United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant **and** **DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Fort Dix, NJ, Employer**	))))))))))	**Docket No. 20-0182** **Issued: April 23, 2021**

Appearances:
Thomas R. Uliase, *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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On October 31, 2019 appellant, through counsel, filed a timely appeal from a July 9, 2019 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.

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[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 appellant has met his burden of proof to establish a consequential left lower extremity condition causally related, to the accepted January 20, 2018 employment injury.

FACTUAL HISTORY

On January 22, 2018 appellant, then a 45-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2018 he strained his lower back when he had to physically restrain an inmate while in the performance of duty. The claim form did not indicate whether he stopped work.

Appellant was initially treated in urgent care. In a January 21, 2018 report, Dr. Jason Torrente, a Board-certified osteopathic physician specializing in family medicine, indicated that appellant was seen for complaints of low back pain after wrestling with someone the prior day. Dr. Torrente diagnosed low back pain and lumbar sprain. He completed a workers' compensation duty form, which indicated that appellant could work modified duty beginning January 25, 2018.

In a January 25, 2018 note, Dr. Jean Fleurantin, a Board-certified emergency medicine physician, indicated that appellant was treated for complaints of back pain. He conducted an examination of appellant's lumbar spine and diagnosed low back pain and lumbar spine sprain.

In a January 29, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and also provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

OWCP received hospital records, which demonstrated that appellant was treated in the emergency department on January 30, 2018 for complaints of left sciatica pain. Appellant related that this pain caused him to fall onto his left knee four days prior and he was experiencing pain since. His patient history also noted that he was seen on January 27, 2018 for a clavicle injury. A left knee x-ray examination report revealed atherosclerosis adjacent to the proximal tibiofibular articulation, favored to be degenerative. Hospital discharge instructions showed diagnosis of left knee sprain and back pain.

On February 14, 2018 appellant began to receive medical treatment from Dr. George Young, an osteopathic physician Board-certified in physical medicine and rehabilitation, who noted in an examination report of the same date that appellant was treated for complaints of right lower back pain and left leg pain that began approximately one month ago. Dr. Young recounted that on January 20, 2018 appellant was attacked by an inmate and experienced low back pain radiating down appellant's right lower extremity. He indicated that approximately two days later appellant had a severe episode of low back pain, which caused him to fall and injure his left knee. Upon examination of appellant's lumbar spine, Dr. Young observed no focal tenderness of the lumbar facet joints or paraspinal muscles and limited range of motion (ROM) due to pain. Straight leg raise testing was negative bilaterally. Dr. Young reported that left knee examination findings revealed marked valgus and varus laxity with effusion and antalgic gait. He diagnosed lumbar region radiculopathy, low back pain at multiple sites, and acute left knee pain. Dr. Young opined

that appellant "fell secondary to [appellant's] low back injury and caused left knee injury." He concluded that appellant's left knee injury was causally related to his work-related injury since appellant would not have fallen if he did not have back pain. Dr. Young completed a workers' compensation note and duty status report (Form CA-17), which indicated that appellant was totally disabled.

In a February 14, 2018 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), Dr. Young noted a diagnosis of lumbar radiculopathy. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by the employment activity.

On March 8, 2018 OWCP accepted appellant's claim for lumbar sprain and lumbar radiculopathy. It paid wage-loss compensation on the supplemental rolls, effective March 7, 2018.

In a March 14, 2018 report, Dr. Young related that appellant continued to complain of persistent low back pain. He noted that appellant was also being treated by another physician for left knee pain. Dr. Young conducted an examination and diagnosed lumbar radiculopathy, low back with right lower extremity radicular pain, and left knee pain. He reported "assuming the history provided by [appellant] is true and correct … the above diagnoses are causally related to the injury described."

On March 21, 2018 appellant began physical therapy treatment and submitted treatment notes.

