

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her accepted July 29, 2017 employment injury; and (2) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 31, 2020.

FACTUAL HISTORY

On August 8, 2017 appellant, then a 62-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2017 she sustained a left knee sprain when she slipped descending steps while in the performance of duty. She did not stop work, but began working limited duty following the injury. OWCP accepted the claim for left knee sprain.⁴

Appellant was initially treated on August 14, 2017 by Dr. Paul Curtin, a Board-certified osteopathic physician specializing in family medicine. In progress notes dated August 14, 2017, Dr. Curtin noted that she was seen for frequent falls starting with a July 29, 2017 fall at work, a fall at home three to four days later, and a fall in a parking lot on August 4, 2017. He noted that appellant was currently being treated for a pulled ligament due to the first fall on July 29, 2017. In an attending physician's report (Form CA-20) dated August 14, 2017, Dr. Curtin indicated no findings of fracture and diagnosed left knee sprain/strain. He checked boxes marked "No" to the questions of whether there was evidence of any preexisting condition and whether the diagnosed condition was caused or aggravated by the employment activity. On a Form CA-20 dated September 26, 2017 Dr. Curtin noted appellant's left knee pain and weakness and checked a box marked "Yes" indicating that these symptoms were related to her fall on July 29, 2017. He indicated that he had released her to return to work on August 28, 2017.

In a September 12, 2017 return-to-work note, Lisa Fuhrman related that appellant was released to return to work with no restrictions on September 14, 2017.⁵

A July 30, 2017 x-ray of appellant's left knee revealed moderate-to-advanced left knee tricompartmental arthritic changes without fracture.

An October 2, 2017 left knee magnetic resonance imaging (MRI) scan demonstrated moderate-to-severe tricompartmental osteoarthritis, grade 1 medial collateral ligament sprain, Baker's cyst, joint effusion, superior cyst dehiscence, and complete or near complete medial meniscus tear.

³ 5 U.S.C. § 8101 *et seq.*

⁴ Appellant retired from the employing establishment, effective July 1, 2018.

⁵ Ms. Fuhrman's medical credentials are unknown.

An October 17, 2017 left knee x-ray revealed findings of primary left knee osteoarthritis.

Dr. Curtin, in progress notes dated October 23, 2017, provided examination findings, diagnosed chronic left knee osteoarthritis, and noted that appellant was scheduled for left total knee replacement surgery.

On December 5, 2017 appellant underwent a total left knee arthroplasty. The preoperative and postoperative diagnoses were end-stage primary left knee osteoarthritis.

In progress notes dated January 31, 2018, Dr. Scott King, an osteopath specializing in orthopedic surgery, provided examination findings and related that appellant was progressing well two months post total left knee arthroplasty.

On December 27, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions to Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon, for a second opinion evaluation to clarify the status of her accepted conditions and assess her work capacity. The SOAF noted that on July 29, 2017 appellant slipped while descending steps, and on July 30, 2017 she began working full time as a limited-duty rural letter carrier. It also noted that, following the accepted July 29, 2017 injury, appellant fell several times and underwent total left knee arthroplasty on December 5, 2017.

In a report dated January 17, 2019, Dr. Feinstein noted his review of the SOAF and the medical evidence of record. He accurately described the July 29, 2017 employment injury and recounted appellant's left knee complaints. Appellant denied having any knee problems prior to the July 29, 2017 injury, but noted that she fell twice following the July 29, 2017 injury. An examination of her left knee revealed no swelling or effusion, a limp to the left lower extremity, healed anterior total knee replacement scar, excellent patellofemoral tracking, and no medial and lateral collateral ligaments instability. Dr. Feinstein reported full left knee flexion and extension when compared to the right knee. He concluded that appellant no longer had any residuals due to the accepted employment injury. Dr. Feinstein opined that her total left knee arthroplasty would have been required regardless of the July 29, 2017 employment injury due to her significant preexisting arthritic changes and her morbid obesity. He explained that the torn meniscus found on the MRI scan was not traumatic or acute due to the accepted employment injury given the extent of arthritis present. In addition, Dr. Feinstein explained that the torn meniscus could have occurred following appellant's two subsequent falls. He explained that a case could be made for a temporary aggravation of the underlying arthritis impacting function, but not impacting the actual arthritic change. Dr. Feinstein concluded that appellant did not require further medical treatment for her left knee sprain/strain or for her total left knee arthroplasty. He completed a work capacity evaluation (Form OWCP-5c) indicating that she was restricted to sedentary work due to her nonwork-related underlying preexisting arthritis.

