

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

A.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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Docket No. 09-935

Issued: November 12, 2009

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2009 appellant filed a timely appeal of the November 7, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation beginning May 10, 2008.

FACTUAL HISTORY

On January 7, 2008 appellant, a 45-year-old regular mail handler, injured her right knee when she slipped and fell on the employing establishment premises. The Office accepted her claim for contusion of the right knee and lower leg on March 7, 2008.

Appellant underwent a magnetic resonance imaging (MRI) scan of the right knee on February 1, 2008. It demonstrated mild diffuse chondromalacia involving the medial facet of the

patella without subchondral edematous changes with minimal spurring of the tibial spine suggesting early arthritic change.

On February 11, 2008 appellant sought treatment for low back pain. Dr. Ning Jiang, a physician Board-certified in physical medicine and rehabilitation, noted that she slipped and fell on January 7, 2008 and felt immediate pain in her lumbar spine and right knee. He diagnosed lumbalgia, myospasm and myalgia and right knee sprain. Appellant underwent an MRI scan of the lumbar spine on March 7, 2008 which revealed mild to moderate degenerative changes at L5-S1 with a left side disc bulge and mild to moderate left side neural foramina narrowing.

On March 17, 2008 appellant filed a claim for wage-loss compensation from January 7, 2008. She completed a similar claim on May 6, 2008 and requested leave without pay from January 7, 2008. In a letter dated May 20, 2008, the Office requested additional medical evidence in support of her claim. It noted that she was not entitled to compensation during the 45-day period covered by continuation of pay which extended to February 28, 2008. The Office noted that appellant used annual leave from February 29 through March 6, 2008 and sick leave from March 9 through 11, 2008. It provided her with instructions to “buy back” this time. The Office advised that appellant’s claim would be considered for the period March 10 through May 9, 2008.

Appellant submitted form reports dated April 28 and May 15, 2008 prescribing additional physical therapy and diagnosing lumbalgic, disc syndrome, joint pain, myospasms and joint stiffness. She submitted physical therapy notes. Appellant also submitted several reports from a physician’s assistant dated March 6, 2008.¹

On May 15, 2008 Dr. Raghu Pulluru, a Board-certified orthopedic surgeon, reported appellant’s complaints of severe right knee pain stating: “The patient states that she is in severe pain and is unable to work. Therefore, she will be kept off work.” He addressed appellant’s low back condition as follows:

“[Appellant] has compensated with the knee pain and has developed left knee pain. Also with this compensation, she has developed lower back pain. She did not have these symptoms prior to the injury.”

In a note dated June 12, 2008, Dr. Pulluru recommended right knee arthroscopy and lateral release.

On August 19, 2008 the Office referred a statement of accepted facts to the district medical adviser. On August 27, 2008 the district medical adviser opined that appellant’s left knee patellofemoral pain and low back pain should be considered consequential injuries to her right knee condition. In a letter dated September 4, 2008, the Office accepted the additional

¹ Registered nurses, licensed practical nurses, physical therapists and physician’s assistants are not “physicians” as defined under the Federal Employees’ Compensation Act. Their opinions are of no probative value. *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) of the Act provides as follows: “(2) ‘physician’ includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.”

conditions of left knee pain and low back pain as a consequence of her right knee injury. It requested that Dr. Pulluru address appellant's dates of disability.

Appellant filed claims for compensation on June 16, 2008 requesting wage-loss compensation from May 6, 2008 and from June 16 through July 16, 2008.

On August 29, 2008 Dr. Mark E. Moran, a Board-certified orthopedic surgeon, stated that appellant's MRI scan continued to demonstrate degenerative changes in the bulging disc and recommended a pain clinic. He noted that appellant's job duties were repetitive and put a strain on her lower back. Dr. Moran stated, "While she never missed any work because of back pain prior to this fall, based on all the evidence and history it's reasonable to expect that degenerative changes may in fact be from her work and the fall caused the bulging disc or exacerbated the degenerative changes that she had there."

On September 6, 2008 appellant requested authorization for surgery. On July 17, 2008 Dr. Pulluru found that appellant had significant right knee pain and popping. On physical examination, he found full range of motion, with marked patellofemoral crepitates and lateral tracking of the patella along with marked tenderness over the medial and lateral facets of the patella. Dr. Pulluru again recommended surgery and opined that this procedure should significantly reduce her symptoms.

