

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

hospitalized and the employing establishment stated her last day of employment was October 29, 2007 and that she received one day of continuation of pay.<sup>2</sup> OWCP accepted the claim for contusion of left elbow, contusion of left shoulder region, neck and lumbar sprains and a concussion without loss of consciousness.

Medical reports from Community Hospital of Monterey, dated October 26 through November 3, 2007 and diagnostic testing were received. A discharge summary from Dr. Marie Scherer, a Board-certified internist, listed as final diagnoses mechanical fall/muscular contusion spasm; major depression/postpartum depression; poly symptomatic symptoms; possible inflammatory connective tissue; left elbow cellulitis; mild scoliosis; history of left knee surgery at age three; and urinary tract infections and B12 deficiency. Dr. Scherer related the history of the work injury and advised that a computerized tomography scan of the head as well as x-rays of the spine and right pelvis and leg were negative. She advised that appellant was admitted due to her inability to ambulate due to pain. Dr. Scherer also was evaluated by a psychiatrist due to her multiple somatic symptoms. She advised that a neurologist felt that most of appellant's sensory complaints were psychosomatic.

On April 24 and August 6, 2008 appellant filed Form CA-7 claims for compensation for wage loss for the period October 30, 2007 through July 3, 2008.

In a February 14, 2008 report, Dr. Paul G. James, a Board-certified orthopedic surgeon, advised that appellant's husband asserted that her back pain was due to the fall at work and that this also caused new right knee pain and an aggravation of old left knee pain. The right knee was tender but stable and without effusion or crepitus. There was resistance to right knee flexion beyond 100 degrees. Left knee findings were also noted. Dr. James advised that his findings were not diagnostic. He stated that the right knee could be internally deranged or may only be contused "and not significantly injured in any way." Dr. James recommended a right knee magnetic resonance imaging (MRI) scan. On August 7, 2008 he noted appellant's fall at the workplace on October 26, 2007 and her 11-day hospitalization after the fall. Appellant complained that her right knee symptoms were the cause of her continuing disability. Dr. James noted findings for her left knee with changes historically dating to childhood and to previous surgery. He stated the right knee was generally tender, with difficulty from 5 to 10 degrees through 110 degrees of flexion, pain on varus-valgus testing, tender on medial and lateral McMurray testing and tender on patellofemoral testing with subtle swelling. Dr. James requested authorization for a right knee MRI scan to substantiate if appellant had an injury and whether treatment was indicated.

In an August 22, 2008 report, Dr. Lisa M. Dwelle, a Board-certified family practitioner, stated that appellant was totally disabled between October 30, 2007 through July 11, 2008 due to knee pain, back pain and severe adjustment disorder.

On September 10, 2008 OWCP advised appellant that the claim was temporarily accepted for a right knee contusion to accommodate Dr. James' MRI scan request and that a final decision on the right leg would be made after he provided a further opinion. It stated that she

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<sup>2</sup> The record reflects appellant had an excepted appointment with a not to exceed date of March 25, 2008. She was terminated on October 30, 2007 during her probation period due to performance issues.

was not entitled to further COP because she was terminated on October 30, 2007 due to performance reasons. OWCP also advised appellant to submit medical evidence explaining how her disability was due to the accepted conditions.

In an August 17, 2007 report, Dr. James noted appellant's left knee pain dated back 25 years to an operation performed for deformity or damage to her left knee. Appellant now experienced bilateral knee pain. Dr. James noted that she had a baby three months prior with an increase in knee symptoms over the last year. He presented findings on examination and x-ray study. Dr. James opined that appellant has significant and advancing osteoarthritis in the left knee as a result from childhood deformity and surgery and recommended modifications to her work site, such as moving her teaching location to a ground floor. On January 22, 2008 he stated that she has a severely arthritic left knee with a symptomatic right leg, which he felt was due to offloading stresses normally shared with the left knee onto the right knee. On examination the right knee had no obvious inflammatory or mechanical changes. Dr. James opined the left knee problem as well as the left leg shortening contributed to the right knee health and comfort and increased stresses on the back.

In a September 22, 2008 letter, appellant alleged that she was terminated from the employing establishment not for performance but because she filed an Equal Employment Opportunity (EEO) complaint for sexual harassment. She sought to transfer and complained of discrimination. No final determination on appellant's EEO complaints was received.

In an October 3, 2008 report, Dr. Dwelle noted that Dr. James had retired October 1, 2008 and her orthopedic care was transferred to Dr. Christopher Clevenger, a Board-certified orthopedic surgeon. She stated that there was no diagnosis regarding appellant's knees as an MRI scan had not been obtained. Based on review of Dr. James' reports, Dr. Dwelle noted that appellant was unable to walk, bear full weight on her knees or complete activities of daily living. She indicated that appellant's knees were deformed, had limited range of motion and were tender, when examined by Dr. James. Dr. Dwelle opined that appellant had been unable to walk or work from October 26 to July 3, 2008 and continued to have significant limitations.

