

**United States Department of Labor  
Employees' Compensation Appeals Board**

R.C., Appellant	)	
	)	
and	)	<b>Docket No. 20-1637</b>
	)	<b>Issued: September 24, 2021</b>
<b>GENERAL SERVICES ADMINISTRATION,</b>	)	
<b>HEARTLAND REGION, Kansas City, MO,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
Shannon Bravo, Esq., for the appellant<sup>1</sup>  
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 September 17, 2020 appellant, through counsel, filed a timely appeal from April 7 and July 13, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the July 13, 2020 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 establish a recurrence of disability from work for the period February 4 through 7, 2020 causally related to his September 21, 2017 employment injury.

## FACTUAL HISTORY

On January 12, 2018 appellant, then a 56-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2017 he sustained a right knee injury when heavy rolls of blue prints fell off the trash and smashed into his right kneecap while in the performance of duty. On September 14, 2018 OWCP accepted that he sustained aggravation of chondrocalcinosis and primary osteoarthritis of the right knee.<sup>4</sup>

In a September 4, 2019 report, Dr. Sharon L. Balanson, a Board-certified internist, reported that appellant returned for persistent right lateral knee swelling and lower joint line pain. She diagnosed right knee pain.

Appellant stopped work for the period February 4 through 7, 2020 and on February 13, 2020 he filed a claim for compensation (Form CA-7) alleging disability from work for the same period due to his September 21, 2017 employment injury.

In a January 28, 2020 report, Dr. Eric Yakish, a Board-certified orthopedic surgeon, discussed the findings of a July 31, 2019 magnetic resonance imaging (MRI) scan of the right knee and diagnosed osteoarthritis of the right knee. He indicated that he performed a right knee corticosteroid injection.

In a February 18, 2020 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including medical documentation supporting that he was disabled from work for the period February 4 through 7, 2020 due to the accepted September 21, 2017 employment injury. It afforded him 30 days to submit the requested evidence.

In response, appellant submitted a March 4, 2020 report from Dr. Martha J. Chalmers, a Board-certified family medicine specialist, who noted that he presented with acute right knee pain for approximately five days. Dr. Chalmers advised that his history and physical examination findings were consistent with acute/chronic right knee pain, and she recommended strengthening exercises and over-the-counter medication.

In a March 6, 2020 report, Dr. Sean J. Meredith, a Board-certified orthopedic surgeon, reported that appellant presented complaining of right knee pain he associated with a September 21, 2017 employment injury. He reported his physical examination findings, noting that right knee x-rays revealed moderate-to-severe primary osteoarthritis of the lateral compartment and described a right knee corticosteroid injection he performed. In another

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<sup>4</sup>Commencing in mid-2018, appellant stopped work for short periods and OWCP paid him wage-loss compensation on the supplemental rolls for these intermittent periods of disability. On June 21, 2018 he underwent arthroscopic surgery of the right knee, including partial lateral meniscectomy, and patellar/femoral chondroplasty.

March 6, 2020 report, Dr. Meredith indicated that he discussed treatment options with appellant, including physical therapy, corticosteroid injections, and medication.

Appellant also submitted right knee x-rays dated January 28 and 29, and March 6, 2020 and lumbar spine x-rays dated January 28, 2020. In a March 7, 2020 report, Dr. Yakish indicated that appellant had been under his care since January 28, 2020 for right knee osteoarthritis, including during the period February 4 through 7, 2020. He advised that the definitive treatment for appellant's right knee condition was total knee replacement.

By decision dated April 7, 2020, OWCP denied appellant's claim, finding that he had not submitted medical evidence establishing disability from work for the period February 4 through 7, 2020 causally related to his September 21, 2017 employment injury.

On April 14, 2020 appellant, through counsel, requested reconsideration of the April 7, 2020 decision. Counsel again argued that the medical evidence of record supported appellant's disability claim.

Appellant submitted a July 5, 2018 report from Dr. Cory A. Gilbert, a Board-certified orthopedic surgeon, who indicated that appellant presented for postoperative care after his right knee surgery. In a March 6, 2020 report, Dr. Meredith indicated that appellant should be excused from his March 4 through 6, 2020 absence from work and advised that he could return to work on March 9, 2020.

