

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

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<b>K.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0788</b>
	)	<b>Issued: August 23, 2023</b>
<b>U.S. POSTAL SERVICE, HUNTINGTON</b>	)	
<b>STATION POST OFFICE,</b>	)	
<b>Huntington Station, NY, Employer</b>	)	
_____	)	

*Appearances:* *Case Submitted on the Record*  
Thomas S. Harkins, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 26, 2022 appellant, through counsel, filed a timely appeal from a November 9, 2021 merit decision 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.

**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 the accepted December 10, 2019 employment injury; and (2) whether appellant has met her burden of proof to establish a recurrence

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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.*

of disability commencing February 24, 2020 causally related to the accepted December 10, 2019 employment injury.

### **FACTUAL HISTORY**

On December 11, 2019 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2019 she sustained injuries to her low back, left hip, and left knee when a truck with a trailer in tow rear-ended her delivery vehicle while in the performance of duty. She stopped work on December 10, 2019.

Appellant submitted December 10, 2019 hospital emergency department aftercare instructions for a motor vehicle collision injury.

In a December 12, 2019 duty status report (Form CA-17) and a work slip of even date, Dr. Igor Stiler, a Board-certified neurologist and psychiatrist, diagnosed derangement of the cervical and lumbar spine, left hip, and left knee. He held appellant off work through January 18, 2020.

In a development letter dated December 23, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a December 30, 2019 statement describing the December 10, 2019 motor vehicle accident and a December 11, 2019 municipal police report of the accident.

In a January 9, 2020 Form CA-17, Dr. Stiler diagnosed derangement of the neck, low back, left shoulder, left knee, and left hip. He held appellant off work.

By decision dated January 27, 2020, OWCP accepted that the December 10, 2019 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted employment incident.

Appellant submitted additional evidence. In a January 8, 2020 report, Dr. Stiler, recounted appellant's symptoms of neck and left knee pain. On examination, he observed tenderness to palpation of the bilateral trapezius muscles, tenderness to palpation and limited motion of the cervical spine, lumbar spine, left femoroacetabular joint, and left knee, bilaterally positive straight leg raising tests, positive Milgram's and Kemp's tests on the left, positive Fabere's and McMurray's tests, and left hip and knee flexion strength at 4+/5. Dr. Stiler diagnosed derangement of the cervical spine, lumbar spine, left hip, and left knee. He referred appellant for imaging studies to rule out herniated discs, a labral tear of the left hip, and instability of the left knee.

In a January 25, 2020 Form CA-17, Dr. Stiler noted findings on examination of decreased muscle strength, tenderness to palpation of the spine, and decreased range of motion. He diagnosed derangement of the neck, lower back, left knee, left shoulder, and left hip. Dr. Stiler answered a question "Yes" indicating that the history of the alleged injury presented by appellant corresponded with that contained on the Form CA-17. He held appellant off work.

On February 14, 2020 appellant requested reconsideration. She submitted a February 7, 2020 report by Dr. Stiler noting the December 10, 2019 employment incident and subsequent treatment. Dr. Stiler recounted that at the moment of impact, appellant had rotated her head and torso toward the left to check her side mirror, then the collision caused her body to “violently jerk forward and backwards,” resulting in a “whiplash” injury to the head, neck, and low back. He explained that appellant’s left knee had been injured when her body weight shifted over her stationary lower leg and foot. Appellant’s “left hip was injured as her body weight shifted forward and the seat belt restrained her.” Dr. Stiler opined that the direction of the collision and appellant’s position in her seat resulted in the impact being primarily absorbed on the left side of her body. He diagnosed derangement of the cervical spine, lumbar spine, left hip, and left knee.

OWCP continued to receive reports from Dr. Stiler dated January 25 and February 19, 2020, reiterating the findings and diagnoses noted in his February 14, 2020 report.

By decision dated April 10, 2020, OWCP vacated, in part, its January 27, 2020 decision and accepted appellant’s claim for whiplash. By separate decision of even date, it denied expansion of her claim to include derangement of the cervical spine, lumbar spine, left hip, and left knee.

