United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant	)	
and	)	**Docket No. 25-0134**
	)	**Issued: December 17, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Michael D. Overman, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 22, 2024 appellant, through counsel, filed a timely appeal from a June 7, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that following the June 7, 2024 decision, OWCP received additional evidence. 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 her burden of proof to expand the acceptance of her claim to include reflex sympathetic dystrophy (RSD)/complex regional pain syndrome (CRPS) and/or patellofemoral arthritis, resulting in disability from work commencing February 2, 2010, causally related to or as a consequence of her accepted employment injuries.

FACTUAL HISTORY

This case has previously been before the Board.[4] The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On November 21, 2002 appellant, then a 41-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2002 she fractured her left knee when she tripped over a rug while in the performance of duty. OWCP accepted the claim, for a fractured left patella. It subsequently expanded its acceptance of the claim to include a closed fracture of the left fibula occurring on January 11, 2010 as a consequential injury.[5] On November 25, 2002 appellant underwent tension band wiring of the left patella and on April 23, 2003 she underwent surgery to remove the left patella hardware. On February 3, 2003 she accepted a full-time modified position with the employing establishment.

On October 7, 2009 appellant filed a notice of recurrence (Form CA-2a) alleging that she required medical treatment from March 2009 onward due to her accepted employment injury.

By decision dated March 2, 2010, OWCP found that appellant had not established a recurrence of a medical condition beginning March 2009 causally related to her accepted employment injury.

On March 9, 2010 Dr. Michael J. Ross, Board-certified in emergency medicine, diagnosed a distal fibular fracture. He opined that appellant should not work, noting that she could not stand or walk for more than one to two hours a day. On April 5, 2010 Dr. Ross advised that appellant continued to experience buckling episodes from her left knee. He diagnosed a healing distal fibular fracture and left knee osteoarthritis with recurrent giving way.

On June 9, 2010 Dr. Ross opined that appellant's patellar fracture had accelerated her left knee arthritis.

[4] Docket No. 14-0467 (issued September 26, 2014); Docket No. 16-1384 (issued February 1, 2017); Docket No. 20-0133 (issued May 21, 2021).

[5] OWCP assigned the present claim OWCP File No. xxxxxx840. On January 11, 2010 appellant filed a Form CA-1 alleging that she injured her left knee and left ankle on that date when her left knee gave out and she fell while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx746, but denied it by decision dated April 30, 2010. OWCP has administratively combined OWCP File Nos. xxxxxx746 and xxxxxx840, with the latter serving as the master file.

On August 3, 2010 Dr. Dennis W. Ivill, a Board-certified physiatrist, diagnosed left knee degenerative joint disease causally related to appellant's November 20, 2002 left knee fracture. He opined that the employment incident had accelerated her left knee degenerative joint disease.

Appellant, on October 13, 2010, requested reconsideration of OWCP's March 2, 2010 decision. She asserted that she sustained left knee osteoarthritis and degeneration arising from her November 20, 2002 employment injury.

By decision dated January 11, 2011, OWCP denied modification of its March 2, 2010 decision.

On December 29, 2011 appellant, through her then-representative, requested reconsideration.

By decision dated February 8, 2012, OWCP denied modification of its January 11, 2011 decision.

On August 28, 2012 appellant filed a Form CA-2a alleging that on January 11, 2010 her left knee "gave out" and she fell to the floor, twisting her left ankle. She maintained that her November 20, 2002 employment injury had weakened her left knee and caused severe pain, stiffness, weakness, and swelling. Appellant stopped work on January 11, 2010. The employing establishment indicated on the form that she had resumed her usual employment after the original injury.

By decision dated November 28, 2012, OWCP found that appellant had failed to establish a recurrence of disability beginning January 11, 2010.

On December 4, 2012 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 13, 2013, OWCP's hearing representative modified the November 28, 2012 decision to find that appellant had alleged a consequential injury rather than a recurrence of disability. The claim remained denied, however, as the medical evidence of record was insufficient to establish that she sustained a left ankle fracture as a consequence of her accepted left knee injury.

By decision dated June 17, 2013, OWCP denied appellant's request to expand acceptance of her claim to include a consequential left ankle condition causally related to her November 20, 2002 employment injury.

