Employees' Compensation Appeals Board

V.S., Appellant	)	
and	)	**Docket No. 26-0443**
	)	**Issued: July 17, 2026**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Alan J. Shapiro, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 15, 2026 appellant, through counsel, filed a timely appeal from an April 1, 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.

[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*.

ISSUE

The issue is whether OWCP properly denied appellant's request for authorization of left knee total arthroplasty.

FACTUAL HISTORY

On April 15, 2024 appellant, then a 50-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a torn meniscus when her left knee popped as she was entering her truck while in the performance of duty on March 17, 2024. She noted that she first became aware of her condition and realized its relation to her federal employment on March 17, 2024. Appellant stopped work on April 2, 2024. By decision dated May 8, 2024, OWCP notified appellant that it had converted her occupational disease claim to a claim for a traumatic injury as the evidence received indicated an incident or event within a single workday or shift. It accepted the claim for left knee medial meniscus tear. OWCP paid her compensation on the supplemental rolls commencing May 17, 2024, and on the periodic rolls commencing July 14, 2024.

On June 10, 2024 appellant underwent an OWCP-authorized arthroscopic partial medial meniscectomy of the left knee from the posterior horn to mid body; chondroplasty of the medial femoral condyle of the left knee; chondroplasty of the left knee patella; and limited synovectomy of the left knee.

On March 12, 2025 OWCP referred appellant for a second opinion evaluation with Dr. Joseph Femminineo, a Board-certified physiatrist, for a second opinion evaluation to determine the nature and extent of her injury related residuals and disability.

In a report dated April 23, 2025,[3] Dr. Femminineo related appellant's history of injury, noted his review of the medical record, reported physical examination findings, and indicated that appellant had an accepted left medial meniscus tear. He opined that appellant was status post left knee arthroscopy with some early bilateral knee degenerative changes. Dr. Femminineo reported that appellant had a history of degenerative arthritis as confirmed by x-ray interpretation. He stated that he was not certain there was a work injury that played a role in her current condition.

In an August 19, 2025 visit note, Dr. Justin Hollander, an osteopathic Board-certified orthopedic surgeon, reviewed diagnostic tests, conducted a physical examination, and diagnosed left knee unilateral primary osteoarthritis. He recommended total knee arthroplasty.

On September 12, 2025 OWCP requested that Dr. Femminineo provide a supplemental report addressing the issue of whether the total knee arthroplasty surgery recommended by Dr. Hollander was medically necessary for and causally related to appellant's accepted condition.

In a supplemental report dated September 19, 2024, Dr. Femminineo, reviewed additional medical records provided by OWCP and noted that appellant had a preexisting history of left knee

[3] The report notes the year as 2024, which appears to be a typographical error as appellant was evaluated on April 12, 2025.

osteoarthritis, which he explained predisposed her to developing a meniscal tear without any trauma. Dr. Femminineo related that appellant's April 5, 2024 left knee magnetic resonance imaging (MRI) scan demonstrated a full thickness radial tear of the posterior horn of the medial meniscus, partial extrusion of the mid bod, and lateral as well as patellofemoral compartment chondral disease. He opined that the surgery recommended by Dr. Hollander appeared appropriate but was unrelated to her accepted employment injury.

By decision October 15, 2025, OWCP denied appellant's request for authorization for left knee total arthroplasty. It found that the medical evidence of record was insufficient to establish that the procedure was medically necessary to treat the effects of her accepted work-related condition.

On January 10, 2026 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 26, 2026, OWCP denied appellant's request for an oral hearing, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

In a February 3, 2026 report, Dr. Hollander opined that appellant's injury preceded the development of her medial compartment chondrosis. In support of this conclusion, he explained that an April 5, 2024 MRI scan revealed no medial compartment chondrosis while a December 7, 2024 MRI scan revealed postoperative changes of the medial meniscus including new signs of medial compartment chondrosis. Dr. Hollander concluded that appellant's employment injury therefore led to her medial compartment chondrosis.

