United States Department of Labor
Employees' Compensation Appeals Board

G.D., Appellant	)	
and	)	**Docket No. 26-0072**
	)	**Issued: March 3, 2026**
DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Los Angeles, CA, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 5, 2025 appellant, through counsel, filed a timely appeal from an October 27, 2025 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 October 27, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 right knee osteoarthritis as causally related to, or consequential to, the accepted February 9, 2010 employment injury.

FACTUAL HISTORY

On February 10, 2010 appellant, then a 51-year-old immigration enforcement agent, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2010 he sustained an injury to his left knee due to tripping on sandbags, while in the performance of duty. He stopped work on February 11, 2010. OWCP accepted appellant's claim for left knee lateral collateral ligament sprain, left knee medial meniscus tear, and left knee lateral meniscus tear. It paid appellant wage-loss compensation for disability from work on the supplemental rolls, effective April 25, 2010.[4]

In a February 9, 2010 report, Dr. Jorge L. Llanes, a Board-certified emergency medicine physician, indicated that appellant presented complaining of left knee pain due to straining his left knee when he stepped on some sandbags. He diagnosed left knee pain. In a May 24, 2010 report, Dr. Paul J. Papanek, a Board-certified preventative medicine physician, advised that appellant underwent left knee surgery on April 15, 2009 which was "not accepted as industrial." Dr. Papanek noted that appellant presently complained of left knee pain and he diagnosed lateral collateral ligament sprain, medial meniscus tear, and lateral meniscus tear of the left knee.

On August 11, 2010 Dr. William C. Loos, a Board-certified orthopedic surgeon, performed OWCP-authorized left knee surgery, including arthroscopy, partial medial meniscectomy, and chondroplasty of the medial femoral condyle. Appellant returned to modified duty shortly after November 6, 2010. Right knee x-rays obtained on June 1, 2011 demonstrated osteoarthritic changes with normal alignment. X-rays of both knees obtained on June 24, 2014 demonstrated moderate degenerative joint disease on all three compartments of both knees.

On October 26, 2015 Dr. Jack Yu, a Board-certified orthopedic surgeon, performed OWCP-authorized left total knee arthroplasty. He noted that appellant's principal diagnosis was left knee osteoarthritis.

On February 19, 2020 OWCP received a February 14, 2020 statement, wherein appellant referenced his accepted left knee injury claim and requested that OWCP consider the "direct causation damage" to his right knee.

Appellant subsequently submitted an April 6, 2020 report wherein Dr. Aaron Rubin, a Board-certified family medicine physician, advised that appellant had undergone a left total knee replacement "after an injury he described at work." He indicated that appellant's right knee was "showing issues" that might lead to a joint replacement or other surgery/interventions. Dr. Rubin stated, "It is likely that this right knee problem is due to his work and left knee issues."

[4] Appellant retired from the employing establishment effective December 29, 2013.

On May 18, 2020 OWCP received February 27 and March 24, 2020 magnetic resonance imaging (MRI) scans of appellant's right knee, which demonstrated complex tearing at the body and posterior horn of the medial meniscus with mild extrusion to the remaining medial meniscal tissue; suggestion of a subtle oblique/horizontal tear at the body of the lateral meniscal body; high-grade chondrosis with moderate tricompartmental osseous spurring, and small joint effusion with mild subcutaneous edema anteriorly.

In a November 16, 2021 report, Dr. Jonathan I. Smith, an osteopath and Board-certified family medicine physician, diagnosed bilateral knee osteoarthritis and bilateral foot pain.

In a May 18, 2022 "request to expand claim," counsel, on appellant's behalf, requested expansion of the acceptance of appellant's claim to include several right knee conditions: osteoarthritis; high-grade chondrosis with moderate tricompartmental osseous spurring; small joint effusion with mild subcutaneous edema anteriorly; and complex tearing at the body and the posterior horn of the medial meniscus with mild extrusion to the remaining knee medial meniscal tissue.

On June 16, 2022 OWCP referred appellant's case to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA) and requested that he provide an opinion regarding whether appellant sustained right knee osteoarthritis related to his accepted left knee condition and/or left knee surgery. In a June 30, 2022 report, Dr. Harris noted that no medical reports of record discussed causal relationship between appellant's work activities and right knee osteoarthritis.