On July 17, 2013 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated August 15, 2013, Dr. Ivill noted that he had initially examined appellant on June 25, 2010 for pain in her left ankle, left knee, and left lower extremity. He advised that she fractured her patella on November 20, 2002. Dr. Ivill diagnosed chronic CRPS of the left lower extremity. Dr. Ivill opined that appellant's left knee gave out on January 11, 2010 causing her to fall and fracture her left fibula near the left ankle.

A hearing was held on November 8, 2013.

In a December 4, 2013 report, Dr. Ivill indicated that appellant had fallen on November 23, 2013 as a result of left lower extremity pain and instability due to her employment. On examination, he found that her left lower extremity was cool and her skin was shiny and thin." Dr. Ivill diagnosed CRPS/RSD of the left lower extremity, spreading to the right. He related that appellant's November 20, 2002 and January 11, 2010 injuries had resulted in "left lower extremity weakness and instability and ultimately resulted in the [CRPS]/RSD in the lower extremities with [a] recent fall on November 23, 2013 with left tibial fracture…." Dr. Ivill opined that appellant was permanently disabled from work.

On January 15, 2014 Dr. R. Bruce Lutz, a Board-certified orthopedic surgeon, performed a surgical repair of a displaced left distal tibia fracture. He indicated that appellant had a history of RSD and a left distal tibia fracture. Dr. Lutz advised that appellant's left leg had given out while she was healing, resulting in a second fracture.

By decision dated March 18, 2014, OWCP's hearing representative vacated the June 17, 2013 decision. He found that OWCP should refer appellant for a second opinion evaluation for an opinion regarding whether she had sustained a consequential injury on January 11, 2010 causally related to the accepted November 20, 2002 employment injury.

On March 21, 2014 OWCP referred appellant along with a SOAF and a series of questions to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon for a second opinion evaluation.

In a report dated April 17, 2014, Dr. Didizian noted appellant's history of a fractured left patella on November 20, 2002 and her subsequent fall on January 11, 2010 resulting in a fractured left distal fibula. He also indicated that she had fractured her tibia on January 11, 2014, which had been treated with surgery on January 15, 2014. Dr. Didizian diagnosed status post a left patellar fracture treated with "internal fixation and removal of the wires with a second procedure and degenerative joint disease of the patellofemoral joint and malalignment." He opined that appellant's patellar fracture was a direct result of her work injury, and that she would continue to have problems with her patellofemoral joint. Dr. Didizian opined that she had no evidence of CRPS based on the results of a bone scan and her failure to respond to sympathetic blocks. He found that appellant had reached maximum medical improvement "as far as the secondary injuries are concerned" but required further medical treatment for the original injury. Dr. Didizian indicated that she could perform limited duty.

On June 5, 4014 Dr. Ivill advised that appellant had pain in her left lower extremity resulting from CRPS/RSD that was spreading into the right lower extremity after a November 20, 2002 employment injury and resulting January 11, 2010 fall. He indicated that the November 20, 2002 and January 11, 2010 falls had caused "left lower extremity weakness and instability and ultimately [CRPS]/RSD of the left lower extremity status post fall of November 23, 2013 and January 10, 2014 with left tibial fracture with osteoporosis." Dr. Ivill attributed appellant's CRPS/RSD to the accepted employment injury.

In a supplemental report dated June 16, 2014, Dr. Didizian opined that appellant had sustained a consequential injury on January 11, 2010 causally related to her November 20, 2002 work injury.

Based on Dr. Didizian's opinion, OWCP expanded acceptance of the claim to include an open fracture of the left fibula as a consequential injury.

A July 23, 2014 MRI scan of the thoracic spine revealed multilevel degenerative disc disease throughout the thoracic spine most significant at the T8-9 level with disc protrusions at T7-8, T8-9, and T11-12. A lumbar MRI scan of even date demonstrated mild degenerative disc disease at T11-12, a right small disc protrusion, and degenerative disc disease and bulges at L2-3, L3-4, L4-5, and L5-S1.

Appellant filed claims for wage-loss compensation (Form CA-7) from February 26 through December 3, 2010 and from April 2, 2011 through December 12, 2014.

In a development letter dated August 28, 2014, OWCP requested that appellant provide medical evidence supporting that she was disabled from work due to her accepted consequential injury during the claimed periods.

Thereafter, OWCP received a February 10, 2014 certification of reassignment and accommodation efforts form from the employing establishment. It indicated that it had been unable to either accommodate appellant or provide reassignment due to the severity of her medical condition and the physical requirements of her position.