On May 6, 2020 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period February 24 through March 6, 2020. The record indicates that she had returned to limited-duty work on February 24, 2020. In accompanying time analysis forms (Form CA-7a), the employing establishment confirmed that during the claimed period, appellant worked from approximately two to five hours a day and utilized leave without pay (LWOP) for the remaining hours when there was no work available within her restrictions.

In a development letter dated May 7, 2020, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation for disability from work for the period February 24, 2020 and continuing. It afforded her 30 days to respond.

In a May 8, 2020 Form CA-17, Dr. Stiler found appellant able to perform limited-duty work for four hours a day.<sup>3</sup>

On May 11, 2020 appellant filed a Form CA-7 for intermittent disability from work for the period March 7 through April 7, 2020. In accompanying Forms CA-7a, the employing establishment confirmed that during the claimed period, she worked for approximately two to six hours a day and utilized LWOP for the remaining hours when there was no work available within her restrictions.

On May 12, 2020 OWCP received reports by Dr. Stiler dated December 12, 2019 and January 8, 2020. Dr. Stiler diagnosed derangement of the cervical spine, lumbar spine, left hip, and left knee.

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<sup>3</sup> A May 8, 2020 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated a right paracentral broad-based disc herniations at C3-4, C4-5, and C5-6 causing spinal stenosis and foraminal narrowing with abutment of the bilateral exiting C5 nerve roots, a right-sided paracentral broad-based disc herniation at C6-7 indenting the thecal sac, mild spinal canal narrowing throughout due to congenitally shortened pedicles and straightening of the lordosis.

In a May 29, 2020 report, Dr. Stiler diagnosed a whiplash injury to the cervical spine. He opined that appellant had been totally disabled from work from January 25 through February 22, 2020 and partially disabled from work as of February 23, 2020.

In a June 9, 2020 report, Dr. Stiler recounted appellant's continuing neck, left shoulder, low back, and left knee pain. On examination, he observed limited range of cervical and lumbar motion with paraspinal spasm and tenderness, and positive straight leg raising, Milgram's, and Kemp's tests on the left. Dr. Stiler diagnosed cervical radiculopathy, herniated lumbar disc, labral tear of the left hip, and meniscal tear of the left knee. He submitted periodic progress notes through July 6, 2020.

In reports dated June 24 through August 31, 2020, Dr. Joseph Gregorace, Board-certified in physiatry and pain management, recounted the December 10, 2019 employment injury and summarized her subsequent treatment. On examination, he observed limited range of motion of the cervical spine, left shoulder, lumbar spine, and left knee, positive Neer and Yocum tests of the left shoulder, lumbar paraspinal spasms, medial joint line tenderness in the left knee, and a positive McMurray's test of the left knee. Dr. Gregorace diagnosed cervical spine strain/sprain, herniated discs from C3-4 through C6-7, left shoulder rotator cuff tendinitis, rule out rotator cuff tear, lumbar spine pain with spasms, herniated discs at L3-4 and L5-S1, and a left knee medial meniscal sprain. He found appellant totally disabled from work.<sup>4</sup>

On September 11, 2020 appellant requested reconsideration of the April 10, 2020 expansion decision.

In reports dated September 15 through December 2, 2020, Dr. Aron Rovner, a Board-certified orthopedic surgeon, recounted appellant's history of injury and treatment. On examination, he observed limited range of lumbar and left knee motion, positive straight leg raising test, clicking with extension of the left knee, left knee effusion, and a positive McMurray's sign on the left. Dr. Rovner diagnosed lumbar/cervical spine pain, multilevel lumbar disc bulges with radiculopathy, left knee pain, and left shoulder pain, status post December 10, 2019 employment injury. He opined that the diagnosed conditions were "directly causally related to the accident within a reasonable degree of medical certainty." Dr. Rovner recommended intra-articular injections and left knee arthroscopy.

In a report dated September 21, 2020, Dr. Gregorace diagnosed cervical spine strain/sprain, left shoulder strain, lumbar spine strain/sprain, and left knee meniscal tear. He held appellant off work.

On November 3, 2020 OWCP received June 24 and July 27, 2020 work slips by Dr. Gregorace holding appellant off work.

