

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

G.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellflower, CA, Employer**

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**Docket No. 14-813
Issued: July 21, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2014 appellant filed an appeal from a September 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a claimed period of disability. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that he was disabled for work on June 1 and 17, 2013 due to accepted left knee and lumbar conditions.

On appeal appellant contends that on June 1, 2013 he could not work due to knee pain but was too immobile to go to the doctor. On June 17, 2013 he reported for a scheduled physical therapy appointment but the session was cancelled as the provider was in an accident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on or before April 18, 2011 appellant, then a 51-year-old city carrier, sustained an L4-5 disc protrusion, left knee plica syndrome and left quadriceps tendinitis in the performance of duty.

On August 13, 2012 Dr. Charles Herring, an attending Board-certified orthopedic surgeon, performed a three compartment synovectomy of the left knee with chondral debridement and a postoperative injection. OWCP authorized the procedure.

Appellant received compensation for temporary total disability from August 13, 2012 to March 1, 2013. He returned to part-time modified duty on March 2, 2013, working one to two hours a day. Appellant received compensation for the remaining hours of wage loss.

On May 28, 2013 Dr. Herring prescribed acupuncture to treat appellant's ongoing left knee symptoms, approved by OWCP.

On June 17, 2013 appellant claimed intermittent wage-loss compensation for the period May 28 to June 7, 2013. He worked part time from May 28 to 31 and on June 3, 5, 6 and 7, 2013. On June 1, 2013 appellant called his supervisor to advise that he was "unable to work due to pain." He claimed eight hours of wage loss for June 1, 2013. OWCP issued compensation for wage loss from May 28 to 31 and June 3, 5, 6 and 7, 2013. In a June 25, 2013 letter, OWCP advised appellant that it could not issue wage-loss compensation for June 1, 2013 until he submitted medical evidence to support that he was totally disabled for work that day.

On June 27, 2013 appellant claimed intermittent wage loss from June 8 to 21, 2013, including June 17, 19 and 21, 2013 acupuncture appointments. In a July 2, 2013 letter, OWCP advised appellant to submit evidence regarding the acupuncture appointments, including the 6.86 hours claimed on June 17, 2013. Appellant submitted a June 19, 2013 medical report and a modality list showing treatment on June 21, 2013. In a July 9, 2013 statement, he noted that on June 17, 2013 he reported for an acupuncture appointment but did not receive treatment as the provider was in an accident and unavailable.

By decision dated September 25, 2013, OWCP denied appellant's claims for wage loss on June 1 and 17, 2013. It found that he did not submit sufficient medical evidence to establish an injury-related disability for those dates. It found that appellant did not submit medical reports or treatment records for either June 1 or 17, 2013.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence.²

² Donna L. Miller, 40 ECAB 492, 494 (1989); Nathaniel Milton, 37 ECAB 712, 722 (1986).

To establish a causal relationship between the period of disability claimed and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.³ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.⁵

The Board will not require OWCP to pay compensation for disability in the absence of any 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.⁶

ANALYSIS

OWCP accepted that appellant sustained lumbar and left knee injuries in the performance of duty. Following authorized left knee surgery, he returned to work in a part-time modified position on March 2, 2013. He claimed compensation for total disability on June 1, 2013 due to left knee pain and for 6.86 hours on June 17, 2013 to attend an acupuncture appointment as prescribed. By decision dated September 25, 2013, OWCP denied appellant's claim for compensation on June 1 and 17, 2013 finding that the medical evidence did not establish work-related disability.⁷

In support of his claim for disability on June 1, 2013, appellant explained that he was unable to work that day due to knee pain. He called his supervisor to advise that he could not report for duty. The Board notes that appellant did not submit any medical evidence addressing his knee condition on June 1, 2013 or finding him unable to work that day. His self-certification of disability is insufficient to meet his burden of proof.⁸

Regarding the June 17, 2013 work absence, appellant stated that, while he reported for a scheduled appointment, he did not receive treatment as the provider was unavailable due to an accident. He thus explained that there was no medical evidence available for June 17, 2013. As

³ *Manuel Gill*, 52 ECAB 282 (2001).

⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ *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).

⁸ *Supra* note 6.

appellant did not provide medical evidence to establish a work-related disability for June 1 or 17, 2013, OWCP properly denied compensation for those dates.

On appeal appellant asserts that on June 1, 2013 he could not work due to knee pain, but was too immobile to go to the doctor. On June 17, 2013 he reported for a scheduled physical therapy appointment but the session was cancelled as the provider was in an accident. The Board finds that OWCP properly denied appellant's claim for wage-loss compensation on June 1 and 17, 2013. Appellant did not submit medical evidence establishing work-related disability on either date.

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 had not established that he was disabled for work on June 1 and 17, 2013 due to accepted left knee and lumbar conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 25, 2013 is affirmed.

Issued: July 21, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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