

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

_____)	
J.V., Appellant)	
)	
and)	Docket No. 24-0621
)	Issued: September 19, 2024
U.S. POSTAL SERVICE, PARAMOUNT POST OFFICE, Paramount, CA, Employer)	
_____)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 21, 2024 appellant filed a timely appeal from a December 27, 2023 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional right knee conditions as causally related to the accepted

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 27, 2023 decision, OWCP received additional evidence. 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.*

employment injury; and (2) whether appellant has met her burden of proof to establish disability from work commencing May 23, 2016 causally related to her accepted employment injury.

FACTUAL HISTORY

On January 30, 2017 appellant, then a 51-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a right knee injury due to the factors of her federal employment, including prolonged standing and walking, pushing and pulling, mounting and dismounting her postal vehicle, and delivering mail. She noted that she first became aware of her condition and realized its relation to her federal employment on April 7, 2016. Appellant stopped work on April 7, 2016.

In an April 21, 2016 medical report, Dr. Yung Han, an orthopedic surgeon, evaluated appellant for severe right knee pain which interfered with her activities of daily living, including walking. He noted that she had undergone an injection with several weeks of relief and walked with a severely antalgic gait. Dr. Han diagnosed unilateral primary osteoarthritis of the right knee and recommended a total knee replacement.

In follow-up reports dated May 5 through August 18, 2016, Dr. Han discussed appellant's ongoing right knee complaints and continued to recommend a total knee replacement or further injections.

In a medical report dated August 29, 2016, Dr. Basimah Khulusi, a Board-certified physiatrist, noted that appellant complained of right knee pain, which she attributed to walking during her employment for the past 11 years. She also noted that appellant related a prior injury to the left knee,³ and that the right knee pain was intermittent leading up to December 2015, but by April 2016 was intolerable, so she stopped working. Dr. Khulusi performed a physical examination and observed that appellant had difficulty getting up from sitting to standing, avoided complete weight-bearing on the right side, had a severely antalgic gait, and that the right knee was hot compared to the left. She also noted a large Baker's cyst at the back of the knee, significant tenderness around the right knee joint, pain with active movement, and severe crepitation with repetitive flexion and extension movements of the leg. Dr. Khulusi diagnosed acceleration of degeneration of the right knee, Baker's cyst, and permanent aggravation of degenerative joint disease of the right knee due to occupational repetitive strain. She noted that appellant had been off from work since April 7, 2016 and recommended that she remain off from work through September 12, 2016. Dr. Khulusi also prescribed a rollator walker.

A September 2, 2016 magnetic resonance imaging (MRI) scan of the right knee demonstrated a complex tear of the medial meniscus with peripheral extrusion and tricompartmental osteoarthritis; a partial thickness intrasubstance tear of the anterior cruciate ligament (ACL); posterior cruciate ligament (PCL) sprain; medial collateral ligament (MCL)

³ Appellant has a prior traumatic injury claim (Form CA-1) for an April 26, 2008 left lower extremity injury, which OWCP accepted for left thigh strain and left knee meniscal tear under OWCP File No. xxxxxx354. Her claims have not been administratively combined.

sprain; joint effusion; an intra-articular body versus prominent osteophyte arising from the superior pole of the patella; and a tear of the anterior horn of the lateral meniscus.

In a September 12, 2016 letter, Dr. John S. Kim, a Board-certified family medicine physician, diagnosed severe osteoarthritis of the right knee, which he noted was affecting appellant's ability to walk and work as a postal carrier. He indicated that she had undergone extensive treatment, including medication, physical therapy, and injections and that Dr. Han had recommended a total knee replacement. Dr. Kim opined that appellant's osteoarthritis was exacerbated by her work duties, including carrying packages and letters. He indicated that she had been disabled from work since April 11, 2016.

In an October 4, 2016 narrative report, Dr. Charles Herring, a Board-certified orthopedic surgeon, noted that appellant complained of right knee pain, which she attributed to her mail delivery duties for the past 11 years, including a mix of park-and-loop, apartments, curbside, dismount, and businesses. He performed a physical examination and observed medial and lateral joint line tenderness and hypersensitivity, but no ligament laxity. Dr. Herring also noted that appellant was using a walker. He reviewed the September 2, 2016 MRI scan and an x-ray, which revealed tricompartmental osteoarthritis, but no fractures or dislocations. Dr. Herring diagnosed tricompartmental osteoarthritis, complex medial and lateral meniscal tears, and loose bodies in the right knee. He opined that the cause of the diagnosed conditions was appellant's employment duties, including going up and down steps, squatting, stooping, kneeling, and walking for long distances. Dr. Herring explained that "any type of axial load can cause a meniscal tear" and her "degenerative changes are from repetitive job duties over the years." He found that appellant was temporarily totally disabled.