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<sup>4</sup> An August 11, 2020 MRI scan of the lumbar spine demonstrated a bulging disc at L2-3 without stenosis, bulging disc at L3-4 with bilateral foraminal encroachment and impingement of the left L3 nerve root, bulging disc at L4-5 with bilateral foraminal encroachment and mild bilateral foraminal stenosis, central disc herniation at L5-S1 with right paracentral annular tear impinging the thecal sac and S1 nerve roots, and mild bilateral foraminal stenosis at L5-S1. An August 11, 2020 MRI scan of the left knee demonstrated a tear of the posterior horn of the medial meniscus, tears of the anterior and posterior horns of the lateral meniscus, medial and lateral retinacular sprains, joint effusion, and a trace Baker's cyst.

In reports dated August 10, September 10, and November 4, 2020, Dr. Stiler diagnosed cervical radiculopathy, derangement of the lumbar spine, labral tear of the left hip, and meniscal tear of the left knee.

By decision dated December 10, 2020, OWCP denied modification of its prior decision.

From December 11, 2020 through January 14, 2021, OWCP received reports dated October 9 through December 10, 2020, wherein Dr. Stiler diagnosed cervical radiculopathy, derangement of the lumbar spine, labral tear of the left hip, and meniscal tear of the left knee.

In reports dated December 14 and 16, 2020, Dr. Gregorace diagnosed left C5 radiculopathy, herniated discs from C3-4 through C6-7, status-post cervical epidural steroid injection, partial left rotator cuff tear, herniated discs at L3-4 and L5-S1, left L5 radiculopathy, and left medial meniscus tear. He noted work restrictions.

By decision dated March 25, 2021, OWCP denied appellant's claim for recurrence of disability commencing February 24, 2020.

Appellant submitted additional evidence. In January 14 and February 17, 2021 reports, Dr. Stiler diagnosed cervical radiculopathy, derangement of the lumbar spine, labral tear of the left hip, and meniscal tear of the left knee.<sup>5</sup>

On May 11, 2021 OWCP received reports dated December 10, 2019 by Dr. Lauren H. Patti, Board-certified in emergency medicine. Dr. Patti recounted the work-related motor vehicle accident that had occurred three hours previously. On examination, she noted left lower extremity pain with full range of motion and no muscle tenderness. Dr. Patti obtained x-rays of the left knee and hip, which demonstrated no bone, joint, or soft tissue abnormalities. She diagnosed left knee contusion and left hip strain.

On August 11, 2021 appellant, through counsel, requested reconsideration. Counsel contended that new medical evidence established that OWCP should expand the acceptance of his claim to include additional conditions, and that appellant had been totally disabled for work commencing February 24, 2020 due to sequelae of the accepted December 10, 2019 employment injury.

Appellant submitted an April 19, 2021 report by Dr. Stiler. Dr. Stiler noted that the impact of the vehicle striking appellant's truck caused her to jerk forward and strike her left knee against a tray at the front of the truck cabin. He diagnosed cervical radiculopathy, herniated lumbar disc, left medial meniscal tear, and partial left rotator cuff tear causally related to the December 10, 2019 employment injury. Dr. Stiler explained that the forces of the accident put pressure on the fibrous exterior of the spinal discs, allowing the nucleus pulposus to protrude, which resulted in pain, spasms, and radiculopathy. He also opined that the impact of the accident caused appellant's left femur to shift over the tibia, which was stable as her foot had been planted on the floor, resulting in a left meniscal tear. Additionally, Dr. Stiler explained that when appellant's vehicle was impacted, her unrestrained left shoulder jerked forward, resulting in a rotator cuff tear due to sudden shifting of the joint.

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<sup>5</sup> Appellant separated from the employing establishment, effective April 9, 2021.

