United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
and	)	**Docket No. 07-438**
	)	**Issued: June 12, 2007**
U.S. POSTAL SERVICE, WICHITA GENERAL MAIL FACILITY, Wichita, KS, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 6, 2006 appellant filed a timely appeal from a May 10, 2006 merit decision of the Office of Workers' Compensation Programs which denied her claim and a June 16, 2006 decision which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she was totally disabled for the period May 25 through June 24, 2005; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 16, 2005 appellant, then a 54-year-old clerk, filed a Form CA-1, traumatic injury claim, alleging that she injured her right knee that day when she tripped. She did not immediately stop work. By decision dated April 8, 2005, the Office denied the claim, but

following the submission of additional medical evidence on December 23, 2005, accepted that she sustained a right medial meniscal tear and approved surgical repair that had been performed by Dr. Robert P. Cusick, a Board-certified orthopedic surgeon, on June 27, 2005. On August 15, 2005 Dr. Cusick released her to work for half a day the first week and then to full-time work.

On March 6, 2006 appellant filed a Form CA-7, claim for compensation, for the period April 11 to September 2, 2005, leave analysis information and a list of appointments.[1] In a March 14, 2005 report, Captain Mocha L. Robinson, physical therapy flight commander, advised that appellant should be off work for two weeks because of knee pain and in an undated report, Sergeant Tanya C. Evans of the physical therapy department, advised that appellant had restrictions of no walking, squatting, jumping or kneeling, 10 minutes standing and should have a sit down job only. On April 26, 2005 Sharon Allen, plant manager, denied appellant's request for light duty, stating that there was "no productive light duty available within your restrictions at this time."

By letter dated March 24, 2006, the Office advised appellant that there was no medical evidence to support disability for 1.82 hours on April 11, 2005, 24 hours from May 25 through 27, 2005, 40 hours from May 30 through June 10, 2005, 40 hours from June 13 through 17, 2005 and 40 hours from June 20 through 24, 2005. Appellant received wage-loss compensation for the additional times claimed. In an April 12, 2006 letter, she informed the Office that she was at physical therapy on April 11, 2005 and that no light duty was available for the period May 25 through June 20, 2005. By decision dated May 10, 2006, the Office authorized payment for April 11, 2005 but denied the claim for compensation for the period May 25 through June 24, 2005 because the record did not include a report from her physician which established that limited-duty work was required.

On an undated Office form, received by the Office on June 2, 2006, appellant requested reconsideration. In a June 6, 2006 decision, the Office denied appellant's reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act[2] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[3] Disability is thus not synonymous with physical impairment which may or may not result in incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the

[1] Appellant also submitted an attending physician's report in which Dr. Daniel J. Prohaska, a Board-certified orthopedic surgeon, advised that she had been seen on April 14, 2005, February 6 and 7, 2006 attending physician's reports in which Dr. Cusick and Dr. Kathleen Ankers, a Board-certified family physician, did not provide treatment dates and physical therapy notes.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Prince E. Wallace*, 52 ECAB 357 (2001).

Act[4] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[5] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[6]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[7]

ANALYSIS -- ISSUE 1

On December 23, 2005 the Office accepted that on February 16, 2005 appellant sustained an employment-related torn medial meniscus and authorized the surgical repair that she had on June 27, 2005. Appellant received intermittent compensation for the period prior to her surgery and wage-loss compensation for the period beginning June 27, 2005 until her return to work on August 30, 2005 and intermittently thereafter. She, however, did not receive wage-loss compensation for the period May 25 through June 24, 2005. The Office noted that appellant submitted no medical documentation to support that she could only work light duty, which the employing establishment had found to be unavailable.

There is no competent medical evidence to support that appellant had restrictions to her physical activity for the period May 25 through June 24, 2005, which would require light duty. The only report that covers the relevant period and which contains restrictions to appellant's physical activity is an undated report signed by Sergeant Evans who is in the physical therapy department at a military hospital. Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[8] While it is unclear whether Sergeant Evans is a physical therapist, a physical therapist is not a "physician" within the meaning of section 8101(2) of the Act and cannot render a medical opinion.[9] To constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician.[10] Even though the employing establishment advised appellant that no light duty was available within her restrictions, there is no medical evidence in this case to support

[4] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[5] *Donald E. Ewals*, 51 ECAB 428 (2000).

[6] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, id.*

[7] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[8] *Tammy L. Medley, supra* note 6; *see Donald E. Ewals, supra* note 5.

[9] *Vickey C. Randall*, 51 ECAB 357 (2000).

[10] *Id.*

that, because of her employment injury, she could only perform light duty for the period May 25 through June 24, 2005. Consequently, the Office properly denied her claim for compensation for this period.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[11] Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[12] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[13] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[14] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[15]

ANALYSIS -- ISSUE 2

On her form requesting reconsideration, appellant merely checked that she was requesting reconsideration. She, therefore, did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[16]

With respect to the third above-noted requirement under section 10.606(b)(2), appellant also submitted no evidence. The merit issue in this case is whether she established that she was totally disabled for the period May 25 through June 24, 2005. This requires the submission of medical evidence establishing that appellant was unable to perform her light-duty job or that the light-duty job was not available. Appellant submitted no such evidence. As she did not submit

[11] 5 U.S.C. § 8128(a).

[12] 20 C.F.R. § 10.606(b)(2).

[13] 20 C.F.R. § 10.608(b).

[14] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[15] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[16] 20 C.F.R. § 10.606(b)(2).

relevant and pertinent new evidence not previously considered by the Office, the Office properly denied her reconsideration request.[17]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to wage-loss compensation for the period May 25 through June 24, 2005 causally related to her employment injury and that the Office properly denied her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 16 and May 10, 2006 be affirmed.

Issued: June 12, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[17] The Board notes that appellant submitted additional evidence subsequent to the June 16, 2006 decision of the Office and with her appeal to the Board. The Board, however, cannot consider this evidence as its review of the case is limited to that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant retains the right to submit a valid request for reconsideration with the Office.