On March 15, 2026 appellant requested reconsideration.

By decision dated April 1, 2026, OWCP denied modification of the October 15, 2025 decision.

LEGAL PRECEDENT

Section 8103(a) of FECA[4] 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.[5]

[4] 5 U.S.C. § 8103(a).

[5] *Id.*; *see J.K.*, Docket No. 20-1313 (issued May 17, 2021); *Thomas W. Stevens*, 50 ECAB 288 (1999).

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.[6] The only limitation on OWCP's authority is that of reasonableness.[7]

Abuse of discretion is generally 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 to produce a contrary factual conclusion.[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 procedure to be authorized, appellant must establish that the procedure was for a condition causally related to the 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]

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.[13] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[14] 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,

---

[6] *N.M.*, Docket No. 26-0021 (issued March 11, 2026); *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-812 (issued April 3, 2009).

[7] *See N.M.*, *id.*; *V.F.*, Docket No. 25-0548 (issued September 5, 2025); *S.Y.*, Docket No. 24-0443 (issued May 28, 2024); *see D.C.*, Docket No. 20-0854 (issued July 19, 2021); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, 59 ECAB 141 (2007).

[8] *See N.M.*, *id.*; *E.F.*, Docket No. 20-1680 (issued November 10, 2021); *J.L.*, Docket No. 18-0503 (issued October 16, 2018); *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (Thomas, Alternate Member, dissenting).

[9] *N.M.*, *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); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981).

[10] *N.M.*, *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).

[11] *N.M.*, *id.*; *T.A.*, Docket No 19-1030 (issued November 22, 2019); *John E. Benton*, 15 ECAB 48, 49 (1963).

[12] *N.M.*, *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] 5 U.S.C. § 8123(a); *L.J.,* Docket No. 23-0270 (issued September 19, 2023); *K.C.,* Docket No. 19-0137 (issued May 29, 2020); *M.W.,* Docket No. 19-1347 (issued December 5, 2019); *C.T.,* Docket No. 19-0508 (issued September 5, 2019); *R.S.,* Docket No. 10-1704 (issued May 13, 2011); *S.T.,* Docket No. 08-1675 (issued May 4, 2009).

[14] 20 C.F.R. § 10.321.

if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[15]

ANALYSIS

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

On August 19, 2025, Dr. Hollander sought authorization for total knee arthroplasty. In a February 3, 2026 report, Dr. Hollander explained that appellant's injury preceded the development of her medial compartment chondrosis. He explained that an April 5, 2024 MRI scan revealed no medial compartment chondrosis while a December 7, 2024 MRI scan revealed postoperative changes of the medial meniscus including new signs of medial compartment chondrosis.

In contrast, Dr. Femminineo, the second opinion Board-certified physiatrist, opined, in his September 19, 2024 supplement report, that the requested surgery was not medically necessary for treatment of the accepted employment condition as appellant had a preexisting history of left knee osteoarthritis, which predisposed her to developing a meniscal tear without any trauma. He also opined that appellant's April 5, 2024 left knee MRI scan demonstrated lateral as well as patellofemoral compartment chondral disease.

As Dr. Femminineo, the second opinion Board-certified physiatrist, and Dr. Hollander, appellant's attending osteopathic Board-certified orthopedic surgeon, disagreed as to whether the left knee arthroplasty was medically necessary, the Board finds that there is a conflict in the medical opinion evidence. The case must therefore be remanded for referral to an IME, pursuant to 5 U.S.C. § 8123(a). 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.

[15] *L.J.*, *supra* note 13; *K.C.*, *supra* note 13; *C.T.*, *supra* note 13; *Darlene R. Kennedy,* 57 ECAB 414 (2006); *Gloria J. Godfrey,* 52 ECAB 486 (2001); *James P. Roberts,* 31 ECAB 1010 (1980).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2026 decision of the Office of Workers' Compensation Programs is case is set aside, and the case is remanded for further proceedings consistent with the decision of the Board.

Issued: July 17, 2026
Washington, DC

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

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

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