In a December 11, 2008 report, Dr. Clevenger noted the history of the October 26, 2007 work-related fall and appellant's preexisting left knee condition. He noted that her right knee continued to be her main complaint of pain following her October 26, 2007 fall. An assessment of left knee degenerative joint disease and right knee contusion was provided. Dr. Clevenger opined that appellant's left knee arthritis was not work related. He requested an MRI scan with respect to the right knee.

On March 18, 2009 appellant underwent a right knee MRI scan that noted a small effusion, but was otherwise normal.<sup>3</sup> On May 21, 2009 she underwent bilateral knee x-rays and, on May 28, 2009, she underwent a left leg MRI scan.

In a May 22, 2009 physical therapy report, Dr. Ronald N. Chaplan, a Board-certified orthopedic surgeon, diagnosed left knee congenital knee injury and right knee pain. In a May 22, 2009 report, he noted that appellant had a history of left knee problems dating back to childhood

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<sup>3</sup> In an April 22, 2009 progress report, Dr. Clevenger indicated that an MRI scan had not been obtained.

surgery. Dr. Chaplan noted that she developed increasing problems with her left leg and had a work-related injury on October 26, 2007, which developed into problems with both knees. He noted the right knee MRI scan did not reveal any degenerative changes or cartilage tear. On examination Dr. Chaplan found the right knee essentially normal, with pain to palpation around the patella and pain with patellar compression. He opined that appellant's severe left knee arthritis was exacerbated by the fall at work. Dr. Chaplan further opined that her right knee had a soft tissue injury that was markedly exacerbated by her inability to walk normally on the left knee. On May 26, 2009 he noted appellant history, stated that the MRI scan showed trace effusion of the right knee, but opined the etiology of the right knee pain was unclear. Dr. Chaplan stated that she could return to modified work May 26, 2009 doing only desk work. Appellant underwent a left knee MRI scan on June 3, 2009. On June 8, 2009 Dr. Chaplan diagnosed left knee degenerative joint disease and painful right knee.

In a February 11, 2010 decision, OWCP denied appellant's claim for wage-loss compensation from October 30, 2007 to July 3, 2008 on the grounds that the medical evidence was insufficient to establish disability due to the October 26, 2007 work injury.

Appellant requested a telephonic hearing, which was held May 7, 2010. She testified that she fell on the stairs at work while moving items from the third floor to the first floor. Appellant stated that she was fired on October 29, 2007 after filing an EEO sexual harassment complaint. Her complaint was still pending. Appellant stated that she was unable to work due to injuries from her fall and that she continued to be treated for her injuries by Drs. Dwelle and Chaplan.

In a December 3, 2008 report, Dr. Dwelle indicated that she saw appellant as a new patient on September 29, 2007 and appellant was in good health and had only minor ailments. On her next visit of November 5, 2007 appellant had been discharged from a long hospital stay and was in pain in her right hip and leg. Dr. Dwelle noted that appellant had extreme work-related stress, a fall and believed that she was being sexually harassed at work. She stated that it was clear that the physical pain was exacerbated by the psychological pain of recent work experiences and appellant's injuries. Dr. Dwelle indicated that when she next saw appellant on January 18 and November 3, 2008, appellant was much worse psychologically. She opined that appellant had suffered a deep physical and emotional trauma. Copies of her treatment notes were attached.

In a July 22, 2010 decision, OWCP's hearing representative set aside the February 11, 2010 decision to find appellant entitled to wage-loss compensation from October 26 to November 3, 2007, the period of her hospitalization.<sup>4</sup> The hearing representative otherwise affirmed the denial of the claim, finding that appellant did not submit sufficient medical evidence to establish work-related disability after November 3, 2007 due to her accepted conditions. She

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<sup>4</sup> The hearing representative found that, as appellant was hospitalized for treatment secondary to the fall which included treatment of the conditions accepted by OWCP, her hospitalization must be considered at least in some part due to the accepted conditions.

also found that appellant did not present evidence of a work-related emotional condition as a consequence of the October 26, 2007 injury.<sup>5</sup>

### **LEGAL PRECEDENT**

For each period of disability claimed, an employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>7</sup> The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>8</sup>

Under FECA 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>9</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>10</sup> An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>11</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To meet her burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).<sup>12</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must

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<sup>5</sup> Regarding appellant's claims of management harassment, OWCP's hearing representative noted that appellant could file a separate emotional condition claim if she wished to pursue the matter.

