

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

D.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Birmingham, AL, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-397
Issued: October 12, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2010 appellant filed a timely appeal from a September 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for wage-loss compensation. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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's disability during the period March 19 to May 25, 2010 is causally related to the August 29, 2009 employment injury.

FACTUAL HISTORY

On September 2, 2009 appellant, then a 65-year-old, rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she bruised cartilage on her left knee after hitting it on the door

¹ 5 U.S.C. § 8101 *et seq.*

handle of her work vehicle in the performance of duty on August 29, 2009. She stopped working on September 1, 2009.

On November 30, 2009 appellant filed a recurrence claim (Form CA-2a) indicating that a recurrence occurred on November 10, 2009. She submitted medical evidence in support of her claim.

In an August 31, 2009 medical report, an unidentifiable physician diagnosed pain in lower leg joint and obesity.

In a November 10, 2009 medical report, Dr. Albert E. Smith, III, a Board-certified family medicine physician, diagnosed varicose veins in the lower extremities and osteoarthritis of the lower leg. In a November 20, 2009 progress report, he reviewed a left knee magnetic resonance imaging (MRI) scan and diagnosed tear of the posterior horn of the medial meniscus, extensive degenerative changes with loss of cartilage and moderate-sized joint effusion.

By letter dated December 24, 2009, OWCP acknowledged receipt of appellant's traumatic injury and recurrence claims and informed her that the evidence submitted was insufficient to establish that she sustained an injury. It allotted 30 days for appellant to submit new evidence and respond to its inquiries.

Appellant submitted a January 8, 2010 medical note from Dr. Smith advising that she was unable to work until after she had knee surgery.

By decision dated January 29, 2010, OWCP denied appellant's claim on the grounds that the medical evidence submitted was not sufficient to establish fact of injury.

By letter dated January 29, 2010, OWCP notified appellant that it could not consider her claim for a recurrence as her traumatic injury claim had been denied.

On February 10, 2010 appellant requested reconsideration of OWCP's January 29, 2010 decision and submitted additional evidence.

In a December 9, 2009 medical report, Dr. Theodis Buggs, Jr., a Board-certified orthopedic surgeon, diagnosed left knee torn medial meniscus with degenerative joint disease. In a December 16, 2009 progress report, he reiterated his diagnosis.

In a December 21, 2009 medical report, Dr. Smith reiterated his diagnosis of osteoarthritis of lower leg. In a report dated February 5, 2010, he opined that the trauma appellant sustained on August 29, 2009 worsened a degenerative knee condition which likely preexisted but had been asymptomatic.

By decision dated April 7, 2010, OWCP accepted appellant's claim for tear of posterior horn of left medial meniscus.

In a March 31, 2010 medical note, Dr. Smith opined that appellant continued to be unable to work due to her left knee condition. He explained that she did not have her surgery previously due to the fact that she experienced a heart attack on January 4, 2010.

On May 28, 2010 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 19 to May 25, 2010. She submitted a time analysis form (CA-7a) and resubmitted medical notes by Dr. Smith dated January 8 and March 31, 2010.

On June 8, 2010 the employing establishment controverted appellant's claim. It indicated that appellant was claiming 560 hours of leave without pay when she should be claiming 384 hours as she claimed 10 weeks of pay, or 400 hours less the 16 hours of sick leave, leaving a balance of 384 hours. The employing establishment noted that Dr. Smith had written her off work until she was able to have left knee surgery for her accepted condition. It challenged payment of compensation for April 10 to 16, 2010 as appellant received 16 hours of sick leave as compensation for 2 days work during that week.

By letter dated June 15, 2010, OWCP notified appellant that his claim for compensation was incomplete and requested additional evidence. It allotted 30 days for appellant to respond to its inquiries.

In a July 16, 2010 medical report, Dr. David Sibley, a physician Board-certified in internal medicine and cardiovascular disease, indicated that appellant has coronary artery disease and a history of intracoronary stent placements, the last of which was placed in April 2010. Dr. Sibley noted that appellant had severe cervical spondylosis with stenosis and arthritic disease in both of her knees. He opined that her cervical spondylosis and degenerative joint disease disabled her for work.

