

FACTUAL HISTORY

OWCP accepted that on November 25, 1987 appellant, then a 44-year-old computer clerk, sustained a left medial meniscus tear with derangement of the left knee, traumatic arthropathy of the left knee and a left ankle sprain when she slipped on a floor plate cover.² She stopped work after the injury. Appellant returned to a modified secretarial position on January 26, 1988. On February 1, 1989 and February 20, 1991 she underwent arthroscopic partial lateral meniscectomies with debridement of the tibial plateau. OWCP approved both procedures. Appellant returned to a modified secretarial position in December 1992, with intermittent recurrences of disability through 2004.

On November 12, 2004 Dr. Mark I. Froimson, an attending Board-certified orthopedic surgeon, performed a left knee arthroscopy with partial lateral meniscectomy, chondroplasty and excision of loose bodies. On June 6, 2005 appellant accepted a modified secretarial position, with sitting seven hours a day, walking up to one hour a day, lifting up to 20 pounds and no squatting or kneeling.³

Appellant stopped work on November 3, 2008. On February 23, 2009 Dr. Froimson performed a total left knee arthroplasty, approved by OWCP. Appellant returned to work on August 17, 2009 as a modified automation secretary, with frequent lifting up to 10 pounds and occasional lifting up to 50 pounds, changing positions as needed, no squatting, twisting or turning, no reaching below the knee or above the shoulder and a 10- to 15-minute break after each hour of sitting, standing or walking.

On April 20, 2010 appellant claimed a recurrence of disability commencing March 19, 2010 related to the accepted left knee injuries and carpal tunnel syndrome. She submitted an October 21, 2009 report from Dr. Ajay Buddharaju, an attending orthopedic surgeon, who diagnosed severe osteoarthritis of the right knee. A March 10, 2010 imaging study showed mild degenerative changes of the right knee with no changes in the left knee replacement. In a March 24, 2010 report, Dr. Froimson stated that appellant was unable to work on March 19 and 22, 2010 due to a flare-up of "knee osteoarthritis." He released her to work on March 23, 2010 with limited walking. In an April 6, 2010 report, Dr. Debabrata Ghosh, an attending neurologist, obtained electromyogram studies showing bilateral carpal tunnel syndrome.

In a May 20, 2010 letter, OWCP advised appellant of the evidence needed to establish her claim for recurrence of disability, including a factual statement explaining why she stopped

² OWCP assigned the November 25, 1987 injuries case File No. xxxxxx060. Under File No. xxxxxx615, it also accepted bilateral carpal tunnel syndrome, right leg and knee abrasions and a left hand contusion sustained in a separate traumatic incident. OWCP doubled the claims in December 2002. It also accepted a right knee and shoulder sprain under File No. xxxxxx370 and a right ankle injury under File No. xxxxxx811. Between January 2000 and June 29, 2004, OWCP issued appellant schedule awards totaling a 59 percent permanent impairment of the left leg and 7 percent impairment of the left arm.

³ By decision dated November 30, 2006, OWCP found that appellant had no loss of wage-earning capacity as she had successfully performed the modified secretary job since June 6, 2005 with wages equal to or greater than those of her date-of-injury position.

work and a report from her attending physician supporting that she could no longer perform her assigned modified-duty position due to a worsening of the accepted conditions.

In a June 8, 2010 letter, appellant contended that her duties required walking long distances, stair climbing and prolonged keyboarding. She noted that she took online college classes unrelated to her employment.

In a June 9, 2010 report, Dr. Froimson recommended a total right knee arthroplasty for post-traumatic knee osteoarthritis. He found appellant totally disabled for work.

In a June 15, 2010 letter, appellant's supervisor stated that, since appellant returned to limited duty in 2009, she was not required to climb stairs. Appellant's duties consisted of updating telephone lists for up to 15 minutes once a day and updating documents for up to 30 minutes a day. She was not required to sit, walk or type for prolonged periods.

In June 29 and July 29, 2010 reports, Dr. Stephen P. Hayden, an attending Board-certified internist, diagnosed osteoarthritis of the right knee requiring total arthroplasty and bilateral carpal tunnel syndrome. He held appellant off work.

By decision dated August 12, 2010, OWCP denied appellant's claim for recurrence of disability. It found that she did not submit sufficient medical evidence supporting a worsening of the accepted conditions or a change in her light-duty job requirements on March 19, 2010 such that she was no longer able to perform her modified position.