In a June 8, 2021 report, Dr. Gregorace examined appellant and observed spasm and tenderness to palpation of the cervical and lumbar paraspinal musculature, tenderness to posterolateral palpation of the left shoulder, tenderness along the medial joint line of the left knee, tenderness at the left MCL with valgus strain, limited motion of the cervical spine, lumbar spine, left shoulder, and left knee, and positive Yocum's and Lachman's tests on the left. He diagnosed post-traumatic cervical spine strain/sprain with spasms, post-traumatic cervical disc herniations at C3-4, C4-5, and C5-6 causing spinal canal stenosis and foraminal narrowing, traumatic left C5 radiculopathy, post-traumatic lumbar strain/sprain with spasms, post-traumatic L3-4 disc herniation with impingement upon the L3 root with biforaminal encroachment, post-traumatic L5-S1 disc herniation with annular tear impinging on the thecal sac and S1 nerve roots with foraminal stenosis, traumatic left L5 radiculopathy, post-traumatic L2-3 disc bulge, post-traumatic L4-5 disc bulge with bilateral foraminal encroachment and foraminal stenosis, post-traumatic left shoulder strain, post-traumatic left rotator cuff tendinosis/tendinopathy with partial thickness bursal surface tear, and post-traumatic left medial and lateral meniscus tears with MCL sprain. Dr. Gregorace opined that the December 10, 2019 employment injury caused significant injuries to the cervical and lumbar spine, left shoulder, and left knee. He explained that the sudden forceful impact caused by the accident "exerted tremendous pressure to the structural integrity of the nucleus pulposus, annulus fibrosis and facet joints of the cervical and lumbar spine," resulting in C3-4, C4-5, and C5-6 disc herniations with spinal stenosis and foraminal narrowing, L3-4 and L5-S1 disc herniations, and disc bulges at L2-3, L3-4, and L4-5. Dr. Gregorace opined that the cervical spine conditions explained appellant's ongoing neck and lumbar pain with left-sided radiculopathy. He noted that the neck, back, left shoulder, and left knee traumas resulted in post-traumatic sprain/ strain syndromes with myofascial derangements and inflammation, leading to scar tissue formation and restricted joint motion.

By decision dated November 9, 2021, OWCP denied modification.

### **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.<sup>6</sup>

To establish causal relationship, the employee must submit rationalized medical opinion evidence.<sup>7</sup> 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 the specific employment factors identified by the claimant.<sup>8</sup> The weight of medical evidence is

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<sup>6</sup> *J.R.*, Docket No. 21-0790 (issued June 21, 2022); *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).

<sup>7</sup> *R.H.*, Docket No. 21-0493 (issued March 4, 2022); *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

<sup>8</sup> *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.<sup>9</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant has met her burden of proof to establish expansion of the acceptance of the claim to include a contusion of the left knee causally related to the accepted December 10, 2019 employment injury.

On December 10, 2019 Dr. Patti examined appellant due to the employment-related motor vehicle accident the same day of injury and diagnosed a left knee contusion. The Board thus finds that the evidence of record establishes that the accepted December 10, 2019 employment injury resulted in a visible injury of left knee contusion.<sup>10</sup> The case will, therefore, be remanded to OWCP for payment of medical expenses for appellant's diagnosed condition and any attendant disability.<sup>11</sup>

The Board further finds that this case is not in posture for decision regarding whether there are additional conditions causally related to the accepted December 10, 2019 employment injury.

In his April 19, 2021 report, Dr. Stiler diagnosed cervical radiculopathy, herniated lumbar disc, left medial meniscal tear, and partial left rotator cuff tear. He opined that these findings were causally related to appellant's December 10, 2019 employment injury, as the extreme forces of the vehicular impact put pressure on the exterior of the spinal discs, allowing protrusion of the nucleus pulposus. Additionally, Dr. Stiler attributed the left meniscal tear to the left femur shifting suddenly over the stabilized tibia, and the left rotator cuff tear to appellant's unrestrained shoulder suddenly jerking forward at impact.

In a June 8, 2021 narrative report, Dr. Gregorace diagnosed cervical spine strain/sprain, cervical disc herniations at C3-4, C4-5, and C5-6 with spinal canal stenosis and foraminal narrowing, traumatic left C5 radiculopathy, lumbar strain/sprain, L3-4 disc herniation with L3 nerve root impingement, L5-S1 disc herniation with annular tear and S1 nerve root impingement, left L5 radiculopathy, L2-3 disc bulge, L4-5 disc bulge with bilateral foraminal encroachment and foraminal stenosis, left shoulder strain, left rotator cuff tendinosis/tendinopathy with partial thickness bursal surface tear, and left medial and lateral meniscus tears with MCL sprain. He characterized these findings as post-traumatic, causally related to appellant's December 10, 2019 employment injury, as the sudden forces of the motor vehicle accident exerted extreme pressure on the nucleus pulposus, annulus fibrosis, and facet joints of the spinal discs, causing C3-4, C4-5,