<sup>6</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>7</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>8</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>10</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>11</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>12</sup> *A.D.*, 58 ECAB 149 (2006).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup>

### ANALYSIS

OWCP accepted appellant's claim for contusions of the left elbow and shoulder region, cervical and lumbar sprains, a right knee contusion and concussion without loss of consciousness as a result of a work-related fall on October 26, 2007.<sup>14</sup> Appellant claimed disability for the period November 4, 2007 through July 3, 2008 due to her October 26, 2007 fall. The Board finds that she submitted insufficient medical evidence to support her claim.

In an August 22, 2008 report, Dr. Dwelle opined that appellant was totally disabled between October 30, 2007 through July 11, 2008 due to knee pain, back pain and severe adjustment disorder. While OWCP accepted a right knee contusion and a lumbar sprain, it did not accept an emotional condition related to the October 26, 2007 fall at work.<sup>15</sup> Dr. Dwelle also did not explain how the diagnosed adjustment disorder was causally related to the October 26, 2007 fall or other accepted conditions. She explained in an October 3, 2008 report, that appellant was unable to walk or work from October 26, 2007 through July 3, 2008 due to significant knee limitations based on her review of the report of Dr. James. Dr. Dwelle's assessment does not accurately reflect Dr. James' findings in his reports concerning appellant's right knee. Dr. James did not state that appellant was unable to walk, bear full weight on her knees or complete activities of daily living to the extent that Dr. Dwelle indicated. His February 14, 2008 report noted appellant's complaints regarding the inability of her knees to support her weight comfortably, he specifically indicated further diagnostic testing was needed to determine the exact status of her right knee and he questioned if there were any objective basis to her right knee pain. Dr. James did not attribute any period of disability to appellant's October 26, 2007 fall at work. Dr. Dwelle's opinion is not based on an accurate factual background, it is of diminished probative value.<sup>16</sup>

Dr. James' reports are not sufficient to establish that appellant was disabled during the period claimed of November 4, 2007 through July 3, 2008 due to injuries sustained in the October 26, 2007 fall. In his January 22, 2008 report, Dr. James relates her symptomatic right leg to her severely arthritic left knee and left knee shortening. However, no mention is made of the October 26, 2007 work-related fall or whether appellant was disabled. In his February 14, 2008 report, Dr. James noted that appellant's husband stated that the work-related fall resulted in her back pain, right knee pain and exacerbated her left knee pain. He, however, offered no

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<sup>13</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>14</sup> While OWCP, on September 10, 2008, phrased its acceptance of the right knee contusion condition as "temporary," it did not make a formal finding regarding when the condition ended.

<sup>15</sup> See *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

<sup>16</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

specific opinion on the cause of the disability at issue.<sup>17</sup> On August 7, 2008 Dr. James noted findings and the history of the October 26, 2007 injury and appellant's hospitalization but he provided no opinion on the cause of disability beginning November 4, 2007. Thus, Dr. James' reports are insufficient to establish her wage-loss claim.

Dr. Chaplan's reports are also insufficient to establish appellant's claim. In his May 22, 2009 report, Dr. Chaplan indicated a history of increasing problems with both knees following the work-related injury of October 26, 2007 but he did not specifically explain why her disability beginning November 4, 2007 was causally related to the October 26, 2007 fall at work. While he indicated that appellant had a soft tissue injury of the right knee which was exacerbated by her inability to walk normally on the left knee, he opined in his May 26, 2009 report that the etiology of the right knee pain was unclear. In none of his reports did Dr. Chaplan render an opinion on disability during the claimed period. In fact, he opined that appellant could return to modified work May 26, 2009. Thus, Dr. Chaplan's reports are insufficient to establish appellant's claim.

In a December 11, 2008 report, Dr. Clevenger noted the history of the October 26, 2007 work-related fall and that appellant's right knee continued to be her main complaint of pain following the fall. He diagnosed left knee degenerative joint disease, which he opined was not work related and right knee contusion. However, Dr. Clevenger offered no opinion on whether appellant was disabled during the period claimed. Thus, Dr. Clevenger's report is insufficient to establish appellant's claim.

The Board finds that the medical evidence of record is not sufficient to meet appellant's burden of proof with respect to the claimed disability for the period November 4, 2007 through July 3, 2008. Accordingly, OWCP properly denied wage-loss compensation for those days.

Appellant argues on appeal that OWCP's hearing representative's decision was contrary to fact and law. As noted, the medical evidence did not sufficiently address the causal relationship of her alleged disability during the claimed period to her accepted work-related injuries. Therefore, appellant failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office 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 she was disabled for the period November 4, 2007 through July 3, 2008 due to her accepted work-related injuries.

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<sup>17</sup> See *K.W.*, 59 ECAB 271(2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2011  
Washington, DC

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

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

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