



internal derangement of the left knee. On July 19, 2002 the Office accepted appellant's claim for left knee internal derangement and paid appropriate compensation.<sup>1</sup> It authorized bilateral arthroscopies. The Office later accepted a claim for right medial meniscus tear and right internal derangement.

On August 6, 2002 appellant underwent a left knee arthroscopy for a torn medial meniscus, torn lateral meniscus, synovitis and chondromalacia patella. On August 23, 2002 Dr. Thompson indicated that appellant would be disabled until September 26, 2002.

The Office subsequently authorized a right knee arthroscopy and appellant underwent surgery on March 11, 2003. Dr. Thompson diagnosed osteochondritis desiccans of the medial femoral condyle, synovitis, chondromalacia patella and torn lateral meniscus. Appellant returned to work in a limited-duty capacity for four hours per day on May 16, 2003 and received compensation for the four hours per day that she did not work.

In a January 26, 2004 treatment note, Dr. Thompson recommended that appellant undergo a repeat right knee arthroscopy. Appellant underwent surgery on February 10, 2004. Dr. Thompson listed a postoperative diagnosis of recurrent tear posterior horn of the medial meniscus, a six millimeter loose body, torn lateral meniscus, synovitis and chondromalacia patella.

In a May 20, 2004 report, Dr. Gregory P. Harvey, a Board-certified orthopedic surgeon, diagnosed status post bilateral knee arthroscopies and meniscectomies with chondromalacia. He opined that appellant was likely to experience continuing chronic pain secondary to chondromalacia and advised that she drive her route, rather than walk it. On June 23, 2004 Dr. Thompson released appellant to work eight hours per day with permanent restrictions effective August 1, 2004.

By decision dated September 24, 2004, the Office granted appellant a schedule award for 10 percent impairment of the right leg and 10 percent impairment of the left leg.

On July 8, 2005 appellant claimed compensation from July 5 to 7, 2005. On July 28, 2005 the Office requested that she submit medical evidence establishing total disability causally related to her work injury during the period claimed. Appellant provided a July 6, 2005 treatment note from Dr. Thompson indicating that she "twisted and fell and hurt her knee the other day and missed a couple of days of work." She saw Dr. Thompson for an office visit and treatment on that day.

In a December 28, 2005 treatment note, Dr. Thompson stated that he treated appellant on that date and reported that she was generally capable of working but continued to have symptoms. In a December 28, 2005 form report, he stated that she was disabled from work on December 27 and 28, 2005. On January 3, 2006 Dr. Thompson indicated that he treated appellant on that day for her continuing right knee pain and that she "had to miss a day because of stiffness and swelling. Appellant is, however, better today and feels that she can return to

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<sup>1</sup> In a separate claim number 160312220, the Office determined that appellant "sustained an accepted bilateral knee condition on a repetitive cumulative basis." The file is not before the Board.

work.” In a form report prepared on the same day, Dr. Thompson stated that appellant was totally disabled until January 4, 2006. In a January 9, 2006 report of office visit, he explained that appellant’s right knee continued to give way, although she was still capable of performing full-duty work. Dr. Thompson’s treatment notes indicated that he saw appellant on January 11, 2006. In a form report prepared January 11, 2006, he stated that she was totally disabled on January 11 and 12, 2006. Appellant also provided a January 9, 2006 form report from Dr. Thompson indicating that she was totally disabled from January 4 to 9, 2006.

On February 2, 2006 appellant claimed compensation for intermittent wage loss from December 27, 2005 to January 12, 2006. On February 17, 2006 the Office requested additional evidence concerning causal relationship between appellant’s work stoppage and her accepted employment injury. In a January 11, 2006 form report, Dr. Thompson indicated that she was totally disabled from January 11 to 12, 2006 and could return to work without restrictions on January 13, 2006. Appellant also provided a January 5, 2006 form report from Dr. Thompson indicating that she could return to work on January 4, 2006 without restrictions. However, a January 9, 2006 report indicated that she was completely disabled between January 4 and 9, 2006. In an undated form report received by the Office, on March 20, 2006, Dr. Thompson certified that appellant was off work from January 3 to 12, 2006. In a March 13, 2006 report, he stated that appellant’s knee “still, however, will occasionally give way on her, whether at work or at home. Occasionally she may need to take a day off if her knee begins to buckle.”

In a March 12, 2006 statement, appellant explained that her right knee continued to give way occasionally and that she sometimes missed a day of work due to pain or for medical treatment. She explained that, “if I can’t walk I can’t work. Because I can’t make it there.”

By decision dated March 20, 2006, the Office denied appellant’s claim for intermittent compensation for the period July 5 to 7, 2005.

By decision dated May 10, 2006, the Office denied appellant’s claim for compensation for the period December 27, 2005 to January 12, 2006.

In a May 31, 2006 report, Dr. Thompson stated that appellant had previously undergone arthroscopies on both knees and that she has “occasional recurrent symptoms of giving way, pain and swelling that generally respond to rest.” He explained: “[Appellant] has put in a claim for disability from December 27, 2005 through January 12, 2006. I would respectfully request that you reevaluate her situation, as I believe that her symptoms are both verifiable and placed in good faith.”

On July 10, 2006 appellant requested reconsideration of the Office’s March 20 and May 10, 2006 decisions. She explained that she had been treated with injections but that she believed they caused her right knee to become more painful and occasionally give out with no warning.