On February 20, 2019 OWCP proposed to terminate appellant's wage-loss compensation benefits and medical benefits because she was no longer disabled and no longer required medical treatment due to her accepted July 29, 2017 employment injury. It found that the weight of the medical evidence rested with the January 17, 2019 report of Dr. Feinstein, who found that she was no longer disabled from work and no longer had residuals due to her accepted left knee injury.

OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In response, appellant submitted an October 12, 2017 report from Dr. King, who noted that she had been seen for knee complaints since her July 29, 2017 fall at work. He detailed examination findings, reviewed an October 2, 2017 MRI scan, and diagnosed left knee primary osteoarthritis.

Dr. King, in progress notes dated December 15, 2017, noted that appellant was approximately two weeks post knee arthroplasty. Left knee findings included some ecchymosis and moderate swelling, no erythema, and 0 to 90 degrees range of motion (ROM).

In a report dated April 29, 2018, Dr. King noted a July 29, 2017 employment injury and his treatment of appellant, which began on October 12, 2017. He related that he was unaware of any left knee medical treatment prior to her employment injury, and that she had related no knee problems prior to the work injury. Dr. King diagnosed acute traumatic medial meniscus posterior horn tear and aggravation of a preexisting left knee condition. He attributed the diagnosed conditions and resulting total knee replacement surgery to appellant's work injury.

By decision dated March 27, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the opinion of the second opinion physician, Dr. Feinstein, constituted the weight of the evidence and established that she had no further disability or residuals of her accepted employment injury.

On April 16, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 8, 2019.

In a report dated May 12, 2019, Dr. King noted that appellant had been seen for a July 29, 2017 work-related injury when she fell down stairs and injured her left knee. He opined that her work injury had been a factor in her knee replacement surgery. In support of his conclusion, Dr. King explained that appellant had preexisting arthritis prior to the work injury, but that she did not have a preexisting meniscus tear, and required no treatment for her left knee until her work injury on July 29, 2017. He, therefore, opined that the July 29, 2019 work injury permanently aggravated her left knee osteoarthritis as well as causing an acute meniscus tear and left knee instability. Furthermore, due to this injury appellant sustained subsequent falls at home and work, which he explained were due to her meniscus tear and knee instability. Dr. King noted that his disagreement with Dr. Feinstein's opinion that she only sustained a left knee sprain/strain.

By decision dated October 21, 2019, OWCP's hearing representative found an unresolved conflict in the medical opinion evidence between Dr. King, appellant's treating physician, and Dr. Feinstein, an OWCP referral physician, as to whether the accepted July 29, 2017 employment injury caused or aggravated appellant's left knee medial meniscus tear and osteoarthritis. Thus, she set aside the March 27, 2019 decision and remanded the case for resolution of the conflict in the medical opinion evidence.

On October 29, 2019 OWCP referred appellant for an impartial medical examination (IME) with Dr. Thomas DiBenedetto, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion between Drs. King and Feinstein regarding her continuing employment-related

disability and medical residuals, and whether her left knee medial meniscus tear and osteoarthritis conditions were related to the July 29, 2017 employment injury.

In a report dated November 19, 2019, Dr. DiBenedetto, based upon a review of the medical record and SOAF, opined that appellant had no residuals or disability due to her accepted left knee sprain. He related that her physical examination revealed left knee ROM 0 to 110 degrees; no knee effusion; normal ligament stability, quadriceps, and neurovascular examination; per-incisional numbness; and lower extremity stasis changes. Dr. DiBenedetto opined that appellant would have recovered from her left knee sprain within 6 to 12 weeks of even if there had been a complete medial collateral ligament tear. He also concluded that her left knee sprain did not contribute in any way to her left knee osteoarthritis. In support of this conclusion, Dr. DiBenedetto noted that the period of time involved was too short to develop osteoarthritis based on the date of appellant's injury, x-rays, and a postinjury MRI scan which showed significant osteoarthritis. He opined that he could not conclude that her left knee osteoarthritis had been caused, aggravated, or precipitated by the accepted employment injury. With respect to the meniscal tear, Dr. DiBenedetto explained that it was a central root tear which is usually nontraumatic and caused by knee degeneration and medial joint space narrowing. He opined that appellant's subsequent falls were unrelated to her left knee injury. Dr. DiBenedetto opined that, while her total knee replacement surgery on December 5, 2017 was necessary, it was not causally related to the accepted July 29, 2017 left knee sprain. He noted his disagreement with Dr. King and agreement with Dr. Feinstein that appellant only sustained a left knee sprain due to the accepted July 29, 2017 employment injury. Any restrictions were due to appellant's nonrelated and preexisting bilateral knee osteoarthritis.