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<sup>9</sup> *R.H.*, *supra* note 7; *C.L.*, Docket No. 20-0213 (issued September 15, 2021); *J.L.*, Docket No. 20-0717 (issued October 15, 2020); *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> *See N.B.*, Docket No. 20-0794 (issued July 29, 2022) (the Board accepted a visible injury of right shoulder contusion as causally related to the accepted employment incident); *B.W.*, Docket No. 22-0134 (issued May 24, 2022) (the Board accepted a visible injury of lower back/buttocks contusion as causally related to the accepted employment incident); *S.K.*, Docket No. 18-1411 (issued July 22, 2020) (the Board accepted visible injuries including bruises as causally related to the accepted employment incident).

<sup>11</sup> *See N.B.*, *id.*; *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

C5-6, L3-4, and L5-S1 disc herniations, L2-3, L3-4, and L4-5 disc bulges, and left-sided cervical and lumbar radiculopathy. Dr. Gregorace explained that the traumatic neck, back, left shoulder, and left knee injuries also caused post-traumatic sprain/strain syndromes, myofascial derangement, inflammation, scar tissue formation, and restricted joint motion.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>12</sup> OWCP has an obligation to see that justice is done.<sup>13</sup>

The Board finds that, while the reports of Drs. Stiler and Gregorace are insufficiently rationalized to establish causal relationship, they are sufficient to require further development of the medical evidence regarding expansion of the acceptance of the claim to include additional conditions.<sup>14</sup> On remand, OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether the additional diagnosed conditions are causally related to the accepted December 10, 2019 employment injury. If the physician opines that the additional diagnosed conditions are not causally related to the employment injury, he or she must explain, with rationale, how or why their opinion differs from that of Dr. Stiler and Dr. Gregorace. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under FECA<sup>15</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>16</sup> Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>17</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>18</sup> Whether a particular injury causes an employee to become disabled from

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<sup>12</sup> *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>13</sup> *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>14</sup> *J.R.*, Docket No. 21-0790 (issued June 21, 2022); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>15</sup> *Supra* note 2.

<sup>16</sup> *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>17</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>18</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).



work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>19</sup>

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 that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>20</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 light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.<sup>21</sup>

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>22</sup>

### ANALYSIS -- ISSUE 2

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

On May 6, 2020 appellant filed a claim for intermittent disability from work during the period February 24 through March 6, 2020. She filed a second claim on May 11, 2020 for intermittent disability from work for the period March 7 through April 7, 2020. On Forms CA-7a attached to both claims, appellant indicated that for intermittent periods beginning February 24, 2020 she was sent home because no work was available within her restrictions. As noted above, a recurrence of disability can be established when a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.<sup>23</sup> As appellant alleged that the employing establishment was unable to

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<sup>19</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>20</sup> 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

<sup>21</sup> *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>22</sup> *Id.*

<sup>23</sup> *Supra* note 19.

accommodate her work restrictions, OWCP should have requested that the employing establishment confirm or deny the correctness of her assertion in a statement from a knowledgeable supervisor.<sup>24</sup>

As noted above, it is well established that proceedings under FECA are not adversarial in nature and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>25</sup> It has an obligation to see that justice is done.<sup>26</sup> Thus, the Board will remand the case to OWCP to obtain a statement from a knowledgeable supervisor as to appellant's allegation that the employing establishment was unable to accommodate her work restrictions. Following any necessary further development, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that appellant has established a visible injury of left knee contusion. The Board further finds that this case is not in posture for decision regarding expansion of the acceptance of the claim to include additional conditions causally related to the accepted December 10, 2019 employment injury. The Board also finds that this case is not in posture for decision regarding whether appellant has met her burden of proof to establish a recurrence of disability commencing February 24, 2020 causally related to the accepted December 10, 2019 employment injury.

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<sup>24</sup> See *J.A.*, Docket No. 20-0726 (issued January 26, 2022); *T.R.*, Docket No. 19-1611 (issued October 26, 2020); see also *P.H.*, Docket No. 20-0039 (issued April 23, 2020).

<sup>25</sup> *Supra* note 12.

<sup>26</sup> *Supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 9, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 23, 2023  
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