In an August 21, 2018 report, Martha Herrera, a clinical assistant, noted that appellant complained of having right knee pain and swelling for two weeks. In a report of even date, Dr. Jocelyn R. Ramoso, a Board-certified internist, related appellant's complaint of right knee pain which had worsened over the past year. She diagnosed bilateral knee arthritis, left knee osteoarthritis, and history of left knee surgery on April 15, 2009, and August 11, 2010. In an August 30, 2018 report, Dr. Yu advised that appellant complained of having right knee pain which worsened over the past several months. He diagnosed right knee osteoarthritis. September 10, 2018 right knee x-rays demonstrated degenerative joint disease which had increased since April 17, 2017.

OWCP continued to develop appellant's case by referring it to Dr. Harris in his role as a DMA. On January 23, 2024 OWCP again referred appellant's case to him for an opinion regarding whether the medical evidence of record established that appellant's right knee conditions were related to the accepted February 9, 2010 employment injury and/or the October 26, 2015 left knee total arthroplasty. In a January 31, 2024 report, Dr. Harris recommended that appellant undergo a second opinion examination and evaluation regarding the causal relationship between his right knee condition and his "work injury of February 9, 2010, work activities, or ongoing left knee problem."

By development letter dated March 19, 2024, OWCP informed appellant of the deficiencies of his request for expansion of the claim. It advised him of the type of medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On April 9, 2024 OWCP received an undated response from appellant wherein he advised that his right knee was weaker than his left knee, and consequently his balance was off when he walked. It also received medical evidence.

In a March 31, 2022 report, Dr. Smith diagnosed bilateral knee osteoarthritis and history of left knee arthroplasty.

In a July 12, 2022 report, Dr. Gerald R. Goodlow, a Board-certified physiatrist, diagnosed bilateral knee osteoarthritis.

By decision dated August 13, 2024, OWCP denied appellant's request for expansion of the acceptance of his claim to include additional right knee conditions as causally related to, or consequential to, the accepted February 9, 2010 employment injury.

On August 20, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated October 18, 2024, OWCP's hearing representative set aside the August 13, 2024 decision and remanded the case to OWCP for further proceedings. The hearing representative determined that Dr. Rubin's April 6, 2020 opinion on causal relationship was not fully rationalized but did constitute *prima facie* evidence that appellant's right knee problems were related to his work-related left knee condition. The hearing representative directed OWCP, on remand, to refer appellant to a second opinion physician, Board-certified in orthopedic surgery, for an examination and opinion regarding whether he sustained a right knee condition causally related to, or sustained as a consequence of, the accepted February 9, 2010 employment injury. Following further warranted development, OWCP was to issue a *de novo* decision regarding appellant's expansion claim.

On January 6, 2025 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, for a second opinion examination with Dr. Michael J. Einbund, a Board-certified orthopedic surgeon. It requested that Dr. Einbund provide an opinion regarding whether appellant sustained a right knee condition causally related to, or consequential to, the accepted February 9, 2010 employment injury.

In a February 20, 2025 report, Dr. Einbund discussed appellant's factual and medical history, noting the treatment appellant received for his knees, including surgical intervention. Appellant presently complained of giving way and constant pain in the left knee, with pain radiating down to the thigh, and constant right knee pain at the 5-6 out of 10 level with numbness from the right knee to below the thigh. Dr. Einbund further noted that appellant reported feeling "off balance" when walking. He reported the findings of physical examination, noting that examination of the right knee revealed diffuse tenderness without swelling or instability, and restricted active range of motion with flexion contracture of five degrees. Examination of the left knee revealed moderate tenderness medially and laterally without swelling or instability, good motor strength, restricted active range of motion with flexion contracture of five degrees, and slight loss of sensation lateral to a surgical scar. Dr. Einbund noted that right knee x-rays demonstrated significant medial joint degeneration with medial joint space narrowing to one millimeter, and that left knee x-rays demonstrated a total knee replacement in good position. He diagnosed left knee osteoarthritis; status post right total knee replacement; history of resolved

left knee sprain; history of resolved left knee meniscus tear; status post partial medial/lateral meniscectomy of the left knee on April 15, 2009; status post partial medial meniscectomy of the left knee on August 11, 2010. Dr. Einbund indicated that there was evidence of preexisting right knee degenerative changes which advanced throughout the years. He referenced a March 12, 2009 right knee MRI scan and June 1, 2011 right knee x-rays and noted that, during the period of the right knee degenerative changes demonstrated by this diagnostic testing, appellant started having left knee symptoms with evidence of tricompartmental osteoarthritis and meniscus tear. Dr. Einbund further advised that appellant underwent left knee arthroscopy on April 15, 2009, a date which predated the February 9, 2010 employment injury. He stated, "This would give rise to both knees being affected by developmental osteoarthritis, independent of any injury."