In an October 25, 2016 narrative report, Dr. Khulusi diagnosed complex tear of the right medial meniscus, tear of the anterior horn of the lateral meniscus, MCL and PCL sprains, intrasubstance tear of the ACL, and permanent aggravation of tricompartmental osteoarthritis. She requested that OWCP accept all the diagnosed conditions as work-related injuries and opined that appellant's employment duties for the last 11 years had caused the diagnosed conditions. Dr. Khulusi explained that repetitive lifting, carrying, entering and exiting her postal vehicle, and climbing to deliver packages resulted in repetitive spraining and straining of the structures of her right knee joint and caused a cumulative trauma disorder. She indicated that this repetitive spraining and straining over many years resulted in weakening of the structures of the knee joint and loading and stressing of the softened structures resulted in further damage to the knee. Dr. Khulusi recommended that appellant remain off from work.

In a statement dated March 3, 2017, appellant indicated that during a typical workday, she cased mail for 2 or more hours, walked or stood for 3 to 4 hours, pushed full loads of hampers, and carried heavy packages every 15 minutes. She spent eight hours per day on her route, which included business and residential mail delivery. Appellant also indicated that she entered and exited her postal vehicle at least 30 times per day and spent about four hours walking and four hours driving for park and loop routes.

On May 16, 2017 OWCP accepted appellant's claim for sprains of the MCL and PCL of the right knee.

OWCP continued to receive evidence, including reports dated October 11, 2016 through January 9, 2017, wherein Dr. Khulusi found that appellant should remain off work.

In a February 13, 2017 medical report, Dr. Khulusi noted that appellant's gait had improved significantly, but that she was not able to squat or fully extend either knee while standing. She released appellant to return to modified-duty work with restrictions of no lifting greater than 10 pounds, no standing or walking more than two hours per day intermittently, no climbing, kneeling, pushing, or pulling more than 100 pounds on wheels, driving a company vehicle for no more than two hours intermittently, and with instructions to exit her postal vehicle using both legs.

In follow-up and duty status reports (Form CA-17) dated March 21 through May 30, 2017, Dr. Khulusi continued to release appellant to modified-duty work.

In a report dated June 1, 2017, Dr. Khulusi requested that OWCP expand its acceptance of the claim to include a tear of the right medial meniscus, a tear of the anterior horn of the lateral meniscus, an intrasubstance tear of the ACL, and permanent aggravation of tricompartmental osteoarthritis. She explained that appellant's job had been physically demanding with prolonged periods of walking, lifting, and carrying heavy loads, and prolonged periods of working in awkward postures such as when retrieving heavy items from hampers and from the back of her postal vehicle.

On June 8, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability from work from June 11, 2016 through February 18, 2017. On June 14, 2017 she filed additional CA-7 forms for total disability from work from May 23 through June 2, 2016, and from June 3, 2016 through May 18, 2017.

In a June 26, 2017 development letter, OWCP informed appellant of the deficiencies of her wage-loss compensation claims. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

In a June 27, 2017 follow-up report, Dr. Khulusi continued to release appellant to modified-duty work with the same restrictions.

In a July 6, 2017 narrative report, Dr. Khulusi again requested that OWCP expand its acceptance of appellant's claim to include additional right knee conditions and opined that from April 11, 2016 through February 12, 2017 appellant was totally disabled from work due to an inability to bear weight on the right leg and difficulty with ambulation.

In a July 11, 2017 narrative report, Dr. Herring noted physical examination findings of mild medial joint line tenderness, but no lateral tenderness and negative ligament laxity tests.

Appellant accepted a modified-duty carrier position on August 17, 2017. The position included requirements of: lifting up to 10 pounds, driving, standing, and walking for up to two hours; casing mail for one hour; delivering mail up to two hours; and no climbing or kneeling.

In follow-up reports dated August 30 and November 6, 2017, Dr. Khulusi released appellant to return to modified-duty work with the same restrictions.

In follow-up reports dated September 5 and November 14, 2017, Dr. Herring noted that he had administered an injection into appellant's right knee and that her physical examination revealed genu varum, medial and lateral joint line tenderness, and positive patellofemoral crepitus.

