

¹ 5 U.S.C. §§ 8101-8193.

right knee. Appellant stopped work on October 26, 2000 and returned to work on November 6, 2000 as a lead medical support technician. She later began working on a full-time basis as a modified medical records technician, a position which was sedentary in nature.

On December 8, 2000 appellant underwent arthroscopic surgery of her right knee with partial lateral meniscectomy and resection of plica-type scar in the supra-patellar pouch. The procedure was authorized by OWCP.

In a May 20, 2002 decision, OWCP granted appellant a schedule award for a 10 percent permanent impairment of her right leg. The award ran for 28.8 weeks from April 23 to November 10, 2002.

Appellant filed several claims for compensation (Form CA-7) alleging that she was totally disabled on July 20 and 27, August 3, 10, 17, 18 and 19, 2011 due to her October 26, 2000 work injury. In brief reports dated July 20 and 27, August 3 and 10, 2011, Dr. John M. Graham, Jr., an attending Board-certified orthopedic surgeon, indicated that he treated her right knee on those dates by providing sodium hyaluronate injections. He generally noted that appellant complained of discomfort in her right knee.

In a November 29, 2011 decision, OWCP denied appellant's claim that she had work-related total disability on July 20 and 27, August 3, 10, 17, 18 and 19, 2011, noting that she did not submit sufficient medical evidence to support her claim. However, it did accept that she should be paid for the time she attended OWCP-authorized medical appointments on July 20 and 27, August 3 and 10, 2011.

The findings of June 6, 2012 x-ray testing of appellant's right knee revealed moderately severe medial compartment joint space narrowing with associated marginal osteophytes. No acute bony injury was observed.

In a June 20, 2012 report, Dr. Graham indicated that appellant complained of pain upon range-of-motion testing of her right knee. He diagnosed unspecified osteoarthritis of the right knee and indicated that she should be limited to sedentary work for only four hours per day.

Appellant filed CA-7 forms alleging that she was disabled for four hours per day from July 16 to October 5, 2012.²

Appellant submitted a July 16, 2012 report in which Dr. Graham stated that she continued to complain of restricted right knee motion and pain when engaging in right knee flexion. He indicated that she reported pain upon range-of-motion testing of her right knee and noted that her right knee had normal stability. Dr. Graham diagnosed unspecified osteoarthritis of the right knee and indicated that appellant should be limited to sedentary work for only four hours per day. He stated that she should continue with a home exercise program and "activity

² In addition to claiming that she was disabled from work for four hours on July 16, 2012, appellant claimed that she should receive compensation for four hours in connection with the July 16, 2012 examination by Dr. Graham.

precautions.”³ In a July 16, 2012 form report, Dr. Graham noted that appellant could return to work on July 16, 2012 for four hours per day. In a July 18, 2012 form report, he stated that she could return to sedentary work on July 17, 2012 for four hours per day. Dr. Graham indicated that appellant’s next appointment was for September 19, 2012.

In an August 6, 2012 letter, OWCP requested that appellant submit additional evidence in support of her claim. In an August 20, 2012 statement, appellant indicated that she continued to experience pain, swelling, instability and popping in her right knee.

In an August 21, 2012 form report, Dr. Graham noted that appellant’s history of injury “goes back to 2009” and diagnosed osteoarthritis of the right knee. In response to a question regarding whether the observed condition was caused or aggravated by a work activity, he stated, “Prolonged standing or walking may aggravate condition.” Dr. Graham indicated that appellant could only perform sedentary work for four hours per day. In an August 21, 2012 work restriction form, he stated that she could only perform sedentary work for four hours per day, noting that working eight hours per day “may aggravate condition.” Appellant could sit for four hours per day and walk or stand for two hours per day, but she could not engage in bending, stooping, squatting, kneeling or climbing.

In a September 19, 2012 report, Dr. Graham stated that appellant continued to complain of pain and swelling in her right knee as well as pain in her right knee at rest and with activity. He noted that she reported pain with range-of-motion testing of her right knee and that mild crepitus was observed. Dr. Graham stated that all ligaments in appellant’s right knee appeared to be stable. He diagnosed unspecified osteoarthrosis of the right knee and indicated that she should be limited to sedentary work for only four hours per day. Dr. Graham injected appellant’s right knee with methylprednisolone acetate and stated that she should return in two months for a recheck of her condition. In a September 19, 2012 form report, he indicated that she was permanently released to sedentary work with restrictions, including no squatting, climbing, stooping and no standing or walking for over two hours per day. Appellant also could not engage in “excessive running or cutting.” He also submitted physical therapy reports, a page from an undated functional evaluation report completed by a physical therapist and a report containing physical findings signed by a person with an illegible signature. In an October 22, 2012 form report, Dr. Graham indicated that appellant could return to sedentary work on October 22, 2012.

In a November 30, 2012 decision, OWCP denied appellant’s claim that she had disability from July 16 to October 5, 2012 for four hours per day due to her October 26, 2000 work injury. It found that she did not submit sufficient medical evidence to support her claim.⁴

³ A copy of the July 16, 2012 report, which was submitted at a later date, contains an attached note in which Dr. Graham stated, “These restrictions are permanent and updated.”

