United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 11-307**
	)	**Issued: September 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Salt Lake City, UT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 19, 2010 appellant filed a timely appeal from the June 29, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for intermittent periods of disability. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant established that he sustained work-related disability on April 29 and 30, May 8 and 10, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal, appellant asks the Board's assistance in various matters, including getting reimbursement for rubbing cream and leave without pay for other periods of disability. The Board's jurisdiction is limited to reviewing final decisions of the OWCP in cases arising under FECA. 20 C.F.R. § 501.2(c)(2). As there is no final decision on these matters, the Board does not have jurisdiction to consider these issues.

FACTUAL HISTORY

On April 27, 2009 appellant, a 51-year-old letter carrier, filed an occupational disease claim alleging that he suffered an injury to his left knee. In an accompanying statement, he advised that he has worked as letter carrier for almost 34 years. Appellant cased mail, stood on cement floors three to five hours, and then walked and delivered routes, making approximately 65 stops a day. He noted that he was required to do heavy lifting, pushing and pulling as part of his federal duties. On July 20, 2009 OWCP accepted appellant's claim for chondromalacia left patella. On February 10, 2010 it accepted an aggravation of osteoarthritis of the left knee.

On May 5, 2010 appellant filed a claim for compensation for 8 hours leave on April 27 and 28, 2010, 6.35 hours of leave on April 29, 2010 and 5.8 hours of leave on April 30, 2010.

In a May 3, 2010 note, Bryan A. Clark, a physician's assistant, stated that appellant had increased pain in the left knee since April 27, 2010 due to torn meniscus. In a May 3, 2010 progress note, he advised that appellant's left knee had become worse for almost a week. Mr. Clark was waiting approval for a left knee arthroscopy and noted when appellant cased mail, it irritated his knee. In a duty status report of the same date, he indicated that appellant could not lift, carry, climb, kneel, bend, stoop, twist, push or pull and was limited to standing 1 hour a day, walking ½ hour a day and reaching above his shoulder from 1 to 3 hours a day. Mr. Clark completed a duty status report on May 10, 2010 with similar restrictions. He indicated that appellant was able to perform his regular work.

By letter dated May 13, 2010, OWCP requested further information in support of appellant's claim for compensation.

In a May 17, 2010 note, Dr. Gordon R. Kimball, a Board-certified orthopedic surgeon, noted that appellant was unable to work from April 27 through May 17, 2010.

On May 18, 2010 appellant made a claim for compensation for 8 hours for May 8, 10, 13, 14, 15 and 17, 2010.

In a letter dated May 17, 2010, appellant advised that his supervisor ordered him to go home on both April 29 and 30, 2010.

By letter dated May 28, 2010, Dr. Kimball stated that appellant underwent extensive left knee surgery on May 13, 2010, *i.e.,* a left knee arthroscopy, partial lateral and medial meniscectomy and extensive chondroplasty. His prognosis was good, but the surgery was quite extensive and appellant was unable to work for a period of time. Dr. Kimball reiterated that appellant was unable to work from April 27 through May 17, 2010.

By decision dated June 29, 2010, OWCP denied appellant's claim for compensation for 6.35 hours on April 29, 2010, 5.8 hours on April 30, 2010, 8 hours on May 8, 2010 and 8 hours on May 10, 2010. It found that the medical evidence did not establish that the disability was employment-related disability due to his left knee condition.

LEGAL PRECEDENT

Under FECA, the term "disability" means the incapacity because of an employment injury to earn the wages the employee was receiving at the time of injury.[3] The Board will not require OWCP to pay compensation for disability in the absence of my medical evidence directly addressing the specific dates of disability for which compensation is claimed.[4]

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. 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.[5]

ANALYSIS

OWCP accepted appellant's claim for chondromalacia left patella and aggravation of osteoarthritis, left knee. Appellant requested compensation for intermittent dates of disability including 6.35 on April 29, 2010 and 5.8 hours on April 30, 2010. He must establish his claim for compensation with medical evidence. The Board finds that the medical evidence does not establish that appellant had any disability causally related to his accepted employment injuries on these dates. Dr. Kimball's brief statement on May 17, 2010 that appellant was unable to work from April 17 through May 17, 2010 does not contain any explanation in support of his finding. It does not contain a medical diagnosis, a history of appellant's injury, or explain any connection between the diagnosis and injury. Dr. Kimball's medical note of May 28, 2010 indicates that appellant underwent extensive left knee surgery on May 13, 2010 and would be unable to work for a period of time because of the surgery. He also stated that appellant was unable to work from April 27 through May 17, 2010. However, Dr. Kimball did not explain why appellant was unable to work prior to his surgery on May 13, 2010.

Mr. Clark is a physician's assistant. The Board notes that the reports by physician's assistants are not considered medical evidence as these providers are not physicians under FECA.[6] Thus, his reports do not constitute competent medical opinion evidence.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of

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[3] *See G.T.* 59 ECAB 447 (2007).

[4] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[5] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[6] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.[7]

Appellant did not submit a medical opinion based on objective findings which demonstrated that he was disabled from work due to the accepted work injury on April 29 and 30 and May 8 and 10, 2010. Therefore, OWCP properly found that he did not meet his burden of proof to establish entitlement to wage-loss compensation for these dates.

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 established that he sustained work-related disability on April 20 and 30, May 8 and 10, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs date June 29, 2010 is affirmed.

Issued: September 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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[7] *D.I.,* 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).