

**United States Department of Labor
Employees' Compensation Appeals Board**

F.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

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**Docket No. 10-2060
Issued: June 10, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from the July 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for a period of disability. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden or proof to establish that he sustained disability for the period April 9 to May 7, 2010 due to his April 2, 2002 work injury.

FACTUAL HISTORY

On April 2, 2002 appellant, then a 48-year-old letter carrier, sustained a work-related injury after he quickly stopped walking and turned to his left when two dogs approached him on

¹ 5 U.S.C. §§ 8101-8193.

his mail delivery route.² OWCP accepted that he sustained a left knee strain due to the incident. On September 4, 2002 appellant underwent a left knee arthroscopy which was authorized by the Office.³ On June 17, 2004 he received a schedule award for a two percent permanent impairment of his left leg.

On April 22, 2010 appellant filed a Form CA-7 (claim for compensation) alleging that he sustained disability from April 9 to 23, 2010 due to his April 2, 2002 work injury. On May 8, 2010 he filed a Form CA-7 claiming that he was disabled for the period April 23 to May 7, 2010.⁴

On May 7, 2010 OWCP requested that appellant submit factual and medical evidence in support of his claim.

In a May 19, 2010 report, Dr. Michael Ford, an attending Board-certified orthopedic surgeon, stated that appellant was a patient at the Veterans Administration orthopedic clinic. He noted, "Due to his diagnosis of arthritis on his left knee, pain and swelling, crepitation, patient is limited to part time work." In a work restrictions form dated May 26, 2010, Dr. Ford listed the April 2, 2002 injury and found that appellant could work inside the post office with no carrying of mail. He stated that appellant could intermittently lift up to 45 pounds for 8 hours per day, stand for 3 hours, walk for 1 hour and twist for 4 hours.⁵

In a May 24, 2010 report, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon serving as an OWCP referral physician, reviewed a history of the April 2, 2002 work injury and reported findings on physical examination. He noted that appellant had osteoarthritis of his left knee with objective findings of limited squatting capability, walking with a limp, crepitus and give-way weakness. Dr. Swartz stated that this preexisting condition was aggravated by appellant's April 2, 2002 injury for a period up to December 4, 2002, or three months after his left knee surgery. Appellant was a candidate for a total left knee joint replacement due to his nonwork-related osteoarthritis. In a June 5, 2010 work restrictions form, Dr. Swartz stated that appellant was "not employable."

The Office requested that Dr. Swartz provide more detail for his opinion that appellant's preexisting left knee osteoarthritis was only temporarily aggravated by the April 2, 2002 work injury. On July 4, 2010 Dr. Swartz addressed the course of appellant's left knee symptoms and treatment and stated that the April 2, 2002 twisting episode was unlikely to have caused any permanent changes in the degenerative arthritic changes of his left knee. He stated, "I would

² Appellant was not attacked by the dogs.

³ Appellant was off work from the date of the surgery until he returned to limited-duty work on September 11, 2002. The Office accepted that appellant sustained work-related synovitis of his left knee after he slipped on mud on February 11, 2002. This claim has been closed.

⁴ When he filed his claims, appellant was working about 1.25 hours per day in a limited-duty position for the employer. The position required intermittently standing, walking, twisting and holding up to 10 pounds. Appellant claimed disability for the portion of each eight-hour day that he did not work.

⁵ The record also contains a less detailed work restrictions form that Dr. Ford completed on May 19, 2010.

again find that the episode of April 2, 2002 was a temporary aggravation of his preexisting osteoarthritis and of the previous injury of February 11, 2002.”

In a July 20, 2010 decision, OWCP denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained disability for the period April 9 to May 7, 2010 due to his April 2, 2002 work injury.

LEGAL PRECEDENT

An employee seeking benefits under the Act⁶ has the burden of establishing the essential elements of his claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ 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.⁸

ANALYSIS

On April 2, 2002 appellant sustained a work-related injury after he stopped walking and turned to his left when two dogs approached him on his mail delivery route. OWCP accepted that he sustained a left knee strain due to the incident and he returned to limited-duty work. In April and May 2010 appellant filed CA-7 forms alleging that he sustained disability for the period April 9 to May 7, 2010 due to his April 2, 2002 work injury.⁹ The Office denied appellant’s disability claim on the grounds that he did not submit sufficient medical evidence in support thereof.

The Board finds that appellant did not submit sufficient medical evidence to meet his burden of proof to establish that he sustained disability for the period April 9 to May 7, 2010 due to his April 2, 2002 work injury.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁹ Appellant was working about 1.25 hours per day in a limited-duty position for the employer and he claimed disability for the portion of each eight-hour day that he did not work. The position required intermittently standing, walking, twisting and holding up to 10 pounds.

Appellant submitted a May 19, 2010 report in which Dr. Ford, an attending Board-certified orthopedic surgeon, stated that the diagnosis of left knee arthritis with pain, swelling and crepitation limited him to part-time work. In work restriction forms dated May 19 and 26, 2010, Dr. Ford recommended various work restrictions. These reports do not establish appellant's disability for work from April 9 to May 7, 2010. OWCP has not accepted that appellant sustained work-related left knee arthritis and Dr. Ford did not provide any opinion that the work-related soft tissue injury of April 2, 2002 contributed to his left knee condition. In addition, it does not appear that Dr. Ford's work restrictions prevented appellant from performing the limited-duty position he held in April and May 2010.

Moreover, the record contains medical evidence indicating that the April 2, 2002 injury did not prevent appellant from working between April 9 and May 7, 2010. In May 24 and July 4, 2010 reports, Dr. Swartz, a Board-certified orthopedic surgeon serving as an OWCP referral physician, provided an opinion that appellant did not have disabling residuals of his April 2, 2002 work injury after December 4, 2002.¹⁰

For these reasons, appellant has not shown that he sustained disability for the period April 9 to May 7, 2010 due to his April 2, 2002 work injury and OWCP properly denied his claim.

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 did not meet his burden or proof to establish that he sustained disability for the period April 9 to May 7, 2010 due to his April 2, 2002 work injury.

¹⁰ The Board notes that, although Dr. Swartz indicated that the April 2, 2002 injury aggravated appellant's preexisting left knee arthritis, OWCP has not accepted a work-related aggravation of left knee arthritis for any period. Dr. Swartz indicated that appellant was totally disabled but this disability was due to nonwork-related osteoarthritis of the left knee.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 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