

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

S.S., Appellant	)	
	)	
and	)	<b>Docket No. 24-0147</b>
	)	<b>Issued: July 2, 2024</b>
U.S. POSTAL SERVICE, LYONS POST OFFICE, Lyons, IL, Employer	)	
	)	

*Appearances:*

*Alan J. Shapiro, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On December 7, 2023 appellant, through counsel, filed a timely appeal from a November 20, 2023 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 issue are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include left knee osteoarthritis as causally related to the accepted July 24, 2019 employment injury; and (2) whether OWCP has met its burden of proof to terminate appellant's

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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 an 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.*

entitlement to medical benefits, effective May 11, 2022, as she no longer had residuals causally related to her accepted July 24, 2019 employment injury.

### **FACTUAL HISTORY**

On July 25, 2019 appellant, then a 57-year-old city carrier, filed a notice of recurrence (Form CA-2a) noting that on July 24, 2019 she experienced pain in the left knee and her left knee gave out as she descended stairs while delivering mail in the performance of duty..<sup>3</sup> OWCP treated the July 24, 2019 incident as a new traumatic injury under OWCP File No. xxxxxx370 and accepted the claim for left knee sprain, contusion, and tear of medial meniscus. Appellant stopped work on July 25, 2019 and OWCP paid her medical benefits and wage-loss compensation on the supplemental rolls from September 28, 2019 through January 8, 2021.

X-rays of the left knee dated April 22, 2019 revealed reduction of the medial tibiofemoral and patellofemoral joint spaces with periarticular osteophytes suggestive of degenerative changes.

X-rays of the left knee dated July 24, 2019, noted that the history of appellant's left knee giving out and revealed reductions of the medial tibiofemoral and patellofemoral joint spaces with periarticular osteophytes suggestive of osteoarthritic changes.

A magnetic resonance imaging (MRI) scan of the left knee dated September 24, 2019 demonstrated meniscus tears, degenerative joint disease/primary osteoarthritis at the medial and lateral femorotibial compartments, and grade 4 chondromalacia patellae at the left articular facets.

In a February 20, 2020 medical report, Dr. Pietro Tonino, a Board-certified orthopedic surgeon, reviewed appellant's MRI scan and noted meniscal abnormalities and significant arthritis of the left knee. He opined that most of her symptoms were due to chondromalacia and indicated that her examination revealed primarily parapatellar discomfort and mild effusion, but no signs of ligamentous or meniscal pathology.

In a letter dated February 15, 2021, Dr. Nicholas Brown, a Board-certified orthopedic surgeon, noted that appellant had been off work from September 28, 2019 through January 18, 2021 for left knee pain, meniscal tear, and osteoarthritis.

On April 20, 2021 OWCP requested clarification from Dr. Brown regarding the status of appellant's accepted work-related conditions.

In a May 10, 2021 response, Dr. Brown opined that appellant's subjective complaints of left knee pain were consistent with degenerative changes in her left knee seen on imaging studies. He performed a physical examination, diagnosed left knee arthritis, and noted that she may require joint replacement surgery.

In a May 11, 2021 narrative report in response to OWCP's questionnaire, Dr. Brown indicated that appellant's subjective complaints of pain in the knee and her objective findings of

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<sup>3</sup> Appellant's recurrence claim was filed under OWCP File No. xxxxxx378, which was a traumatic injury claim accepted for an April 19, 2019 left knee sprain when appellant stepped in a hole. She stopped work on April 20, 2019 and returned to work without restrictions on May 4, 2019. Appellant's claims under OWCP File Nos. xxxxxx370 and xxxxxx378 have been administratively combined, with the latter serving as the master file.

decreased range of motion and tenderness to palpation, were consistent with arthritis. He reviewed standing x-rays of her left knee, which revealed near complete medial joint space narrowing with osteophytes and subchondral sclerosis. Dr. Brown noted that arthritis was a multifactorial condition, and that physical labor and meniscal tearing could accelerate the development of arthritis. He further noted that appellant had some level of arthritis in the left knee prior to her July 24, 2019 employment injury, but that he did not examine her prior to this injury and did not review preinjury x-rays. Dr. Brown opined that “the work-related condition has not resolved” and that she would require further conservative modalities and possible total knee replacement to treat her arthritis.

On December 2, 2021 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Hythem P. Shadid, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether she continued to suffer from residuals due to her accepted employment injury.