In an August 24, 2010 letter, appellant requested a telephonic hearing, held on December 7, 2010. At the hearing, she testified that she was required to carry documents to and from her workstation to her supervisor's office, a distance of three city blocks each way. Appellant also asserted that, upon her return to work in December 2009, her workload increased as no one updated files during her absence. She estimated spending five to six hours a day keyboarding at work. In addition to her work duties, appellant participated in online college coursework for four to five hours a day. She contended that her right knee and carpal tunnel symptoms worsened in March 2010 due to prolonged walking and keyboarding. Appellant submitted additional medical evidence.

In November 16, 2010 reports, Dr. Froimson diagnosed post-traumatic lateral and patellofemoral compartment osteoarthritis of the right knee. He found appellant temporarily disabled for work. November 16, 2010 x-rays showed no significant progression of severe right knee arthritis or change in the left knee arthroplasty or hardware alignment. In a December 9, 2010 report, Dr. Buddharaju diagnosed osteoarthritis of the knee and prescribed physical therapy.⁴

By decision dated March 8, 2011, OWCP affirmed the August 12, 2010 decision denying appellant's claim for recurrence of disability. The hearing representative found that appellant did not establish as factual that she was required to walk long distances or perform prolonged

⁴Appellant submitted physical therapy notes dated from August 2010 through January 2011.

keyboarding. He further found that the medical evidence did not establish a change or worsening of the accepted conditions on March 19, 2010 such that appellant was no longer able to perform her modified-duty position. The hearing representative noted that appellant did not submit sufficient medical evidence to accept a right knee condition.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁵ When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements such that the position exceeds the employee's physical limitations.⁶ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁷

ANALYSIS

OWCP accepted that appellant sustained traumatic arthropathy and meniscal tears of the left knee necessitating three arthroscopies from 1989 to 1994, followed by a total left knee arthroplasty on February 23, 2009. It also accepted bilateral carpal tunnel syndrome. Following the arthroplasty, appellant returned to work as a modified secretary on August 17, 2009. She claimed a recurrence of total disability commencing March 19, 2010, asserting both a worsening of the claimed conditions and a change in her light-duty job requirements. OWCP denied appellant's claim for a recurrence of disability by decision dated August 12, 2010 and March 8, 2011 on the grounds that the medical evidence submitted did not support a worsening of the accepted conditions such that she was disabled for work or a change in her light-duty job that exceeded her work restrictions.

In support of her claim, appellant submitted medical reports which she alleged demonstrated a worsening of the accepted conditions on March 19, 2010. Dr. Froimson, an attending Board-certified orthopedic surgeon, stated in a March 24, 2010 report that appellant was disabled for work on March 19 and 22, 2010 due to a flare up of osteoarthritis of one of her knees. In reports from June 9 to November 16, 2010, he found that she disabled for work due to

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

⁶ *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

osteoarthritis of the right knee. However, Dr. Froimson did not explain how the March 19, 2010 flare up or right knee osteoarthritis was related to the accepted injuries. Similarly, Dr. Hayden, an attending Board-certified internist, found appellant totally disabled for work in June and July 2010 due to right knee osteoarthritis, but did not provide medical rationale supporting a causal relationship between the left knee injuries and right knee arthritis. The lack of rationale greatly reduces the probative value of Dr. Froimson's and Dr. Hayden's opinion.⁸

Appellant also submitted an October 21, 2009 report from Dr. Buddhharaju, an attending orthopedic surgeon, who diagnosed osteoarthritis of the right knee and an April 6, 2010 report from Dr. Ghosh, an attending neurologist, regarding carpal tunnel syndrome. However, neither physician addressed any period of disability for work. Therefore, their reports are insufficient to meet appellant's burden of proof.

Appellant also alleged a change in the nature of her light-duty requirements following her return to work in August 2009. She contended that she was required to walk a distance of three city blocks to deliver papers to her supervisor's office, perform prolonged keyboarding and update neglected files for several hours a day. However, appellant's supervisor controverted appellant's account in a June 15, 2010 letter, explaining that appellant had only 45 minutes of work to perform each day and was not required to walk or type for prolonged periods. Also, appellant did not provide any factual evidence corroborating a change in her job requirements. The Board finds that she has not met her burden of proof in this regard.⁹

On appeal, counsel contends that the March 8, 2011 decision is "contrary to fact and law." As stated, appellant did not submit sufficient evidence to establish a worsening of the accepted conditions on March 19, 2010 such that she could no longer perform her modified secretarial job or a change in her modified duties such that they were beyond her physical limitations. Therefore, the Board finds that the March 8, 2011 decision denying her claim for a recurrence of disability commencing March 19, 2010 was proper under the law and facts of this case.

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 established that she sustained a recurrence of disability commencing on March 19, 2010 causally related to accepted left lower extremity injuries and bilateral carpal tunnel syndrome.

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *J.F.*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2011 is affirmed.

Issued: February 23, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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