Dr. Einbund opined that the left knee arthritic changes were accelerated by the February 9, 2010 employment injury and the subsequent left knee arthroscopy on August 11, 2010, and indicated that arthritic changes continued to progress in both knees, as demonstrated by June 24, 2014 x-rays which revealed moderate degenerative joint disease of all three compartments of both knees. He indicated that a left total knee replacement was performed on October 26, 2015 and that the "right knee re-emerges" on August 21, 2018 when appellant reported right knee pain present for two weeks, as well as on August 30, 2018 when he reported right knee pain present for several months. Dr. Einbund advised that September 10, 2018 right knee x-rays revealed moderate degenerative joint disease that had progressed since the last examination and that a February 27, 2020 right knee MRI scan documented complex tearing of the medial meniscus with mild extrusion to the remaining medial meniscus tissue and lateral meniscus horizontal tear. He further noted that the arthritic condition of the right knee had progressed to end stage. Dr. Einbund opined that appellant's right knee osteoarthritis was unrelated to his accepted February 9, 2010 employment injury involving the left knee, noting that there was evidence of preexisting early degenerative changes of the right knee dating back to March 2009. He found that there had been a natural progression of the arthritic changes which occurred independently of the left knee condition. Dr. Einbund indicated that there was no documentation following the October 26, 2015 left total knee replacement that there was any post-surgical impact affecting the opposing right knee. He explained that it was approximately three years later, on August 21, 2018, that the right knee became an issue, and noted that, by this time, the natural progression of the arthritic changes had advanced in the right knee and brought about the onset of right knee symptoms. Dr. Einbund stated that there was "no evidence that the injured left knee caused or altered the natural course of the right knee osteoarthritis," and noted that "the resulting outcome is as would be expected." He opined that there was "no causal relationship to support that the left knee either caused, accelerated or aggravated the underlying preexisting right knee condition."

By *de novo* decision dated March 24, 2025, OWCP denied appellant's request for expansion of the acceptance of the claim, finding that the medical evidence of record was insufficient to establish additional conditions as causally related to, or consequential to, the accepted February 9, 2010 employment injury. It found that the weight of medical opinion evidence regarding additional work-related conditions rested with the opinion of Dr. Einbund, the OWCP referral physician.

On April 1, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 19, 2025.

On September 19, 2005 OWCP received a June 2, 2025 report, wherein Dr. Smith reported his examination findings and diagnosed bilateral knee osteoarthritis.

By decision dated September 19, 2025, OWCP's hearing representative affirmed the March 24, 2025 decision in part, finding that appellant failed to meet his burden of proof to expand the acceptance of his claim to include right knee osteoarthritis causally related to, or sustained as a consequence of, the accepted February 9, 2010 employment injury. It was determined that the weight of the medical opinion evidence regarding this issue rested with the opinion of Dr. Einbund, the OWCP referral physician. The hearing representative set aside the March 24, 2025 decision in part and remanded the case to OWCP for further development regarding expansion of the acceptance of his claim to include chondrosis and medial meniscus tear of the right knee causally related to, or consequential to, the accepted February 9, 2010 employment injury.

On October 24, 2025 appellant, through counsel, requested reconsideration of the September 19, 2025 decision. Appellant submitted an October 6, 2025 report wherein Dr. Smith indicated that there was no direct causal relationship between appellant's undergoing a right knee replacement and the development of osteoarthritis in the contralateral knee. Dr. Smith noted, however, that biomechanical adaptations following unilateral total knee arthroplasty, such as altered gait mechanics, compensatory loading, and redistribution of joint forces, might contribute to an increased risk of osteoarthritic progression in the opposite knee over time. He stated, "These changes are well-documented in orthopedic literature and are considered secondary effects of the surgical intervention and subsequent rehabilitation process. While they do not constitute a direct cause, they may influence the natural history of joint degeneration in the contralateral limb."

By decision dated October 27, 2025, OWCP denied modification of the September 19, 2025 decision with respect to the denial of appellant's claim to expand his accepted conditions to include right knee osteoarthritis. It found that the weight of the medical evidence continued to rest with Dr. Einbund.

