

On December 14, 2001 appellant, then a 45-year-old city carrier, filed a claim for an injury occurring on that date when she fell down steps while picking up mail. The Office accepted her claim for right knee and leg sprain, lumbar strain, left shoulder and upper arm strain and bilateral osteoarthritis of the lower leg. Appellant stopped work on December 14, 2001 and returned to work for four hours per day on April 22, 2002 and to her regular full-time

employment on May 6, 2002. She sustained intermittent disability from work due to her employment injury.¹ The Office placed her on the periodic rolls beginning February 24, 2004.

On November 10, 2004 Dr. Howard Z. Finkel, a Board-certified orthopedic surgeon, performed partial medial and lateral meniscectomies of the right and left knee. Appellant resumed part-time limited-duty employment on February 15, 2005 and full-time limited-duty employment on March 3, 2005. By decision dated June 30, 2005, the Office reduced appellant's compensation to zero based on its finding that her actual earnings as a carrier effective February 15, 2005 fairly and reasonably represented her wage-earning capacity.

In a form report dated December 9, 2005, Dr. Finkel diagnosed a torn left medial meniscus and checked "yes" that the condition was causally related to the employment activity of appellant falling on concrete steps. He found that she was totally disabled from December 1 to 3, 2005 and partially disabled from December 7 to 8, 2005. Dr. Finkel described appellant's work restrictions in a December 9, 2005 duty status form report. He indicated that she could resume work with restrictions on December 9, 2005. In a narrative report of the same date, Dr. Finkel described appellant's complaints of severe left knee pain beginning December 1, 2005 and her treatment for the pain in the emergency room. He listed findings of good movement, no swelling and "some grinding behind the patella and some soreness medially." Dr. Finkel diagnosed a symptom flare-up and found that she should work limited-duty employment temporarily.

On January 20, 2006 Dr. Finkel listed findings of arthritic changes and indicated that appellant should continue on her "present duty status." In a form report dated January 24, 2006, he diagnosed a left knee medial meniscus tear, checked "yes" that the condition was due to an employment activity and found that she was able to resume light work on December 12, 2005. Dr. Finkel indicated that appellant should continue "light-duty work."

On May 22, 2006 appellant filed a claim for compensation on account of disability (Form CA-7) requesting compensation from December 1, 2005 to January 20, 2006. On time analysis forms covering this period she indicated that the employing establishment did not have work available for her on those dates. The time analysis forms were signed by an employing establishment official.

The employing establishment notified the Office on May 30, 2006 that appellant had requested leave for the dates in question. On June 7, 2006 the employing establishment asserted that appellant was working limited duty but refused to go to another work area. The employing establishment instructed her to go home if she did not work in accordance with the job offer.

In a statement received by the Office on June 16, 2006, appellant related that management ordered her to stop work from December 4, 2005 to January 20, 2006 because she

¹ In a decision dated May 6, 2004, the Office denied appellant's claim for compensation on or after February 24, 2002 on the grounds that the evidence did not establish that the disability was due to her accepted employment injury. Appellant requested an oral hearing but subsequently withdrew her request after the Office placed her on the periodic rolls beginning February 24, 2004.

could not carry and deliver mail. She alleged that Dr. Finkel placed her on limited-duty employment during this period.

By decision dated July 3, 2006, the Office denied appellant's claim for compensation from December 1, 2005 through January 20, 2006. The Office found that the medical evidence was insufficient to show that appellant was "totally disabled during the entire period claimed due to the work[-]related injury."

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act² means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.³ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁴ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁵ 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 employee's to self-certify their disability and entitlement to compensation.⁶

ANALYSIS

The Office accepted that appellant sustained a sprain of the right knee, right leg, left shoulder and left upper arm, lumbar strain and bilateral osteoarthritis of the lower leg due to a December 14, 2001 employment injury. On November 10, 2004 she underwent partial medial and lateral meniscectomies of both knees. Appellant resumed full-time limited-duty employment on March 3, 2005. In a June 30, 2005 decision, the Office changed her compensation to zero based on its finding that her actual earnings as a carrier fairly and reasonably represented her wage-earning capacity.

On May 22, 2006 appellant filed a claim for compensation for disability from December 1, 2005 to January 20, 2006. She alleged that she was partially disabled from employment during this period and unable to work because the employing establishment did not have work available within her restrictions. In a decision dated July 3, 2006, the Office denied appellant's claim for compensation from December 1, 2005 through January 20, 2006 based on

² 5 U.S.C. §§ 8101-8193.

³ *Sean O'Connell*, 56 ECAB ____ (Docket No. 04-1746, issued December 20, 2004).

⁴ *Paul E. Thams*, 56 ECAB ____ (Docket No. 04-1019, issued April 26, 2005).

⁵ *Id.*

⁶ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

its finding that the medical evidence did not show that she was totally disabled from employment.⁷

The Board finds that the Office did not properly adjudicate the issue presented. Office regulations provide that compensation for wage loss due to disability is available for any period during which an employees' work-related medical condition prevents him or her from earning the wages earned before the work-related injury.⁸ The disability may be partial or total.⁹ The Office denied appellant's claim after finding that the medical evidence did not show that she was totally disabled from employment for the period in question. The Office, however, did not determine whether the medical evidence established that she was partially disabled due to her employment injury such that she was unable to perform her position as carrier. The case, therefore, will be remanded to the Office for an appropriate decision on this issue. If the Office finds that the medical evidence established that she was partially disabled during the period in question, it should consider the relevant factual evidence and make a determination regarding whether the employing establishment provided her with work within her restrictions from December 1, 2005 through January 20, 2006.

CONCLUSION

The Board finds that the case is not in posture for decision as the Office did not make proper findings with respect to appellant's claim for compensation from December 1, 2005 through January 20, 2006.

⁷ Appellant has filed a claim for compensation for a limited time period from December 1, 2005 through January 20, 2006. The Board notes that the Office can accept a limited period of employment-related disability without a formal modification of the wage-earning capacity determination. See *Sharon C. Clement*, 55 ECAB 552 (2004).

⁸ *Judith A. Cardiddo*, 55 ECAB 348 (2004)

⁹ *Hubert Jones, Jr.*, 57 ECAB ____ (Docket No. 05-603, issued March 10, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 3, 2006 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 14, 2007
Washington, DC

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

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

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