Appellant also submitted copies of the June 21, 2018 right knee surgery report, September 4, 2019 report of Dr. Balanson, March 4, 2020 report of Dr. Chalmers, two March 6, 2020 reports of Dr. Meredith, and a March 27, 2020 report of Dr. Yakish. He also submitted a partial copy of the previously submitted January 28, 2020 report of Dr. Yakish.

OWCP also received reports dated June 26 and July 11 and 27, 2018 from Angela Richards, an attending physical therapist, regarding therapy sessions held on those dates, as well as a June 25, 2019 report from Juan Cooks, a physician assistant.<sup>5</sup>

By decision dated July 13, 2020, OWCP denied modification of its April 7, 2020 decision.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>6</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of

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<sup>5</sup> In a June 30, 2020 letter, counsel requested that the accepted conditions be expanded to include additional right knee conditions.

<sup>6</sup> 20 C.F.R. § 10.5(x); A.V., Docket No. 20-0486 (issued June 20, 2021); J.D., Docket No. 18-1533 (issued February 27, 2019).

record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work.<sup>7</sup> As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimed disability and the accepted employment injury.<sup>9</sup> The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability from work for the period February 4 through 7, 2020 causally related to his September 21, 2017 employment injury.

In support of his disability claim, appellant submitted a March 6, 2020 report in which Dr. Meredith indicated that appellant should be excused from his March 4 through 6, 2020 absence from work and advised that appellant could return to work on March 9, 2020. In a March 27, 2020 report, Dr. Yakish indicated that appellant had been under his care since January 28, 2020 for right knee osteoarthritis, including during the period February 4 through 7, 2020. Although these reports discussed either a period of disability or appellant's treatment during the claimed period of disability, they are of no probative value regarding his disability claim because they do not contain an opinion that he had disability from work for the period February 4 through 7, 2020 causally related to his September 21, 2017 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>11</sup> Therefore, these reports are insufficient to establish appellant's disability claim.

Appellant submitted other medical reports, but they did not contain any reference to his disability. A June 21, 2018 report described the right knee surgery he underwent on that date. In a July 5, 2018 report, Dr. Gilbert indicated that appellant presented for postoperative care after his June 21, 2018 right knee surgery. In a September 4, 2019 report, Dr. Balanson diagnosed right

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<sup>7</sup> See *D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> *Id.*

<sup>9</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>10</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

knee osteoarthritis post June 21, 2018 meniscectomy. In a January 28, 2020 report, Dr. Yakish discussed the findings of a July 31, 2019 MRI scan of the right knee and diagnosed osteoarthritis of the right knee. In a March 4, 2020 report, Dr. Chalmers advised that appellant's history and physical examination findings were consistent with acute/chronic right knee pain. In two March 6, 2020 reports, Dr. Meredith discussed appellant's continuing right knee symptoms. These reports also are of no probative value regarding appellant's disability claim because they do not contain an opinion that he was disabled from work for the period February 4 through 7, 2020 causally related to his September 21, 2017 employment injury. As noted above, a medical report that does not contain an opinion on causal relationship is of no probative value.<sup>12</sup> Therefore, these reports are insufficient to establish appellant's disability claim.

Appellant also submitted reports dated June 26 and July 11 and 27, 2018 from Ms. Richards, an attending physical therapist, and a June 25, 2019 report from Mr. Cooks, an attending physician assistant. However, these reports of no probative value regarding his disability claim. The Board has held that the reports of physical therapists and physician assistants do not constitute probative medical evidence as physical therapists and physician assistants are not physicians under FECA.<sup>13</sup>

OWCP also received right knee x-rays dated January 28 and 29 and March 6, 2020, and lumbar spine x-rays dated January 28, 2020. However, diagnostic studies standing alone lack probative value as they do not address whether an accepted employment condition caused the claimed disability.<sup>14</sup>

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed recurrence of disability and the accepted September 21, 2017 employment injury, the Board finds that he has not met his burden of proof.

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 establish a recurrence of disability from work for the period February 4 through 7, 2020 causally related to his September 21, 2017 employment injury.

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<sup>12</sup> *Id.*

<sup>13</sup> Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.T.*, Docket No. 17-0913 (issued June 23, 2017) (physical therapists are not considered physicians under FECA); *R.S.*, Docket No. 16-1303 (issued December 2, 2016) (physician assistants and physical therapists are not considered physicians under FECA).

<sup>14</sup> *See A.V.*, Docket No. 19-1575 (issued June 11, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** July 13 and April 7, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 24, 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