In an April 16, 2018 letter, Dr. R. Robert Franks, a Board-certified osteopathic physician specializing in family medicine, noted that appellant was a patient under his care for a left knee injury. He indicated that appellant was diagnosed with left anterior knee pain and partial thickness quad tendon tear. Dr. Franks recounted: "[appellant] was involved in an altercation at work that exacerbated his sciatica, which caused [appellant] to fall onto his left knee several times." He completed a workers' compensation note, which indicated that appellant was totally disabled.

In an examination report dated April 16, 2018, Dr. Young related that appellant was seen for follow-up evaluation for his low back pain. He indicated that appellant would follow up with Dr. Franks about appellant's left knee quadriceps tear. Dr. Young opined that this condition was causally related to appellant's work injury. He explained that appellant was suffering from severe low back pain, which caused appellant's knees to buckle, thereby causing appellant's left quadriceps tear. Dr. Young provided a workers' compensation note, which indicated that appellant was totally disabled.

In a May 2, 2018 narrative report, Dr. Young related that appellant was first treated in his office on February 14, 2018. He indicated that, at the time of the initial evaluation, appellant described the January 20, 2018 work injury and related that he felt pain in his low back radiating down his right lower extremity. Appellant noted that, two days after the injury, he experienced a severe episode of low back pain, which caused him to fall down and injure his left knee. Dr. Young reported that his initial assessment was lumbar radiculopathy, low back pain, and acute pain of the left knee. He explained that he referred appellant to the sports medicine department for further evaluation of his left knee pain. Dr. Young related that appellant underwent a left knee magnetic resonance imaging (MRI) scan, which revealed a quadriceps tendon tear. He opined that

appellant's left quadriceps tear was secondary to his work-related injury from January 20, 2018. Dr. Young explained that, because of appellant's low back pain, appellant left knee buckled, causing him to strain and tear his left quadriceps. He reported that, if appellant had not suffered from the January 20, 2018 work injury, appellant's knee would not have buckled and caused his left quad tear. Dr. Young completed a work capacity evaluation form (OWCP-5c), which indicated that appellant could work full-time, modified duty.

In a May 16, 2018 report, Dr. Young noted that appellant presented for reevaluation of his low back pain. He provided examination findings and diagnosed low back pain at multiple sites. Dr. Young indicated that appellant had reached maximum medical improvement (MMI) for his back injury and was released from his care. He completed a workers' compensation note, which indicated that appellant could return to full duty on May 17, 2018.

In a May 25, 2018 memorandum of telephone call (Form CA-110), an OWCP claims examiner inquired about appellant's clavicle injury on January 27, 2018. Appellant responded that he was involved in a motor vehicle accident (MVA) and shattered his clavicle. OWCP's claims examiner also asked about the discrepancy in the dates that he fell down and he clarified that he had fallen down several times after the January 20, 2018 work injury.

In a June 18, 2018 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA), indicated that he had reviewed the statement of accepted facts (SOAF) and Dr. Young's May 2, 2018 narrative report. He described the January 20, 2018 employment injury and noted that appellant's claim was accepted for lumbar sprain and lumbar radiculopathy. Dr. Fellars reported that he agreed with Dr. Young that appellant had developed an additional diagnosis of partial quadriceps tendon tear as a consequence of the accepted work-related injury. He explained that, while it was a possibility that the intervening injury to appellant's clavicle could have also injured appellant's left knee, there was no medical documentation to support a left knee injury associated with the MVA.

In a June 21, 2018 letter, OWCP requested additional evidence from appellant, specifically medical records regarding his MVA and the January 27, 2018 emergency department visit.

Appellant submitted a January 27, 2018 emergency department note by Dr. Craig Turner, an osteopathic physician specializing in emergency medicine. Dr. Turner recounted that appellant was involved in an MVA four days ago and complained of low back pain. He indicated that appellant now complained of left shoulder pain after lifting a dryer. Dr. Turner noted that x-ray examination showed a clavicle fracture. He reported that examination of appellant's left lower extremity showed normal inspection.

OWCP also received a January 29, 2018 report by Dr. Mark G. Schwartz, a Board-certified orthopedic surgeon, who noted that appellant was evaluated for a left shoulder injury after an MVA. Upon examination of appellant's left shoulder, Dr. Schwartz observed limited painful ROM and marked tenderness. Examination of appellant's left knee revealed mild swelling and mild discomfort with ROM. Dr. Schwartz indicated that a left knee x-ray examination report was unremarkable. He diagnosed left clavicle fracture and left knee contusion.