In a report dated August 28, 2014, Dr. Ivill reviewed the results of appellant's thoracic spine MRI scan and noted marked right anterior displacement of the thoracic cord at T6-7. He diagnosed a transdural cord herniation. Dr. Ivill again attributed appellant's CRPS/RSD to the November 20, 2002 employment injury and resulting fall on January 11, 2010.

On September 12, 2014, Dr. Ivill opined that appellant's November 20, 2002 and January 11, 2010 injuries had resulted in CRPS/RSD, and weakness and instability of the left lower extremity. He noted that she was "status post fall of November 23, 2013 and January 10, 2014 with left tibial fracture with osteoporosis, rule out thoracic myelopathy."

An October 29, 2014 notification of personnel action (Form SF-50) indicated that the Office of Personnel Management (OPM) had approved her request for disability retirement. Her last day in pay status was July 26, 2014.

On November 20, 2014 appellant elected to receive FECA benefits, effective January 11, 2010, in lieu of OPM retirement benefits.

By decisions dated December 18 and 19, 2014, OWCP denied appellant's Form CA-7 claims for wage-loss compensation for disability from work during the periods February 26 through December 3, 2010 and April 2, 2011 through December 12, 2014.

On December 29, 2014 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant underwent a T5-8 posterior arthrodesis with autograft and a T6-7 complete laminectomy on March 30, 2015 to repair a thoracic T6-7 transdural spinal cord herniation.

By decision dated May 11, 2015, OWCP's hearing representative vacated the December 19, 2014 decision, finding that the case required further development by OWCP. The hearing representative remanded the case for OWCP to administratively combine appellant's files, update the statement of accepted facts, and request a supplemental report from Dr. Didizian regarding the extent of appellant's disability since January 11, 2010. The hearing representative also noted that the employing establishment should confirm whether she had been offered light duty for any period after January 11, 2010.

In a May 27, 2015 email, OWCP requested that the employing establishment address whether appellant was offered light duty for any period after January 11, 2010. In a May 28, 2015 response, the employing establishment advised that it had not had the opportunity to offer her a modified position as the medical evidence supported total disability.

On September 2, 2015 OWCP referred appellant to Dr. Didizian for a second opinion evaluation to determine any periods of employment-related disability on or after January 2010.

In a September 10, 2015 report, Dr. Didizian noted that appellant had undergone thoracic surgery on March 30, 2015 for myelomalacia to prevent her neurological condition from worsening. He discussed her continued complaints of buckling, aching, and pain in her left knee. Dr. Didizian noted that appellant had fractured her tibia and fibula on January 11, 2010. He found hyperreflexia of the knee and decreased sensation in the left leg in all dermatomes. Dr. Didizian opined that appellant's left leg weakness was due to a thoracic disc injury rather than her left knee condition. He disagreed with Dr. Ivill's diagnosis of RSD. Dr. Didizian related that appellant's left knee condition had plateaued and that the "consequential tibia and fibula fractures are healed." Regarding disability beginning January 2010, he responded that she was partially disabled due to patellofemoral arthritis of the left knee and totally disabled due to surgery on her thoracic spine.

On September 10, 2015 Dr. Ivill again advised that appellant's fall on January 11, 2010 had resulted in CRPS/RSD and indicated that she had experienced falls on November 23, 2013 and January 10, 2014. He noted her history of a March 30, 2015 thoracic fusion.

By *de novo* decision dated October 16, 2015, OWCP again denied appellant's claim for disability from work during the periods February 26 through December 3, 2010 and April 2, 2011 through October 2, 2015 causally related to her accepted employment injury.

On October 28, 2015 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on February 8, 2016. Counsel asserted that the employing establishment did not provide appellant with limited-duty work and Dr. Didizian failed to specifically address any periods of partial disability due to her accepted employment injuries. He requested that OWCP expand acceptance of the claim to include patellofemoral arthritis based on Dr. Didizian's opinion.

By decision dated March 17, 2016, OWCP's hearing representative found that appellant was entitled to compensation for total disability from January 11 to February 1, 2010, but noted

that she had not filed a claim for this period.[6] He further found that she was not entitled to wage-loss compensation benefits commencing February 2, 2010 as she was disabled due to nonoccupational conditions.

Appellant appealed to the Board. By decision dated February 1, 2017, the Board set aside the March 17, 2016 decision.[7] The Board found that Dr. Didizian had failed to fully address the period of appellant's disability due to her accepted employment injuries. The Board remanded the case for OWCP to obtain a supplemental report from Dr. Didizian addressing the period of disability as a result of her consequential left ankle fracture and to obtain a response from the employing establishment regarding the availability of modified employment.