On October 27, 2017 OWCP prepared a statement of accepted facts (SOAF) which noted that it had accepted appellant's claim for sprains of the MCL and PCL of the right knee due to walking and climbing stairs while carrying mail and repeatedly stepping out of her postal vehicle. It described her duties as a letter carrier and noted that since she began working for the employing establishment, she had worked full duty as a letter carrier from October 3, 2005 through April 28, 2008; modified duty from April 28, 2008 through February 3, 2011 with duties consisting of no lifting over 15 pounds and walking or standing for no more than four hours per day; full duty from February 3, 2011 through March 5, 2013; was off work from March 6, 2013 through February 2014; worked partial day modified-duty work for four days in June 2016; was off work from June 8, 2016 through February 2017; and performed partial day modified-duty work as of February 2017.

On October 31, 2017 OWCP referred appellant, together with the SOAF, the medical record, and a series of questions, to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of her employment-related injury.

Dr. Einbund, in a November 28, 2017 report, reviewed the SOAF, appellant's history of injury, and medical records. He performed a physical examination of the right knee, which revealed a limping gait, diffuse tenderness, slight swelling, and reduced range of motion. Dr. Einbund reviewed a right knee x-ray dated December 9, 2015 which revealed degenerative joint disease of the right knee and effusion, and the September 2, 2016 MRI scan of the right knee. He diagnosed work-related right knee PCL and MCL sprains. Dr. Einbund opined that appellant no longer had objective findings or any residuals of the right knee MCL and PCL sprains, indicating that he found no laxity during his examination. Regarding her right knee osteoarthritis and meniscal tears, he opined that they were unrelated to the April 7, 2016 occupational exposure and consistent with age-related changes. Dr. Einbund explained that appellant had a history of extended periods of time off from work, extended periods of modified duty, and that her osteoarthritis was consistent with age-related changes. He opined that she 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. Dr. Einbund opined that appellant did have physical limitations due to nonindustrial underlying right knee osteoarthritis.

On December 21, 2017 OWCP forwarded Dr. Einbund's November 28, 2017 report to Dr. Herring for his review and comment.

By letter dated January 4, 2018, Dr. Khulusi indicated that she had reviewed the November 28, 2017 report of Dr. Einbund. She requested that OWCP refer appellant for an impartial medical evaluation.

By letter dated February 27, 2018, Dr. Herring indicated that he had reviewed the November 28, 2017 report of Dr. Einbund and disagreed with his opinion that appellant's right tricompartmental osteoarthritis and complex tear of the medial and lateral menisci were

attributable to age-related changes. He explained that high levels of physical stresses contributed to osteoarthritis disorders of the hip and knee and noted that not all women her age develop tricompartmental osteoarthritis apart from job factors. Dr. Herring noted that even while working modified duty, appellant was still applying repetitive stresses to the right knee.

In follow-up reports dated January 29 through June 4, 2018, Dr. Khulusi continued to release appellant to return to modified-duty work with restrictions.

On June 29, 2018 appellant accepted a modified city carrier position. The position included casing and carrying a specific route up to two hours per day and driving, walking, standing, and lifting no more than 10 pounds for up to two hours.

In follow-up reports dated August 1, 2018 through December 21, 2020, Dr. Khulusi continued to release appellant to modified-duty work with restrictions for the right knee.

By decision dated June 15, 2021, OWCP denied appellant's claim for disability from work commencing May 23, 2016, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury. It accorded the weight of the evidence to the second opinion physician, Dr. Einbund, who did not support the requested expansion of the acceptance of the claim to include additional right knee conditions.

OWCP continued to receive evidence, including follow-up reports dated June 17, 2021 through July 6, 2022 by Dr. Khulusi, who continued to release appellant to modified-duty work.

On June 15, 2022 appellant requested reconsideration of OWCP's June 15, 2021 denial of disability. In support thereof, she submitted an August 11, 2021 narrative report from Dr. Khulusi, who explained that she disagreed with Dr. Einbund's conclusion that the work-related diagnoses were limited to sprains of the right MCL and PCL and requested that OWCP refer appellant for an impartial medical examination.

By decision dated September 13, 2022, OWCP denied modification of its June 15, 2021 decision.