In a July 17, 2018 statement, appellant indicated that he was providing a timeline of events that took place in January 2018. He related that on January 20 he sustained a lumbar sprain after

the job incident and went to urgent care on January 21, 2018. Appellant reported that on January 24, 2018 he was involved in an MVA and sustained a shoulder injury. He noted that he had follow-up examinations on January 25 and 27, 2018 for his clavicle injury and was diagnosed with a clavicle fracture. Appellant indicated that on January 28, 2018 he fell on his left knee and that on January 29, 2018 a left knee x-ray examination report revealed a left knee contusion.

By decision dated August 17, 2018, OWCP denied expansion of the acceptance of appellant's claim to include a left knee injury. It found that the medical evidence of record was insufficient to establish that he sustained left knee conditions as a result of the January 20, 2018 employment injury.[3]

On August 28, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review of OWCP's August 17, 2018 decisions before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted reports and work status notes by Dr. Franks dated February 14 to September 24, 2018. Dr. Franks reported that examination of appellant's left knee revealed full extension, full flexion, and 5/5 muscle strength. He diagnosed strain of the left thigh and partial thickness quadriceps tendon tear of the left leg. Dr. Franks released appellant to light duty beginning September 24, 2018.

A video hearing was held on January 14, 2019.[4] Counsel confirmed that appellant had returned to full duty on November 20, 2018. He asserted that Dr. Young and Dr. Franks unequivocally found that appellant's left knee injury was a consequence of the accepted January 20, 2018 employment injury. Counsel noted that the DMA also opined that appellant's claim should be expanded to include his left knee condition.

Appellant subsequently submitted a January 24, 2019 narrative report by Dr. Young. Dr. Young related that he reviewed additional documentation, including the January 21, 2018 urgent care report, January 27, 2018 emergency room report, and January 29, 2018 follow-up report. He reported that, after reviewing the additional records, he found "no clear causality that [appellant's] knee pain is related to the [MVA]."

By decision dated March 20, 2019, an OWCP hearing representative set aside the August 17, 2018 decision, which denied expansion of appellant's claim to include a left knee condition, and remanded the case for further medical development.[5] The hearing representative instructed OWCP to provide the additional medical documentation to the DMA and request a

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[3] By separate decision dated August 17, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 18, 2018, because he no longer had residuals or disability causally related to the January 20, 2018 employment injury. In a third August 17, 2018 decision, it denied his claim for wage-loss compensation for total disability for the period June 13 to August 7, 2018.

[4] The hearing representative addressed all three August 17, 2018 decisions.

[5] The hearing representative also affirmed the August 17, 2018 decisions, which terminated appellant's wage-loss compensation and medical benefits and denied appellant's wage-loss compensation claim for the period June 13 through August 17, 2018.

supplemental opinion regarding whether appellant sustained a consequential left knee condition due to his accepted January 20, 2018 employment injury.

In a supplemental report dated May 23, 2019, Dr. Fellars indicated that he had reviewed the additional medical records and explained that the new information had changed his previous opinion. He reported that the MVA was the "most likely injury" associated with the left knee and that it was not likely that appellant injured his quadriceps due to a fall resulting from right leg weakness. Dr. Fellars pointed out that the January 29, 2018 follow-up evaluation report noted left lower extremity pain and swelling. He also referenced the Bradford-Hill criteria for determining causation and related that the medical evidence supported that the MVA was the "most likely cause" of appellant's left knee condition. Thus, Dr. Fellars concluded that appellant did not have a consequential left knee condition.

In a July 9, 2019 *de novo* decision, OWCP denied expansion of the acceptance of appellant's claim to include a left knee injury. It noted that Dr. Fellars, the DMA, had issued a new report after reviewing additional medical records and had determined that appellant did not sustain a left knee condition as a consequence of his accepted January 20, 2018 employment injury.

