

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a left knee meniscus tear as causally related to her accepted November 14, 2020 employment injury.

FACTUAL HISTORY

On November 14, 2020 appellant, then a 60-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her left knee when she tripped on a plastic strip and fell on her left knee while in the performance of duty. On January 11, 2021 OWCP accepted the claim for a left knee contusion. It paid appellant wage-loss compensation on the supplemental rolls from December 30, 2020 to December 2, 2022.

A December 15, 2020 magnetic resonance imaging (MRI) scan of appellant's left knee documented a moderate probability for tear of the body segment lateral meniscus, questionable findings of a small bone contusion beneath the lateral tibial plateau and intact medial meniscus-ligaments-extensor mechanism-posterior-lateral corner.

On March 14, 2021 appellant fell down her front steps when her left knee buckled. She underwent surgery on March 15, 2021 for a broken left femur.

On December 14, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of her accepted condition and whether the acceptance of the claim should be expanded to include additional conditions.

In a January 25, 2022 report, Dr. Didizian noted his review of the SOAF, appellant's medical record, and examination findings. He opined that appellant's work-related left knee contusion had resolved and that she was at maximum medical improvement. Dr. Didizian further opined that the case should be expanded to include some degree of osteoarthritis. He explained that it was conceivable that the work injury temporarily aggravated the degenerative disease and also caused the lateral meniscal tear, noting that appellant's MRI scan showed lateral meniscal tear and it was not unusual to have a torn meniscus result in a buckling of the knee and secondary fall. Dr. Didizian completed a January 25, 2022 work capacity evaluation (Form OWCP-5c) noting appellant's work restrictions. Following OWCP's request for clarification, he, in a March 31, 2022 report, indicated that appellant's knee contusion and temporary aggravation of degenerative disease had resolved at the time of his examination. Dr. Didizian clarified that appellant's MRI study was suggestive, rather than definitive, for lateral meniscus tear. He opined that since appellant's contusion diagnosis and aggravation of degenerative disease were temporary, there was no work-related reason for her March 14, 2021 fall. In a May 14, 2022 addendum report, Dr. Didizian stated that diagnostic studies should be clinically correlated but there was no clinical correlation in appellant's records for a lateral meniscal tear, which the MRI scan found was suggestive, but not definitive. He further opined that appellant's temporary aggravation of left knee degenerative disease and contusion had resolved.

On June 15, 2022 OWCP expanded the acceptance of the claim to include temporary aggravation of osteoarthritis, left knee (resolved). In its June 15, 2022 decision, it also noted that a separate letter would be sent to address the diagnosis of the meniscus tear.

On June 23, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a July 19, 2022 letter, Dr. William T. Ingrames, a Board-certified osteopathic family physician, opined that he was treating appellant for work-related injuries of lateral meniscus tear left knee, lateral tibial plateau bruise/edema left knee, medical meniscus dysfunction and post-traumatic synovitis left knee. He agreed with Dr. Didizian that appellant had an aggravation of her underlying degenerative arthritis, which caused synovitis and dysfunction, but indicated that appellant also sustained a meniscal tear as a result of her work injury as determined by his multiple physical examinations. Dr. Ingrames indicated that his opinion was shared by his associate, Dr. Tapan Joshi, a Board-certified physiatrist, in his June 2, 2021 note.

Following a preliminary review, by an August 25, 2022 decision, OWCP's hearing representative determined that a conflict in medical opinion evidence existed between Dr. Ingrames and Dr. Didizian as to whether appellant sustained a meniscal tear as a result of the November 14, 2020 work injury. The hearing representative referred appellant for an impartial medical examination in order to resolve the conflict of medical opinion.

On September 7, 2022 OWCP sent an updated SOAF dated September 1, 2022 to Dr. Robert B. Grob, a Board-certified osteopathic orthopedic surgeon serving as an impartial medical examiner (IME), to resolve the conflict in medical opinion regarding whether the accepted condition of aggravation of osteoarthritis of the left knee had resolved, and whether appellant sustained a meniscal tear as a result of her November 14, 2020 work injury.

In a December 29, 2022 report, Dr. Grob noted his review of the September 1, 2022 SOAF and the medical record. He set forth appellant's December 2, 2022 physical examination findings and opined that her left knee contusion and temporary aggravation of arthritis of the left knee had resolved based on no objective findings at the time of examination. Dr. Grob further advised that appellant's December 15, 2020 MRI scan indicated a preexisting degenerative condition along her left knee, including a tearing of the lateral meniscus. However, biomechanically, her mechanism of injury, which did not involve a twisting injury, did not support any aggravation of meniscal pathology. Thus, he opined that appellant had fully recovered from the temporary aggravation of left knee arthritis, that the temporary aggravation had fully resolved, and that appellant no longer required ongoing treatment. Dr. Grob explained that the medical care appellant continued to seek was due to her progressive degenerative left knee condition, age, and morbid obesity.

By decision dated March 16, 2023, OWCP denied expansion of the acceptance of appellant's claim to include a left knee meniscus tear. It found that the special weight of the medical evidence rested with the December 29, 2022 report of Dr. Grob, the IME.

On April 4, 2023 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received an April 18, 2023 letter, wherein Dr. Robert Cabry, Board-certified in family medicine, opined that the mechanism of the November 14, 2020 work-related fall was consistent with a left knee meniscal tear, aggravation and worsening of her left knee

arthritis, left knee contusion, and subsequent femur fracture as a result of the injured left knee giving way. With regard to the meniscal tear, Dr. Cabry indicated that although there was no twisting mechanism, a violent fall that causes rapid flexion of the knee can lead to a meniscal tear. He concluded that appellant had not fully recovered from her knee injury. Dr. Cabry further opined that appellant was not fit for full duty and she would require permanent restrictions in order to return to work in some capacity.