By decision dated October 3, 2006, the Office denied modification of its May 10, 2006 decision denying disability from December 27, 2005 to January 12, 2006.

In an October 11, 2006 report, Dr. Thompson noted that appellant was totally disabled from July 5 to 7, 2006 and from December 27, 2005 to January 12, 2006. On October 17, 2006 appellant requested reconsideration of the Office's May 10, 2006 decision.

By decision dated December 18, 2006, the Office denied modification of its previous decisions denying appellant's claim for disability from December 27, 2005 to January 12, 2006.

### **LEGAL PRECEDENT -- ISSUES 1 & 2**

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.<sup>2</sup> As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages.<sup>4</sup> Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>5</sup> The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>6</sup>

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.<sup>7</sup> Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.<sup>8</sup> However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof which includes the necessity of submitting supporting rationalized medical evidence.<sup>9</sup>

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<sup>2</sup> *William A. Archer*, 55 ECAB 674 (2004).

<sup>3</sup> *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

<sup>4</sup> *See Fred Foster*, 1 ECAB 21 (1947).

<sup>5</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB \_\_\_\_ (Docket No. 05-739, issued October 12, 2005); *William A. Archer*, *supra* note 2; *Fereidoon Kharabi*, *supra* note 5.

<sup>7</sup> 5 U.S.C. § 8103(a).

<sup>8</sup> *Vincent E. Washington*, 40 ECAB 1242 (1989).

<sup>9</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

### ANALYSIS -- ISSUE 1

Appellant filed claims for intermittent wage-loss compensation from December 27, 2005 to January 12, 2006. In support of her claim, she submitted numerous form reports stating that she was disabled on various days during that time period. Appellant also provided treatment notes from Dr. Thompson, dated December 28, 2005 and January 3, 6, 9 and 11, 2006, indicating that she was seen for examination and treatment of her knee conditions on those dates. The Board has long recognized that, under section 8103, payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical services. An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.<sup>10</sup> Appellant has submitted evidence indicating that she received medical treatment for her accepted knee conditions on December 28, 2005 and on January 3, 6, 9 and 11, 2006 she is entitled to compensation for appropriate hours on those dates. The case will be remanded to the Office for payment of appropriate compensation for the days on which she sought medical treatment for her accepted employment-related condition. The Office shall issue an appropriate decision on whether appellant has established that she is entitled to compensation for the other days of intermittent disability sought for the period December 27, 2005 through January 12, 2006.

### ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet her burden of proof in establishing that she was disabled from July 5 to 7, 2005. In response to the Office's request for additional information concerning appellant's request for wage-loss compensation for leave without pay taken during that time period, appellant submitted a July 6, 2005 treatment note from Dr. Thompson who confirmed that she "twisted and fell and hurt her knee the other day and missed a couple of days of work" but did not provide a rationalized medical opinion clearly establishing that appellant was totally disabled during that time period as a result of her accepted employment injuries. Although the July 6, 2005 note establishes that appellant was seen in the physician's office on that day, it does not explain that she received treatment specifically for her work-related injury or establish total disability for the three days claimed. Dr. Thompson stated that her visit was precipitated by an incident in which appellant "twisted and fell and hurt her knee." He did not state that he treated appellant for her accepted knee condition; rather, his note indicates that her complaint may have been caused by a new traumatic incident, which he did not relate to her accepted medial meniscus tear. Moreover, Dr. Thompson did not identify which knee appellant injured when she "twisted and fell." The Board notes that the Office accepted medical meniscus tear and internal derangement of appellant's right knee, but Dr. Thompson's July 6, 2005 note is unclear as to whether appellant was treated for her right or left knee. Dr. Thompson also did not identify either the day on which appellant injured her knee or the specific days she took off work as a result of that claimed injury, but rather simply stated that she "missed a couple of days of work." His report does not establish that appellant was disabled

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<sup>10</sup> *Daniel Hollars*, 51 ECAB 355 (2000), citing *Antonio Mestres*, 48 ECAB 139 (1996); *Henry Hunt Searls, III*, 46 ECAB 192 (1994); *Mrytle B. Carlson*, 17 ECAB 644 (1966). This concept is recognized in the Office's procedures. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

during that time or that she was disabled on the day before and after the examination date.<sup>11</sup> The Board finds that Dr. Thompson's July 6, 2005 note is insufficient to establish appellant's entitlement to compensation for temporary total disability for the period July 5 to 7, 2005.

Dr. Thompson's October 11, 2006 report, in which he stated that appellant was "temporarily but totally disabled" from July 5 to 7, 2005 is similarly insufficient to establish appellant's claim for disability compensation. Accordingly, the Board finds that appellant did not establish her entitlement to compensation for temporary total disability during the period July 5 to 7, 2005.

### **CONCLUSION**

The Board finds that appellant established entitlement to intermittent wage-loss compensation for December 28, 2005 and January 3, 6, 9 and 11, 2006. The Board also finds that appellant did not establish entitlement to compensation for temporary total disability during the period July 5 to 7, 2005.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 18, October 3, May 10 and March 20, 2006 are affirmed as modified and the case remanded to the Office for further action consistent with this decision.

Issued: December 13, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>11</sup> See *Fereidoon Kharabi*, *supra* note 5.