A series of requests for or notifications of absence by the employing establishment indicated that appellant took sick leave for the following periods: September 1 to 5, September 11 to 15, November 10 to 14, November 20, December 9, December 17, and December 19 to 27, 2009, January 5 to 21, and January 25 to February 6, 2010.

Appellant submitted return to work slips by Dr. Smith for September 8, 2008, November 16, 2009, December 28, 2009 and January 4, 2010 and resubmitted medical reports by Dr. Smith dated November 10, 2009 to March 31, 2010. She also resubmitted an August 31, 2009 medical report by an unidentifiable physician.

On April 15, 2010 appellant filed a claim for wage-loss compensation (Form CA-7) for the period August 3, 2009 to April 18, 2010.

By decision dated September 20, 2010, OWCP denied appellant's claim for disability for the period March 19 to May 25, 2010 on the grounds that the medical evidence submitted was not sufficient to support disability for the period claimed.

LEGAL PRECEDENT

Section 8102(a) of FECA² sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal

² 5 U.S.C. § 8102(a).

injury sustained while in the performance of his duty....” In general the term “disability” under FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”³ This meaning, for brevity, is expressed as disability for work.⁴ Appellant, for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.⁵

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. When, however, 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 his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.⁶ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period 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

The Board finds appellant is not entitled to wage-loss compensation for the period March 19 to May 25, 2010 causally related to the August 29, 2009 employment injury. The Board finds that appellant submitted no rationalized medical evidence explaining how her work activities materially worsened or aggravated her left knee condition and caused her to be totally disabled for work for the period March 19 to May 25, 2010.

On November 20, 2009 Dr. Smith diagnosed tear of the posterior horn of the medial meniscus, extensive degenerative changes with loss of cartilage, and moderate-sized joint effusion based on his review of a left knee MRI scan. On January 8, 2010 he advised that appellant was unable to work until after she had knee surgery. In his report dated February 5, 2010, Dr. Smith opined that the trauma appellant sustained on August 29, 2009 worsened a degenerative knee condition which likely preexisted but had been asymptomatic. On March 31, 2010 he opined that appellant continued to be unable to work due to her left knee condition as

³ 20 C.F.R. § 10.5(f). See also *William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

⁴ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁵ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁶ *Merle J. Marceau*, 53 ECAB 197 (2001).

⁷ *Fereidoon Kharabi*, *supra* note 5.

her surgery was postponed due to a heart attack on January 4, 2010. Dr. Smith completed return to work slips for September 8, 2008, November 16, 2009, December 28, 2009 and January 4, 2010. He provided a firm diagnosis and simply advised appellant not to work until after knee surgery, however, he did not provide a rationalized medical explanation as to how the residuals of the August 29, 2009 employment injury prevented her from continuing in her employment. Therefore, appellant has not met her burden of proof to establish that she is entitled to compensation.

In a July 16, 2010 medical report, Dr. Sibley indicated that appellant had coronary artery disease and a history of intracoronary stent placements. He noted that appellant had severe cervical spondylosis with stenosis and arthritic disease in both of her knees. Dr. Sibley opined that her cervical spondylosis and degenerative joint disease disabled her for work. Although Dr. Sibley opined that appellant was disabled, he failed to provide a rationalized medical explanation as to how the residuals of the August 29, 2009 employment injury prevented her from continuing to work. Thus, appellant did not meet her burden of proof.

In a December 9, 2009 medical report, Dr. Buggs diagnosed left knee torn medial meniscus with degenerative joint disease. The Board has held that 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.⁸ As Dr. Buggs did not provide a rationalized medical explanation as to how the residuals of appellant's August 29, 2009 employment injury prevented appellant from continuing in her employment, appellant did not meet her burden of proof.

In an August 31, 2009 medical report, an unidentifiable physician diagnosed pain in lower leg joint and obesity. This form, lacking proper identification, cannot be considered as probative evidence. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in FECA.⁹ Therefore, appellant did not meet her burden of proof.

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 has not met her burden of proof to establish that her disability for the period March 19 to May 25, 2010 was causally related to the August 29, 2009 employment injury.

⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ See *Merton J. Sills*, 39 ECAB 572 (1988). See also *Bradford L. Sutherland*, 33 ECAB 1568 (1982).

ORDER

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

Issued: October 12, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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