OWCP received progress notes from Dr. Cabry dated March 10, May 1, June 12, July 10, August 21, and September 18, 2023. In his progress notes, Dr. Cabry related appellant's current physical examination findings. He diagnosed chronic knee pain related to meniscal tear and an aggravation of underlying arthritis. Dr. Cabry also opined that appellant could perform permanent sedentary work.

In a June 6, 2023 addendum report, Dr. Grob reviewed the updated March 16, 2023 SOAF and reiterated his opinion that appellant had recovered from her work-related left knee contusion as well as the accepted temporary aggravation of left knee arthritis (resolved) from June 15, 2022 based on no positive objective findings to substantiate any further treatment or disability. Dr. Grob also reiterated that while appellant had a preexisting degenerative condition along her left knee, including tearing of the lateral meniscus, the mechanism of injury would not support this pathology. He further indicated that his medical opinion did not change that all medical treatment should be discontinued and she could perform her regular job duties.

An oral hearing was held on September 5, 2023 regarding expansion of the acceptance of appellant's claim.

In a September 19, 2023 letter, Dr. Cabry disagreed with Dr. Grob's December 29, 2022 opinion that the mechanics of the November 14, 2020 fall rendered it impossible to tear the lateral meniscus as there was no pivoting motion. He discussed appellant's MRI scan findings. Dr. Cabry stated that if appellant fell hard enough to cause a significant injury to the bone below the lateral meniscus, the meniscus can tear with a hyperflexed knee or direct severe impact, causing both the femur and tibia to impact one another with the meniscus in between. He opined that the lateral meniscal tear was caused by the fall. Dr. Cabry continued to submit progress reports.

By decision dated November 17, 2023, OWCP's hearing representative affirmed OWCP's March 16, 2023 decision.

LEGAL PRECEDENT

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.⁴

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁵

⁴ *L.F.*, Docket No. 20-0359 (issued January 27, 2021); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *L.F.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

The 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.⁶ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷

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.⁸

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁹

Section 8123(a) provides 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.¹⁰ OWCP's implementing regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. 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.¹¹ Were a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹²

ANALYSIS

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

⁶ *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See D.T.*, *id.*; *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁸ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁹ *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ 20 C.F.R. § 10.321.

¹² *A.R.*, Docket No. 18-0441 (issued February 19, 2020); *V.K.*, Docket No. 18-1005 (issued February 1, 2019); *D.M.*, Docket No. 17-1411 (issued June 7, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

OWCP accepted that on November 14, 2020 appellant tripped and fell on her left knee. It subsequently found a conflict in the medical opinion evidence between Dr. Ingrames, appellant's treating physician, who opined that the left knee meniscus tear was causally related to the November 14, 2020 work injury, and its second opinion physician, Dr. Didizian, who opined that the MRI scan was suggestive and not definitive for left knee lateral meniscus tear. OWCP properly referred appellant to Dr. Grob, serving as the IME, to resolve the conflict with regard to whether the acceptance of the claim should be expanded to include left knee meniscus tear, pursuant to 5 U.S.C. § 8123(a).

With regard to the left meniscus tear, Dr. Grob opined, in his December 29, 2022 report, that while appellant's December 15, 2020 MRI scan indicated a preexisting degenerative condition along her left knee including a tearing of the lateral meniscus, biomechanically, her mechanism of injury, which does not involve a twisting injury, did not support any aggravation of meniscal pathology.

In a June 6, 2023 addendum report, Dr. Grob reviewed the updated March 16, 2023 SOAF. He again recounted that while the medical evidence of record supported a finding of preexisting degenerative condition along appellant's left knee, including tearing of the lateral meniscus, her mechanism of injury would not support this pathology.

The Board finds that Dr. Grob's opinion was conclusory and did not provide sufficient rationale. Medical conclusions lacking rationale are of diminished value.¹³ Thus, Dr. Grob's opinion is insufficient to be accorded the special weight of the medical evidence accorded to an IME.

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. However, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁴ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁵

The Board has held that, when OWCP obtains an opinion from an IME for the purpose of resolving a conflict in the medical evidence and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the IME to correct the defect in his original report.¹⁶

The case shall therefore be remanded to OWCP for referral to Dr. Grob for a supplemental opinion regarding whether appellant's left knee meniscus tear is causally related to her accepted November 14, 2020 employment injury. If Dr. Grob is unable or unwilling to clarify his opinion,

¹³ See *F.C.*, Docket No. 19-1267 (issued December 20, 2019); *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹⁴ See *T.H.*, Docket No. 20-0905 (issued December 9, 2022); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ *Id.*; see also *C.F.*, Docket No. 21-0003 (issued January 21, 2022); *S.A.*, Docket No. 18-1024 (issued March 12, 2020).

¹⁶ See *L.R.*, Docket No. 21-1312 (issued March 6, 2023); *F.H.*, Docket No. 17-1924 (issued January 25, 2019); *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

or if his requested supplemental report is lacking rationale, OWCP shall refer appellant to a new IME for the purpose of obtaining a rationalized medical opinion.¹⁷ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 16, 2024
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

¹⁷ *L.R., id.; M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Harold Travis, id.*