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]

[5] *J.R.,* Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

The claimant bears the burden of proof to establish a claim for a consequential injury.[6] As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[7]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[9]

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.[10] The basic rule is that a subsequent injury, whether 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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include right knee osteoarthritis as causally related to, or consequential to, the accepted February 9, 2010 employment injury.

In a February 20, 2025 report, Dr. Einbund, the OWCP referral physician, opined that appellant's right knee osteoarthritis was unrelated to his accepted February 9, 2010 employment injury involving the left knee, noting that there was evidence of preexisting early degenerative changes of the right knee dating back to March 2009. He further opined that there had been a natural progression of the arthritic changes which occurred independently of the left knee condition. Dr. Einbund indicated that there was no documentation following the October 26, 2015 left total knee replacement that there was any post-surgical impact affecting the opposing right knee. He explained that it was approximately three years later, on August 21, 2018, that the right knee became an issue, and noted that, by this time, the natural progression of the arthritic

[6] *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

[7] *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

[8] *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

[9] *Id.*

[10] *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *A.M.,* Docket No. 18-0685 (issued October 26, 2018); *Mary Poller,* 55 ECAB 483, 487 (2004).

[11] *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n. 7 (2001).

changes had advanced in the right knee and brought about the onset of right knee symptoms. Dr. Einbund stated that there was "no evidence that the injured left knee caused or altered the natural course of the right knee osteoarthritis," and noted that "the resulting outcome is as would be expected." He further opined that there was "no causal relationship to support that the left knee either caused, accelerated or aggravated the underlying preexisting right knee condition."

The Board finds that the weight of the medical opinion evidence with respect to OWCP's claim that he sustained right knee osteoarthritis as causally related to, or consequential to, the accepted February 9, 2010 employment injury is represented by the well-rationalized opinion of Dr. Einbund, the OWCP referral physician. The Board has reviewed the February 20, 2025 opinion of Dr. Einbund and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding appellant's claim for the consequential injury of right knee osteoarthritis. Accordingly, OWCP properly relied on Dr. Einbund's opinion in finding that appellant did not meet his burden of proof to expand the acceptance of his claim to include right knee osteoarthritis causally related to, or consequential to, the accepted February 9, 2010 employment injury.[12]

Appellant submitted an October 6, 2025 letter wherein Dr. Smith, an attending physician, indicated that there was no direct causal relationship between appellant's undergoing a right knee replacement and the development of osteoarthritis in the contralateral knee. Dr. Smith further noted, however, that biomechanical adaptations following unilateral total knee arthroplasty, such as altered gait mechanics, compensatory loading, and redistribution of joint forces, might contribute to an increased risk of osteoarthritic progression in the opposite knee over time. He stated, "These changes are well-documented in orthopedic literature and are considered secondary effects of the surgical intervention and subsequent rehabilitation process. While they do not constitute a direct cause, they may influence the natural history of joint degeneration in the contralateral limb." However, the Board notes that his opinion on causal relationship between the accepted left knee condition and the claimed consequential right knee condition is speculative in nature. The Board has held that an opinion is of limited probative value when it is speculative regarding the issue of causal relationship.[13] Therefore, Dr. Smith's October 6, 2025 letter is insufficient to overcome the weight accorded to Dr. Einbund or create a conflict in the medical opinion evidence.[14]

Appellant submitted reports by other attending physicians in support of his expansion claim, including reports wherein Dr. Smith and Dr. Goodlow diagnosed right knee osteoarthritis. These physicians did not, however, provide an opinion regarding the relationship between appellant's right knee condition and his accepted February 9, 2010 employment injury involving the left knee and/or the OWCP-authorized left knee surgery. Therefore, this evidence also is

[12] *P.G.,* Docket No. 24-0437 (issued June 26, 2024); *S.V.*, Docket No. 23-0474 (issued August 1, 2023).

[13] *See E.B.,* Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe,* 14 ECAB 42, 48 (1962).

[14] *See M.D.*, Docket No. 21-0080 (issued August 16, 2022).

insufficient to overcome the weight accorded to Dr. Einbund or create a conflict in the medical opinion evidence.[15]

For these reasons, appellant has not met his burden of proof to expand the acceptance of his claim to include right knee osteoarthritis as causally related to, or consequential to, the accepted February 9, 2010 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include right knee osteoarthritis as causally related to, or consequential to, the accepted February 9, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 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

[15] *Id.*