⁴ However, OWCP determined that appellant should be paid compensation in connection with the July 16, 2012 examination with Dr. Graham.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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.⁵ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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.⁷

ANALYSIS

OWCP accepted that on October 26, 2000 appellant sustained a torn medial meniscus and post-traumatic arthropathy of her right knee due to standing up from a sitting position and authorized December 2000 right knee surgery, which included partial lateral meniscectomy and resection of plica-type scar in the supra-patellar pouch. Appellant began working on a full-time basis as a modified medical records technician, a position which was sedentary in nature. She filed CA-7 forms alleging that she was disabled for four hours per day from July 16 to October 5, 2012 due to her October 26, 2000 work injury and OWCP denied her claim on the grounds that she did not submit sufficient medical evidence in support thereof.

The Board finds that appellant did not submit sufficient medical evidence to establish that she had disability from July 16 to October 5, 2012 for four hours per day due to her October 26, 2000 work injury.

Appellant submitted a July 16, 2012 report in which Dr. Graham, an attending Board-certified orthopedic surgeon, stated that she continued to complain of restricted right knee motion and pain when engaging in right knee flexion. Dr. Graham indicated that she reported pain upon range-of-motion testing of her right knee and noted that her right knee had normal stability. He diagnosed unspecified osteoarthritis of the right knee and indicated that appellant should be limited to sedentary work for only four hours per day.⁸ In a July 16, 2012 form report, Dr. Graham noted that she could return to work on July 16, 2012 for four hours per day and, in a

⁵ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁶ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

⁷ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁸ Dr. Graham later indicated that these restrictions were permanent.

July 18, 2012 form report, he stated that she could return to sedentary work on July 17, 2012 for four hours per day.

The submission of these reports does not establish appellant's disability claim, because Dr. Graham did not provide a clear opinion that her claimed disability for four hours per day beginning July 16, 2012 was due to her October 26, 2000 work injury or any other work-related condition. Dr. Graham did not provide any notable description of her medical history or detail the conditions accepted by OWCP as due to the incident on October 26, 2000 when she stood up from a sitting position. Moreover, he did not explain how appellant's right knee condition prevented her from working for four hours each day beginning July 16, 2012. Appellant's job in July 2012 was sedentary in nature and required minimal walking and standing. Although Dr. Graham noted that she reported symptoms such as pain on right knee motion, she complained of such symptoms well before July 2012 and he did not explain why she could only perform her sedentary work for four hours per day beginning July 16, 2012.

In an August 21, 2012 form report, Dr. Graham indicated that appellant's history of injury "goes back to 2009" and diagnosed osteoarthritis of the right knee. In response to a question regarding whether the observed condition was caused or aggravated by a work activity, he stated, "Prolonged standing or walking may aggravate condition." Dr. Graham indicated that appellant could only perform sedentary work for four hours per day. In an August 21, 2012 work restriction form, he stated that she could only perform sedentary work for four hours per day, noting that working eight hours per day "may aggravate condition." While Dr. Graham now appeared to relate appellant's disability for four hours per day to a work cause, he did not provide a rationalized explanation for this opinion. He did not describe her accepted work conditions in any detail or explain how they could have caused disability for four hours per day.⁹ Rather, Dr. Graham appears to have restricted appellant to working for only four hours per day based on a perception that she might be injured at some point in the future if she worked eight hours per day. However, it is well established that the possibility of future injury constitutes no basis for the payment of compensation.¹⁰

In a September 19, 2012 report, Dr. Graham stated that appellant continued to complain of pain and swelling in her right knee as well as pain in her right knee at rest and with activity. He noted that she reported pain with range-of-motion testing of her right knee and that mild crepitus was observed, but pointed out that all ligaments in her right knee appeared to be stable. Dr. Graham again diagnosed unspecified osteoarthrosis of the right knee and indicated that appellant should be limited to sedentary work for only four hours per day.¹¹ In his September 2012 reports, he also failed to provide a rationalized opinion explaining how her October 26, 2000 work injury limited her to only working four hours per day. Dr. Graham did

⁹ Moreover, Dr. Graham provided an inaccurate medical history by indicating that appellant's right knee problems dated from 2009.

¹⁰ *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

¹¹ In a September 19, 2012 form report, Dr. Graham indicated that appellant was permanently released to sedentary work with restrictions, including no squatting, climbing, stooping and no standing or walking for over two hours per day. Appellant also could not engage in "excessive running or cutting."

not describe the conditions accepted by OWCP as being caused by the October 26, 2000 work incident or explain how these conditions caused disability from appellant's sedentary work.

Appellant also submitted physical therapy reports and a page from an undated functional evaluation report completed by a physical therapist. However, as causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of nonphysicians, such as physical therapists, cannot be considered by the Board in adjudicating that issue.¹² On appeal, appellant argued her continuing right knee symptoms showed that she had the claimed work-related disability between July and October 2012, but her own opinion on the cause of her claimed disability has no probative value.

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 her burden of proof to establish that she had disability from July 16 to October 5, 2012 for four hours per day due to her October 26, 2000 work injury.

¹² *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993); *Jane A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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