Dr. Shadid, in a January 17, 2022 report, reviewed appellant’s history of injury and medical records. He performed a physical examination of the left knee, which was unremarkable other than tenderness to the medial joint line. Dr. Shadid reviewed the left knee imaging studies dated April 22, July 24, and September 24, 2019 and a January 17, 2022 x-ray of the right and left knees, which revealed marked thinning of the patellofemoral joint spaces and varus deformity, bilaterally. He diagnosed work-related left knee sprain, left knee contusion, and left medial meniscus tear. Dr. Shadid found that appellant no longer had objective findings or any residuals of the left knee sprain, contusion, and medial meniscus tear and that those conditions would be self-resolving within six weeks. Regarding her left knee osteoarthritis, he opined that it was unrelated to the July 24, 2019 employment injury and noted that there was no material change between the April 22 and July 24, 2019 x-rays. Dr. Shadid explained that osteoarthritis is a progressive disease and would be expected to worsen and become more symptomatic as a part of its natural history. He opined that appellant was able to return to full-duty work as it related to her accepted employment conditions and was not in need of any further medical treatment.

On January 28, 2022 OWCP forwarded Dr. Shadid’s January 17, 2022 report to Dr. Brown for his review and comment.

By letter dated March 14, 2022, Dr. Brown indicated that appellant had reached maximum medical improvement as it related to the accepted employment-related conditions of left knee sprain, contusion, medial meniscus tear. He opined that “she has now progressed to osteoarthritis of her knee,” and therefore, “I do believe [that appellant] is limited in her ability to work due to her current osteoarthritic degenerative changes to her knee.”

On April 7, 2022 OWCP issued a notice proposing to terminate appellant’s entitlement to medical benefits as she no longer had residuals causally related to her accepted July 24, 2019 employment injury based on Dr. Shadid’s report. It afforded her 30 days to respond.

By decision dated May 11, 2022, OWCP terminated appellant’s entitlement to medical benefits effective May 9, 2022, finding that the weight of the medical evidence rested with the report of Dr. Shadid.

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

In a June 10, 2022 medical report, Dr. Brown diagnosed bilateral varus knee arthritis and noted that appellant was a candidate for joint replacement of both knees. He opined that she could perform sedentary work.

A hearing was held on September 8, 2022. In an October 7, 2022 follow-up report, Dr. Brown diagnosed bilateral varus knee arthritis and noted that "a knee after a meniscal tear can progress with further degenerative changes." He explained that "once the shock absorbing and stress reducing qualities of the meniscus are removed, the hyaline cartilage on the end of the knees do see increased stresses and this can accelerate degeneration. Therefore, if [appellant] does have an accepted work injury as a meniscal tear, I think it is reasonable that the subsequent knee arthritis is also related."

On October 17, 2022 appellant, through counsel, requested expansion of the acceptance of appellant's July 24, 2019 claim to include bilateral varus knee arthritis.

By decision dated November 28, 2022, OWCP's hearing representative affirmed OWCP's May 11, 2022 termination decision. The hearing representative further found a conflict in the medical evidence between Dr. Brown, appellant's examining physician, and Dr. Shadid, OWCP's second opinion physician, regarding expansion of her claim to include left knee osteoarthritis. OWCP's hearing representative noted that appellant's medical benefits should remain closed and remanded the case for OWCP to refer appellant for an impartial medical examination to resolve the conflict in the medical opinion evidence regarding whether her claim should be expanded to include left knee osteoarthritis causally related to the accepted April 19 and July 24, 2019 employment injuries.

On February 2, 2023 OWCP referred appellant, together with a SOAF and the medical record, to Dr. Jeffrey Kazaglis, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence regarding whether she sustained left knee arthritis causally related to her accepted 2019 injuries.

In a February 21, 2023 report, Dr. Kazaglis, serving as the impartial medical examiner (IME), indicated that he had reviewed appellant's records, including the April 22 and July 24, 2019 x-rays, the September 24, 2019 MRI scan, and the reports of Dr. Brown. On physical examination of the right knee, he observed mild varus deformity and crepitus in the patellofemoral joint with range of motion. On physical examination of the left knee, Dr. Kazaglis observed varus deformity, trace effusion, tenderness at the medial compartment and patellofemoral joint, crepitus with range of motion, and pain with McMurray's sign over the medial aspect of the left knee. Regarding the accepted diagnoses of left knee contusion, sprain, and medial meniscus tear, he opined that the conditions were self-limited by natural history and had resolved within six weeks. Dr. Kazaglis noted that after the initial injury on April 19, 2019 appellant's x-rays were consistent with osteoarthritis of the left knee and that her symptoms fully resolved by May 2019. He also noted that she had a secondary exacerbation of her left knee osteoarthritis on July 24, 2019 after which her x-ray findings were essentially the same and a September 24, 2019 left knee MRI scan demonstrated advanced degenerative osteoarthritis. Dr. Kazaglis opined that appellant's work-related injuries of left knee sprain, contusion, and medial meniscus tear temporarily exacerbated

her left knee osteoarthritis. He noted that temporary exacerbations of osteoarthritis were self-limited and symptomatic for six to eight weeks. Dr. Kazaglis indicated that, at the time of his evaluation, appellant had symptomatic osteoarthritis of her left knee which was not related to the April 19 and July 24, 2019 employment injuries. He explained that any progression of her symptoms was part of the natural history of osteoarthritis where the symptoms normally will worsen with time. Dr. Kazaglis noted that appellant may require a total knee arthroplasty in the future but opined that this treatment was not related to her April 19 and July 24, 2019 employment injuries.