In a follow-up report dated December 7, 2022, Dr. Khulusi noted that appellant related a significant worsening of her right knee pain for the past three weeks. Physical examination of the right knee revealed moderate effusion, limited active movement due to severe pain, severely antalgic transitional movements, use of a cane, reduced extension, and that the knee was hot. Dr. Khulusi opined that appellant was totally disabled from all work and recommended an updated right knee MRI scan.

In a narrative report dated December 13, 2022, Dr. Herring noted that appellant related complaints of significant right knee pain. He performed a physical examination, which revealed medial and lateral joint line tenderness, positive patellofemoral crepitus, and negative ligament laxity tests. Dr. Herring diagnosed right knee tricompartmental osteoarthritis, complex medial meniscus tear, lateral meniscus tear, and loose bodies. He recommended steroid injections.

An MRI scan of the right knee dated December 24, 2022 demonstrated mucoid degeneration with high-grade partial tear of the ACL, mucoid degeneration with moderate grade partial tear of the PCL, a large complex tear of the medial meniscus body and posterior horn with peripheral extrusion and associated marrow edema, osteoarthritis, and a small joint effusion.

On January 16, 2023 Dr. Khulusi continued to find appellant totally disabled from work.

On February 9, 2023 OWCP referred appellant, together with a SOAF, the medical record, and a series of questions, to Dr. Jacob Rabinovich, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of her employment-related injury. It advised that the purpose of the evaluation was to determine whether appellant sustained a right medial meniscus complex tear, a tear of the anterior horn of the right knee lateral meniscus, an intrasubstance tear of the right ACL, a permanent aggravation of tricompartmental osteoarthritis, and right knee loose bodies due to her accepted employment injury.

Dr. Rabinovich, in a February 27, 2023 report, reviewed appellant's history of injury and medical records. He documented physical examination findings and noted that her updated right knee MRI scan of December 24, 2022 no longer showed evidence of a lateral meniscus tear as compared to the September 2, 2016 study. Dr. Rabinovich diagnosed work-related right knee PCL and MCL sprains, which had resolved "at least by November 28, 2017." He attributed the remainder of appellant's symptoms and clinical and diagnostic findings to age-related degeneration and not to her employment duties and opined that her work duties did not aggravate her underlying osteoarthritis. Dr. Rabinovich noted that appellant began employment in 2005 and by August 2008 had right knee arthritic changes and advanced left knee osteoarthritis, which would he found unrelated to her brief work history. He indicated that she was not capable of performing her full-duty position and noted that her limitations were due to nonindustrial underlying bilateral knee osteoarthritis.

In follow-up reports dated March 7 and May 9, 2023, Dr. Khulusi continued to find appellant totally disabled from work due to her right knee condition.⁴

In a report dated March 28, 2023, Dr. Herring indicated that he performed an injection to the right knee.

On July 7, 2023 appellant, through her then-representative, requested reconsideration of OWCP's September 13, 2022 decision. In support of the request, she submitted a June 13, 2023 narrative report by Dr. Khulusi, who expressed her disagreement with the opinion of Dr. Rabinovich. Dr. Khulusi reiterated that appellant's work duties aggravated her osteoarthritis and requested that OWCP refer appellant for a referee evaluation.

By decision dated July 25, 2023, OWCP denied modification of its September 13, 2022 decision.

⁴ In her March 7, 2023 report, Dr. Khulusi noted that appellant had "been medically retired on disability since January 31, 2023."

In an August 8, 2023 follow-up report, Dr. Khulusi documented physical examination findings and continued to keep appellant off from work.

In a September 5, 2023 narrative report, Dr. Herring opined that appellant's employment duties "at least hastened the development of right knee osteoarthritis." He recommended corticosteroid injections.

OWCP also received physical therapy treatment notes.

On October 11, 2023 appellant, through her then-representative, requested reconsideration of OWCP's July 25, 2023 decision.

By decision dated December 27, 2023, OWCP denied modification of its July 25, 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.⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or an impartial medical

⁵ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *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).

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

⁸ *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁹ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

examiner (IME)) who shall make an examination.”¹⁰ 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.¹¹ When there exist 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.¹²

ANALYSIS -- ISSUE 1

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

In an October 25, 2016 narrative report, Dr. Khulusi described appellant’s work duties and history of right knee pain, reviewed her medical records, and documented physical examination findings. She diagnosed a complex tear of the right medial meniscus, a tear of the anterior horn of the lateral meniscus, MCL and PCL sprains, an intrasubstance tear of the ACL, and permanent aggravation of tricompartmental osteoarthritis. Dr. Khulusi explained that repetitive lifting, carrying, entering and exiting her postal vehicle, and climbing to deliver packages for the last 11 years resulted in repetitive spraining and straining of the structures of appellant’s right knee joint and caused a cumulative trauma disorder. She indicated that this repetitive spraining and straining resulted in weakening of the structures of the knee joint, and that loading and stressing of the softened structures resulted in further damage to the knee. In a report dated June 13, 2023, Dr. Khulusi again found that appellant had sustained additional employment-related right knee conditions and expressed her disagreement with OWCP’s referral physician, Dr. Rabinovich.