On March 31, 2017 OWCP referred appellant to Dr. Didizian for a second opinion examination.

In a report dated June 15, 2017, Dr. Didizian noted that appellant had fractured her patella on November 20, 2002. On May 19, 2013 appellant resumed modified employment until she fell on January 11, 2010 fracturing her left fibula. On examination Dr. Didizian found no effusion of synovitis of the knee, no patellar crepitation, good muscle tone and strength of the quadriceps, and no atrophic changes. He opined that appellant was totally disabled from work from January 11 through February 1, 2010 due to her consequential left fibula injury. Dr. Didizian related that after that period there was "no reason why she could not have gone back to her modified duty, which she did for [seven] years prior to the fibula fracture." He noted that appellant had developed myelomalacia of the left lower extremity due to a T6-7 disc condition for which she underwent surgery on March 30, 2015. Dr. Didizian found that her thoracic spine injury was unrelated to her employment and that Dr. Ivill's treatment of her low back condition was "not an accepted injury."[8] In a work capacity evaluation of even date, he indicated that appellant could perform modified employment walking and standing for two hours per day and lifting no more than 20 pounds.

By *de novo* decision dated January 29, 2018, OWCP again denied appellant's claim for disability from work commencing February 2, 2010, causally related to her accepted employment injury.

On February 5, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On March 15, 2018 Dr. Ivill evaluated appellant for pain and weakness in the lower extremity, left low back pain, and right knee pain after a left tibial fracture in October 2014, an initial employment injury on November 20, 2002, and an injury on January 11, 2010 due to the November 20, 2002 injury. He diagnosed CRPS/RSD of the left lower extremity spreading to the

[6] The Board notes that on November 20, 2014 appellant elected FECA benefits in lieu of disability retirement benefits effective January 11, 2010.

[7] *Supra* note 4.

[8] Dr. Ivill provided progress reports dated August 30, November 8, and December 6, 2017 and January 8, 2018 similar to his prior reports of record.

right lower extremity as a result of her employment injuries. Dr. Ivill noted that appellant had sustained fractures due to falls in July 2015 and July 2017.[9]

A hearing was held on May 23, 2018. Counsel contended that OWCP had failed to establish whether modified employment was available during the period in which compensation was claimed, noting that Dr. Didizian had determined that appellant was partially disabled due to her patellar fracture.

By decision dated July 19, 2018, OWCP's hearing representative vacated the January 29, 2018 decision. She found that Dr. Didizian's opinion supported that appellant could resume modified work on February 2, 2010 and that she did not have RSD or CRPS of the left lower extremity. The hearing representative noted that Dr. Didizian advised that she may have sustained left patella arthritis due to her authorized surgeries, but found that he had considered this condition in his disability determination. She determined, however, that OWCP had not adequately developed the issue of whether the employing establishment had offered appellant a limited-duty position after January 11, 2010. The hearing representative remanded the case for OWCP to obtain clarification from the employing establishment regarding whether it could have provided her with modified employment within her restrictions had she not been totally disabled due to a nonemployment-related condition.

On October 31, 2018 OWCP requested that the employing establishment advise whether appellant would have been able to resume the position held beginning May 19, 2003, effective February 1, 2010.[10]

In an email response dated November 7, 2018, the employing establishment indicated that it did not have appellant's file but that since "her work[-]related restrictions would have allowed her to continue her modified assignment on February 2, 2010, the same position would have been available to the claimant. [The employing establishment] does not replace employees that quickly, especially when it is a 'temporary out of work' situation."

By *de novo* decision dated November 26, 2018, OWCP again denied appellant's claim for wage-loss compensation commencing February 2, 2010 causally related to her accepted November 20, 2002 employment injury.

On November 29, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on April 11, 2019. Counsel argued that as appellant was partially disabled due to her accepted employment injury, it had to consider her nonemployment-related conditions. He asserted that the claim should be expanded to accept left knee patella arthritis, noting that Dr. Didizian had found that appellant was partially disabled from that condition.

By decision dated May 21, 2019, OWCP's hearing representative affirmed the November 26, 2018 decision.

[9] Dr. Ivill submitted a similar report on May 24, 2018.