In a report dated September 11, 2008, Dr. Pulluru stated that appellant had severe patellofemoral pain which had not responded to treatment and which did not exist prior to her January 7, 2008 employment injury. He opined that appellant's injury caused the significant symptoms from patellar chondromalacia. Dr. Pulluru recommended surgery to relieve appellant's pain. He found that appellant was totally disabled due to her bilateral knee and low back pain. Dr. Pulluru stated that on previous visits appellant had significant right knee symptoms and could not have performed significant activities on her feet. However, he noted that appellant could have worked sitting down, but that she felt that she had too much pain to even do sitting work.

On October 1, 2008 the Office requested additional factual and medical evidence in support of appellant's claim for wage-loss compensation beginning May 10, 2008.

By decision dated October 8, 2008, the Office found that appellant received continuation of pay through February 28, 2008 and that her claim for leave without pay would not be considered for days that she used sick or annual leave, from February 29 through March 6, 2008 and March 9 through 11, 2008. It authorized compensation for four hours on the dates that she attended physical therapy: March 12, 14, 17, 19, 21, 24, 26, 28 and April 2, 4, 7, 9, 11, 14, 21, 23, 25, 30 and May 5 and 7, 2008. Appellant also received eight hours of compensation for a doctor's appointment on April 28, 2008. The Office found that the medical evidence did not

support that appellant was totally disabled for the period in question. It authorized compensation for the period January 7 through May 9, 2008 for 88 hours in the amount of \$1,602.35.²

On October 9, 2008 Dr. Pulluru stated that appellant's right knee remained the same while her left knee was worsening with popping and giving way. He found significant patellofemoral tenderness bilaterally with medial joint line tenderness on the left knee. Dr. Pulluru noted that McMurray testing produced pain and requested surgery for the right knee and an MRI scan for the left knee. He stated, "I asked [appellant] at this point if she is able to go back to sitting work. She states with her back and both knees and significant pain, she is not able to work. Therefore, [appellant] was kept off work."

By decision dated November 7, 2008, the Office denied appellant's claim for total disability for the period beginning May 10, 2008. It paid compensation for 104 hours of time lost in the amount of \$1,893.68.

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

Appellant for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provided by preponderance of the reliable probative and substantial medical evidence.⁴

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurts too much to work, without objective signs of disability being shown, the

² Appellant requested an oral hearing of this decision on November 7, 2008. The Branch of Hearings and Review scheduled an oral hearing on March 2, 2009 and issued a decision on May 13, 2009. As appellant only appealed the November 7, 2008 decision to the Board on February 25, 2009 and as the October 8, 2008 decision was in an interlocutory posture with a pending oral hearing at the time the appeal was filed, the Board will not address the issues raised by the Office's October 8, 2008 decision in this decision and order. 20 C.F.R. § 501.2(c).

³ 20 C.F.R. § 10.5(x).

⁴ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁵

ANALYSIS

Appellant claimed that she was totally disabled for work beginning May 10, 2008. In support of her claim, she submitted reports from Dr. Pulluru, a Board-certified orthopedic surgeon dated May 15 to October 9, 2008. Dr. Pulluru stated, “[Appellant] states that she is in severe pain and is unable to work. Therefore, she will be kept off work.” On October 9, 2008 he stated, “I asked [appellant] at this point if she is able to go back to sitting work. She states with her back and both knees and significant pain, she is not able to work. Therefore, [appellant] was kept off work.”

The Board finds that these reports are not sufficient to establish appellant’s total disability for work beginning May 10, 2008. Dr. Pulluru’s reports consist only of a repetition of appellant’s complaints that she hurt too much to work. He did not provide objective evidence based on physical examination to support total disability. Dr. Pulluru did not provide a medical opinion on the issue of disability or a basis for payment of compensation. He clearly stated that he based his finding of disability solely on appellant’s complaint of pain and not on his own medical opinion that she was incapable of work. These reports are not sufficient to meet appellant’s burden of proof.

On August 29, 2008 Dr. Moran, a Board-certified orthopedic surgeon, found degenerative changes in the bulging disc on the MRI scan. He noted that appellant’s job duties were repetitive and put a strain on her lower back. Dr. Moran stated, “While she never missed any work because of back pain prior to this fall, based on all the evidence and history it [i]s reasonable to expect that degenerative changes may in fact be from her work and the fall caused the bulging disc or exacerbated the degenerative changes that she had there.” While Dr. Moran generally supported the causal relationship between appellant’s employment duties and the degenerative changes demonstrated on her MRI scan, he did not provide any opinion regarding appellant’s disability for work. In order to establish that appellant was totally disabled on or after May 10, 2008, she must submit medical evidence which clearly opines that she was incapable of any work and which relates her incapacity to her employment. Appellant has not submitted such evidence.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that she was totally disabled for work on or after May 10, 2008 due to her accepted employment injuries.

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board