Dr. Rabinovich, in his February 27, 2023 report, reviewed appellant’s history of injury and medical records. He performed a physical examination of the right knee, including the results of imaging studies, noting that a December 24, 2022 MRI scan no longer showed evidence of a lateral meniscus tear. Dr. Rabinovich opined that appellant’s PCL and MCL sprains had resolved and that the remainder of her symptoms and findings resulted from age-related degeneration unrelated to her employment duties. He further found that her work duties had not aggravated her underlying osteoarthritis. Dr. Rabinovich attributed appellant’s limitations to her nonemployment-related underlying right knee osteoarthritis.

As noted above, if there is a disagreement between an employee’s physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.¹³ The Board finds that a conflict in medical opinion exists between Dr. Khulusi and Dr. Rabinovich regarding

¹⁰ 5 U.S.C. § 8123(a).

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

¹² 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); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹³ See *E.B.*, Docket No. 23-0169 (issued August 24, 2023); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

whether the acceptance of appellant's claim should be expanded to include additional right knee conditions as causally related to the accepted employment factors.¹⁴

The Board, therefore, will remand the case for OWCP to refer appellant to an IME for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).¹⁵ After such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding appellant's expansion claim and claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹⁶ 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.¹⁷ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁸ 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.¹⁹ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.²⁰

When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.²¹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.²² The opinion of the physician must be one of

¹⁴ *D.W.*, Docket No. 24-0157 (issued March 26, 2024); *S.T.*, Docket No. 21-0906 (issued September 2, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

¹⁵ *Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).

¹⁶ *Supra* note 1.

¹⁷ *L.S.*, Docket No. 23-0778 (issued December 27, 2023); *L.S.*, Docket No. 22-0821 (issued March 20, 2023); *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).

¹⁸ 20 C.F.R. § 10.5(f); *C.L.*, Docket No. 20-0520 (issued July 7, 2022); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁹ *L.S.*, *supra* note 17; *K.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

²⁰ *C.L.*, *supra* note 18; *M.T.*, Docket No. 21-0783 (issued December 27, 2021).

²¹ *L.S.*, *supra* note 17; *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

²² *See L.S., id.*; *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.²³

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.²⁴

ANALYSIS -- ISSUE 2

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

On February 9, 2023 OWCP referred appellant, together with a SOAF, the medical record, and a series of questions, to Dr. Rabinovich for a second opinion examination to determine the nature and extent of her employment-related injury. Dr. Rabinovich, in his February 27, 2023 report, reviewed appellant's history of injury and medical records. He documented physical examination findings and noted that her updated right knee MRI scan of December 24, 2022 no longer showed evidence of a lateral meniscus tear as compared to the September 2, 2016 study. Dr. Rabinovich diagnosed work-related right knee PCL and MCL sprains, which had resolved "at least by November 28, 2017." He opined that appellant was not capable of performing her full-duty position, but that she could return to modified work with restrictions that were due to nonindustrial underlying bilateral knee osteoarthritis. Dr. Rabinovich, however, was not asked to address the specific claimed period of disability.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.²⁵ 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.²⁶

On remand, OWCP shall request a supplemental opinion from Dr. Rabinovich clarifying whether appellant was disabled from work during the period January 25, 2018 through June 19, 2020 causally related to the accepted employment injury.²⁷ Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision.

²³ *L.S., id.; T.S.*, Docket Nos. 20-1177 and 20-1296 (issued May 28, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

²⁴ *M.W.*, Docket No. 23-1059 (issued January 26, 2024); *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

²⁵ *See M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

²⁶ *Id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

²⁷ *See M.S. and E.B.*, *supra* note 25; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to expand the acceptance of her claim to include additional right knee conditions as causally related to the accepted employment factors. The Board further finds that the case is not in posture for decision with regard to whether appellant has met her burden of proof to establish disability from work commencing May 23, 2016 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 27, 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 19, 2024
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board