By *de novo* decision dated March 23, 2023, OWCP terminated appellant's entitlement to medical benefits effective May 11, 2022. It found that the special weight of medical evidence rested with Dr. Kazaglis, the IME.

On March 31, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on September 11, 2023.

By decision dated November 20, 2023, OWCP's hearing representative affirmed the May 23, 2023 decision.

### **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>4</sup> When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.<sup>5</sup> Thus, a subsequent injury, be it 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.<sup>6</sup>

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical 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>

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<sup>4</sup> *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>5</sup> *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

<sup>6</sup> *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>7</sup> *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>8</sup> *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

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 (known as a referee physician or IME) who shall make an examination.”<sup>9</sup>

This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>10</sup> When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

### ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision with regard to appellant’s expansion claim.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Brown, appellant’s treating physician, and Dr. Shadid, an OWCP second opinion examiner, regarding whether she had sustained left knee osteoarthritis causally related to her accepted employment injury. It referred her, pursuant to 5 U.S.C. § 8123(a), to Dr. Kazaglis for an impartial medical examination and an opinion to resolve the conflict.

In a February 21, 2023 report, Dr. Kazaglis opined that the record supported that the accepted conditions of left knee sprain, contusion, and medial meniscus tear caused a temporary exacerbation of underlying left knee osteoarthritis. However, he indicated that these exacerbations and aggravations were temporary and would have resolved within six to eight weeks with conservative treatment. He further opined that the symptoms may progress as a part of the natural history of osteoarthritis where the symptoms normally would worsen with time. The Board finds that the report of Dr. Kazaglis is conclusory in nature. The Board has held that a conclusory opinion provided by a physician, without the necessary rationale, is insufficient to resolve the issue.<sup>12</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation, but OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that

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<sup>9</sup> 5 U.S.C. § 8123(a).

<sup>10</sup> 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

<sup>11</sup> *See W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>12</sup> *See C.P.*, Docket No. 21-1120 (issued January 27, 2023); *C.W.*, Docket No. 20-1339 (issued September 15, 2021); *J.A.*, Docket No. 20-1258 (issued August 4, 2021); *G.Y.*, Docket No. 19-1683 (issued March 16, 2021); *A.C.*, Docket No. 19-1522 (issued July 27, 2020); *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>13</sup> *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

will resolve the relevant issues in the case.<sup>14</sup> When OWCP secures an opinion from an impartial medical specialist and the opinion of the specialist requires further clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.<sup>15</sup>

As Dr. Kazaglis' opinion was conclusory, the Board finds that the issue of claim expansion remains unresolved.<sup>16</sup>

The Board shall therefore remand the case for OWCP to obtain a supplemental opinion from Dr. Kazaglis.<sup>17</sup> If the IME is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant to a new IME for the purpose of obtaining a rationalized medical opinion on the issue.<sup>18</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of an employee's entitlement to benefits.<sup>19</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>20</sup> To terminate entitlement to medical benefits, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>21</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP has failed to meet its burden of proof to terminate appellant's entitlement to medical benefits, effective May 11, 2022.

As explained above, OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded to include left knee osteoarthritis,

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<sup>14</sup> *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

<sup>15</sup> *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluation Medical Evidence*, Chapter 2.810.11e (September 2010).

<sup>16</sup> *See C.S.*, Docket No. 20-0621 (issued December 22, 2020); *J.T.*, Docket No. 19-1723 (issued August 24, 2020).

<sup>17</sup> *See P.J.*, Docket No. 23-1168 (issued February 6, 2024).

<sup>18</sup> *Id.*; *see also M.N.*, Docket No. 21-0980 (issued July 24, 2023); *C.C.*, Docket No. 22-1315 (issued July 23, 2023); *T.C.*, Docket No. 20-1170 (issued January 29, 2021); *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988).

<sup>19</sup> *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>20</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>21</sup> *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

but has not resolved the issue. As the issue of expansion is not in posture for decision, the Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to medical benefits.<sup>22</sup>

**CONCLUSION**

The Board finds that the case is not in posture for decision with regard to appellant's expansion claim. The Board further finds that OWCP improperly terminated appellant's entitlement to medical benefits, effective May 11, 2022.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 2, 2024  
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

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<sup>22</sup> See *C.M.*, Docket No. 22-0183 (issued January 9, 2024); *M.B.*, Docket No. 22-1180 (issued August 17, 2023); *C.S.*, *supra* note 16.