LEGAL PRECEDENT

Where 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.[6]

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.[7] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.[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 a claimant's own intentional misconduct.[10] The basic rule is that

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[6] *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).

[7] *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *C.W.*, Docket No. 18-1536 (issued June 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019); *Albert F. Ranieri*, 55 ECAB 598 (2004); *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

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] With respect to consequential injuries, the Board has held that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.[12]

ANALYSIS

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

OWCP denied expansion of the acceptance of appellant's claim to include a left knee injury based on Dr. Fellars May 23, 2019 supplemental DMA report. Dr. Fellars indicated that, after reviewing the additional medical records related to appellant's January 24, 2018 MVA, he had changed his previous opinion regarding the cause of appellant's left knee condition. He reported that the MVA was the most likely injury associated with the left knee and that it was not likely that appellant's quadriceps injury resulted from a fall due to right leg weakness.

The Board finds that Dr. Fellars' opinion is conclusory in nature and did not contain sufficient medical reasoning to establish that appellant's left knee condition was not causally related to the accepted January 20, 2018 employment injury.[13] In assessing medical evidence, the number of physicians supporting one position or another is not controlling, the weight of such evidence is determined by its reliability, its probative value, and its convincing quality.[14] The factors that, determine the probative value of medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issues addressed to him by OWCP.[15]

The Board finds that Dr. Fellars did not adequately explain why he changed his initial conclusion to now conclude that appellant's left knee injury resulted from the intervening January 24, 2018 MVA and not the accepted January 20, 2018 employment injury. While Dr. Fellars noted that, a January 29, 2018 report, showed mild swelling and discomfort in appellant's left knee, he did not explain how these examination findings supported his new conclusion regarding causal relationship. He also failed to discuss the January 27, 2018 emergency room note, which indicated a normal left lower extremity examination. Dr. Fellars did not explain how these normal examination findings supported his opinion that appellant's left knee injury was most likely caused by the January 24, 2018 MVA. Furthermore, he did not explain why appellant's accepted lumbar injury would not have caused his knees to buckle, thereby

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[11] *R.M.*, Docket No. 18-1621 (issued August 23, 2019); *Debra L. Dilworth*, 57 ECAB 516 (2006); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

[12] *K.C.*, Docket No. 19-1251 (issued January 24, 2020); *R.V.*, Docket No. 18-0552 (issued November 5, 2018); *L.S.*, Docket No. 08-1270 (issued July 2, 2009).

[13] *See J.H.*, Docket No. 19-0513 (issued September 24, 2019).

[14] *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

[15] *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *James T. Johnson*, 39 ECAB 1252 (1988).

causing or contributing to his left knee quadriceps tendon tear.[16] The Board notes that, a well-rationalized medical explanation is particularly needed in this case where Dr. Fellars had previously opined in his June 18, 2018 report that, it was reasonable that appellant sustained an additional left knee injury due to several falls caused by the accepted January 20, 2018 employment injury.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.[17] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[18] As Dr. Fellars' DMA reports failed to properly address the issue of whether appellant sustained a left knee injury causally related to his accepted January 20, 2018 employment injury, the Board finds that the case must be remanded to OWCP.[19]

On remand, OWCP should prepare an updated SOAF that has a timeline of events which includes the January 24, 2018 MVA. It should then refer the case record, together with the SOAF, to a second opinion physician in the appropriate field of medicine to determine whether the acceptance of appellant's claim should be expanded to include a left knee condition.[20] Following this and any further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

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[16] *See supra* note 14.

[17] *See e.g.*, *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 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[18] *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

[19] *See J.R.*, Docket No. 19-1321 (issued February 7, 2020).

[20] OWCP's procedures provide that, if a DMA provides an opinion which is not strong enough to constitute a conflict with the opinion of the treating physician, but which is nevertheless of sufficient value to warrant additional action, OWCP may refer the claim for a second opinion examination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(h) (September 2010).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2019 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.[21]

Issued: April 23, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[21] The Board notes that the case record contains an attending physician's report (Part B of a Form CA-16), dated February 14, 2018. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).