[10] Dr. Ivill submitted progress reports dated August 9, October 11, and December 13, 2018 and February 7, 2019.

Appellant appealed to the Board. By decision dated May 21, 2021, the Board set aside the May 21, 2019 decision.[11] The Board found a conflict existed between Dr. Ivill and Dr. Didizian regarding whether OWCP should expand the acceptance of the claim to include CRPS/RSD of the left lower extremity due to the accepted November 20, 2002 employment injury and/or the January 11, 2010 consequential left distal fibula fracture, necessitating referral of appellant to an impartial medical examiner (IME). The Board also ordered OWCP to request that the IME address whether she sustained patellofemoral arthritis causally related to her accepted employment injury. The Board instructed OWCP to then issue a *de novo* decision on both the issue of claim expansion and whether appellant has met her burden of proof to establish disability from work commencing on or after February 2, 2010 causally related the November 20, 2002 employment injury.

On June 14, 2022 Dr. Ivill advised that appellant had back pain due to a severely antalgic gait due to her employment injury.

On August 1, 2022 OWCP referred appellant to Dr. Robert Grob, an osteopath Board-certified in orthopedic surgery, for an impartial medical examination.

In a report dated September 2, 2022, Dr. Grob, serving as the IME, reviewed appellant's history of a left patella fracture due to a November 20, 2002 employment injury treated with an open reduction and internal fixation in November 2002 and hardware removal in March 2003. He also noted that she had sustained a left ankle fracture in 2010 at work when her left knee buckled. Dr. Grob provided his review of the medical evidence. On physical examination of the left knee, he observed a negative Lachman's, drawer, and pivot shift tests, no instability, a negative McMurray's, and no crepitation. Dr. Grob further observed no lower extremity trophic changes, skin discoloration, temperature change, abnormal hair growth or loss, allodynia, or pain to deep palpation along the fibula. He noted tenderness along the medial malleoli. Dr. Grob related that appellant's November 20, 2002 fracture had healed such that she returned to her usual employment for eight years. He noted that appellant had preexisting left knee arthritis and a maltracking patella "which is not a result of her surgery since it healed anatomically but related to a preexisting arthritic condition." Dr. Grob opined that appellant's left fibula fracture also healed uneventfully and that at the time of his examination there was no evidence of pain with deep palpation and no crepitation suggesting patellofemoral arthritis. He related, "Without any positive objective findings, it is reasonable to state that [appellant] has fully recovered from her left patella fracture from accepted work date of November 20, 2002 and a left fibular fracture from January 11, 2010." Dr. Grob related that appellant needed no future invasive treatment. He noted no evidence of RSD of the left lower extremity on electromyogram, but that she did have "preexisting disease of her thoracic and lumbar spine as well as an upper motor neuron lesion which may cause her current neuropathic features." Dr. Grob noted that at the time of his examination appellant did not have active range of motion of the whole left lower extremity, which he asserted was unrelated to her accepted employment injuries. He advised that there was "no evidence of any RSD present including no evidence of any allodynia, trophic changes, abnormal skin temperature, or abnormal hair growth." Dr. Grob concluded that she had no disability related to her initial injury, noting that she had worked seven years after the first injury. He advised that appellant's claim "should not be expanded to include any diagnosis of CRPS and RSD due to her accepted work-related injuries."

[11] *Supra* note 4.

Dr. Grob further found "no evidence of any patellofemoral arthritis to substantiate any further disability."

By *de novo* decision dated October 18, 2022, OWCP denied appellant's request to expand its acceptance of the claim causally related to her accepted employment injuries. It also again denied appellant's claim for disability from work commencing February 2, 2010 causally related to the accepted employment injury.

On October 25, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on March 17, 2023. Appellant's counsel asserted that Dr. Grob's finding that arthritis was a preexisting condition was not supported by rationale.

By decision dated June 2, 2023, OWCP's hearing representative affirmed the October 18, 2022 decision. She found that the opinion of Dr. Grob constituted the weight of the evidence, and established that appellant's claimed RSD, patellofemoral arthritis, and disability on or after February 2, 2010 were not causally related to the accepted employment injury.

On May 31, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence.

In notes dated April 25 and May 8 and 14, 2024, Drs. Miteswar Purewal and Shailen Jalali, Board-certified anesthesiologists and pain management specialists, diagnosed left leg CRPS and lumbar radiculopathy. They noted that appellant had exhausted pain management treatment options and recommended a spinal cord stimulator trial.