By decision dated January 31, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective January 31, 2020. It accorded the special weight to Dr. DiBenedetto as the IME. It further found that the accepted July 29, 2017 work injury did not cause or aggravate the diagnosed left knee meniscal tear and osteoarthritis and that the total left knee replacement surgery was unrelated to the accepted July 29, 2017 work injury.

LEGAL PRECEDENT -- ISSUE 1

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.⁶

To establish causal relationship, the employee must submit rationalized medical opinion evidence.⁷ 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 diagnosed condition and

⁶ *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *see T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *D.T.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

the accepted employment injury.⁸ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹⁰ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹¹

ANALYSIS -- ISSUE 1

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

The Board finds that OWCP improperly determined that there was a conflict in the medical opinion between Dr. King, an attending physician, and Dr. Feinstein, an OWCP referral physician, on the issue of whether appellant sustained a left knee meniscus tear and aggravation of her preexisting left knee arthritis due to her July 29, 2017 employment injury. Dr. King, in reports dated April 29, 2018 and May 12, 2019, diagnosed left knee acute meniscus tear and left knee instability and permanent aggravation of left knee osteoarthritis causally related to the accepted July 29, 2017 employment injury. In a January 17, 2019 report, Dr. Feinstein opined that appellant might have had a temporary aggravation of her underlying left knee arthritis and her left knee meniscal tear could have been the result of her two subsequent falls.

As noted above, for a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹² The Board finds that Dr. Feinstein's report required clarification as his statements raised the question of whether the left knee meniscal tear and temporary aggravation of underlying left knee arthritis were caused or aggravated by the accepted July 29, 2017 employment injury. Therefore, the Board finds that Dr. Feinstein's opinion was not of equal weight and was, thus, insufficient to create a conflict with Dr. King.¹³ As no true conflict existed in the medical evidence at the time of the referral to Dr. DiBenedetto, the Board finds that Dr. DiBenedetto's report may not be afforded the special weight of an IME and should be

⁸ *R.M.*, Docket No. 20-0452 (issued March 4, 2021); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *R.M.*, *supra* note 8; *D.B.*, Docket No. 19-0663 (issued August 27, 2020).

¹² *A.P.*, Docket No. 22-1054 (issued January 6, 2023); *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

¹³ *A.P.*, *id.*; *Y.J.*, Docket No. 20-1337 (issued February 7, 2022) (the Board found that a second opinion examiner's report was of limited probative value and insufficient to create a conflict in medical opinion with the claimant's treating physician); *see also R.B.*, Docket No. 20-0109 (issued June 25, 2020).

considered for its own intrinsic value.¹⁴ The referral to Dr. DiBenedetto is therefore considered to be a second opinion evaluation.¹⁵

The Board, however, finds that a conflict in the medical opinion evidence now exists between Dr. King and Dr. DiBenedetto regarding whether appellant sustained a left knee meniscus tear and aggravation of her preexisting left knee arthritis due to her July 29, 2017 employment injury.

Dr. King continued to opine that appellant's left knee meniscus tear, aggravation of her preexisting left knee arthritis, and subsequent fall were causally related to her accepted July 29, 2017 employment injury. Dr. DiBenedetto noted that the period of time involved was too short to develop osteoarthritis based on the date of appellant's injury, x-rays, and a postinjury MRI scan which showed significant osteoarthritis. With respect to the meniscal tear, he explained that it was a central root tear which is usually nontraumatic and caused by knee degeneration and medial joint space narrowing. Dr. DiBenedetto opined that appellant's subsequent falls were unrelated to her left knee injury.

Therefore, as a conflict currently exists in the medical opinion evidence, OWCP shall refer to appellant an impartial medical specialist for a resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a). After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

According to FECA,¹⁶ once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.¹⁷ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹⁸ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁹

¹⁴ *Id.*

¹⁵ See *A.D., id.*; *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹⁶ *Supra* note 3.

¹⁷ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁸ *Y.I.*, Docket No. 20-0623 (issued November 30, 2020); *A.G.*, Docket No. 18-0749 (issued November 7, 2018); see also *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

¹⁹ *C.B.*, *supra* note 17; *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.²⁰ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective January 31, 2020.

As explained above, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded but did not resolve the issue. As the issue of expansion is not in posture for decision, the Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.²²

CONCLUSION

The Board finds that this case is not in posture for a decision on the issue of claim expansion. The Board further finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

²⁰ *C.B., id.; L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

²¹ *C.B., id.; R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

²² *See D.F.*, Docket No.20-0690 (issued June 2, 2022); *C.S.*, Docket No. 20-0621 (issued December 22, 2020); *D.F.*, Docket No. 19-1257 (issued July 14, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2020 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 8, 2023
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