By decision dated June 7, 2024, OWCP denied modification.

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.[12]

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.[13] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[14] 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,

[12] *L.M.*, Docket No. 23-1040 (issued December 29, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[13] *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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

explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.[15]

The employee also bears the burden of proof to establish a claim for a consequential injury.[16] In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[17]

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[18] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[19] An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[20] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.[21]

Section 8123(a) of FECA provides in pertinent part that, 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.[22] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[23] Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.[24]

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[15] *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[16] *T.A.*, Docket No. 21-0798 (issued January 31, 2023); *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

[17] *A.J.*, Docket No. 23-0404 (issued September 8, 2023); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

[18] 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

[19] *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

[20] *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

[21] *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

[22] 5 U.S.C. § 8123(a); *A.E.*, Docket No. 23-0756 (issued December 14, 2023); *G.S.*, Docket No. 20-0562 (issued June 23, 2022); *M.S.*, 58 ECAB 238 (2007).

[23] 20 C.F.R. § 10.321.

[24] *Id.* at § 10.321; *T.D.*, Docket No. 17-1011 (issued January 17, 2018).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include RSD/CRPS and/or patellofemoral arthritis, resulting in disability from work commencing February 2, 2010, causally related to or as a consequence of her accepted employment injuries.

Appellant filed a claim for wage-loss compensation due to disability commencing February 2, 2010. OWCP denied her claim, finding that she was disabled due to nonemployment-related conditions, including CRPS/RSD of the left lower extremity. Appellant's counsel argued that she sustained CRPS/RSD as a consequential injury.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's May 21, 2019 decision because the Board considered that evidence in its May 21, 2021 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.[25]

The Board determined that a conflict arose between appellant's attending physician, Dr. Ivill, and OWCP's referral physician, Dr. Didizian, regarding whether acceptance of the claim should be expanded to include CRPS/RSD of the left lower extremity due to the accepted November 20, 2002 employment injury and the January 11, 2010 consequential left distal fibula fracture. The Board further found that the IME should address whether she sustained patellofemoral arthritis due to her employment injuries. On remand OWCP properly referred appellant to Dr. Grob, for an impartial medical examination pursuant to 5 U.S.C. § 8123(a) to resolve the issue of claim expansion.

When a case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[26]

In a report dated September 2, 2022, Dr. Grob discussed appellant's history of a left patella fracture due to a November 20, 2002 employment injury treated with an open reduction and internal fixation in November 2002 and hardware removal in March 2003, and a left ankle fracture in 2010 when her left knee buckled. On examination of the lower extremity, he observed no trophic changes, skin discoloration, temperature change, abnormal hair growth or loss, allodynia, or pain to deep palpation along the fibula. Dr. Grob noted that appellant's left patella fracture and left fibula fracture had both healed based on the lack of objective findings. He determined that appellant had left knee arthritis and a maltracking patella due to a preexisting arthritic condition unrelated to her surgery. Dr. Grob found no evidence of patellofemoral arthritis on examination, noting that she had no pain with deep palpation and no crepitation. He further found that no evidence of RSD of the left lower extremity based on the examination findings and diagnostic testing. Dr. Grob concluded that appellant's claim should not be expanded to include CRPS/RSD

[25] *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *C.H.*, Docket No. 19-0669 (issued October 9, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

[26] *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

due to her accepted employment injuries, and further found no evidence of patellofemoral arthritis supporting disability.

The Board finds that Dr. Grob accurately described the accepted employment injuries and noted his review of the medical record. He performed a thorough clinical examination and provided detailed findings. Dr. Grob provided a rationalized opinion regarding whether appellant's claim should be expanded to include the conditions of CRPS/RSD of the left lower extremity and patellofemoral arthritis, noting that the conditions were not supported by the objective findings on examination. The Board therefore finds that Dr. Grob's opinion is entitled to the special weight accorded to an IME and establishes that appellant has not met her burden of proof to expand the acceptance of her claim to include these additional conditions or to establish disability as a result of these conditions commencing February 2, 2010.[27]

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 her burden of proof to expand the acceptance of her claim to include CRPS/RSD and/or patellofemoral arthritis, resulting in disability from work commencing February 2, 2010, causally related to or as a consequence of her accepted employment injuries.

[27] *A.P.*, Docket No. 24-0170 (issued March 26, 2024); *M.G.*, Docket No. 23-0674 (issued October 3, 2023).

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board