

FACTUAL HISTORY

On March 26, 2012 appellant, then a 37-year-old social scientist, filed a traumatic injury claim alleging that she injured her right knee on March 7, 2012 when she bent over to pick up a duffel bag.² She was initially treated in Afghanistan and transported to Germany where a magnetic resonance imaging (MRI) scan demonstrated a complete anterior cruciate ligament (ACL) tear. Appellant was then flown back to the United States where Dr. James Elliott, a Board-certified orthopedic surgeon, performed surgical repair on March 28, 2012.

A position description for appellant's social scientist position indicated that it was in support of combat operations and that the social scientist could be required to deploy on very short notice and maintain a level of physical fitness including: tolerate heat well in excess of 110 degrees in the summer and cold or freezing conditions during the winter; traverse rough and uneven terrain; endure hostile environment including persons that could cause bodily harm, injury, or loss of life; work with little sleep or rest for extended periods of time in support of physically and mentally challenging projects; travel extended distances by foot, military ground vehicles, and air transport into mountainous or desert regions; carry 40 to 75 pounds of gear and personal protective equipment for 10 to 16 hours a day; conduct a variety of tactical maneuvers in personal protective gear, which could include entering and exiting a combat vehicle, conducting a security halt; and responding to direct and indirect fire.

On May 7, 2012 OWCP accepted sprain of knee, cruciate ligament, right. Appellant received disability compensation beginning April 22, 2012 and she was placed on the periodic compensation rolls.³

In June 2012, the employing establishment informed appellant that her employment would end in September 2012 because the position had been abolished due to changes in funding and mission requirements. Appellant was terminated effective September 8, 2012. Dr. Elliott submitted treatment notes dated March 19 and November 27, 2012 describing her postoperative care, noting that she had problems regaining full flexion.

In January 2013, OWCP referred appellant to Dr. John M. McNulty, a Board-certified orthopedic surgeon, for a second-opinion evaluation. In a February 4, 2013 report, he noted his review of the medical record and her complaint of pain and weakness in her right knee with popping, cracking, and stiffness. Physical examination demonstrated decreased right knee flexion and obvious thigh muscle atrophy. Dr. McNulty diagnosed status-post right knee ACL reconstruction with stable grafts and quadriceps atrophy with resultant right knee extension weakness. On an attached work capacity evaluation, he advised that appellant could walk and stand for 4 hours, could push and pull 20 pounds for 2 hours, could lift 20 minutes, and could not

² Appellant indicated on the claim form that the date of injury was March 12, 2012. On May 11, 2012 she amended the date to reflect that the injury occurred on March 7, 2012. The medical evidence supports that the injury occurred on March 7, 2012.

³ Although appellant accepted a social scientist position at Fort Leavenworth, Kansas on May 30, 2012, she reinjured her right knee while moving. On July 23, 2012 OWCP determined that the job offer was not suitable.

squat, kneel, or climb. Dr. McNulty indicated that she did not have right knee strength to carry 40 to 75 pounds of gear.

Dr. Elliott continued to submit reports describing appellant's right knee condition. An April 16, 2013 electrodiagnostic study of the right lower extremity was normal.⁴ A July 16, 2013 MRI scan study of the right knee demonstrated an intact ACL graft, possible localized chondromalacia, an unusual signal at the inferior margin of the patella of uncertain etiology but possibly scar, and no significant derangement.

Appellant changed physicians in September 2013. In a September 24, 2013 report, Dr. Stanley H. Makman, an attending Board-certified orthopedic surgeon, noted that she was doing research with the military when injured. He reviewed medical records including the MRI scan study and reported appellant's complaint of right knee pain and popping since the time of surgery. Dr. Makman provided right knee examination findings including full range of motion and mild quadriceps atrophy. He indicated that appellant could jump on the right foot and land on the single leg without difficulty. Dr. Makman diagnosed stable right knee and recommended continued strengthening therapy. He advised that appellant had reached maximum medical improvement but that if popping and discomfort persisted, an option would be arthroscopic debridement. On an attached work capacity evaluation, Dr. Makman stated that she could return to her usual job without restriction.

In a November 1, 2013 letter, OWCP proposed to terminate appellant's wage-loss compensation, based on Dr. Makman's opinion that she could return to her usual job without restriction. Appellant disagreed with the proposed termination, noting that Dr. Makman was requesting authorization for follow-up surgery on the right knee to remove scar tissue.

In a December 5, 2013 report, Dr. Makman noted appellant's complaint of continued discomfort, popping, and catching in the knee, that her quadriceps felt weak, and that she would like to go ahead with scar debridement surgery. He noted examination findings of no effusion and good range of motion, with some tenderness and grinding. Dr. Makman diagnosed symptomatic plica and scar tissue of the right knee and requested authorization for surgery.

On December 9, 2013 Dr. Morley Slutsky, an OWCP medical adviser who is Board-certified in occupational medicine, noted his review of the record including Dr. Makman's reports. He stated that there were no current notes from the attending surgeon and that the MRI scan study did not support that scar tissue was present. Dr. Slutsky recommended a second-opinion evaluation.

OWCP referred appellant, along with the medical record, a statement of accepted facts, and a set of questions, to Dr. Matthew K. Wallace, a Board-certified orthopedic surgeon, for a second opinion evaluation. The statement of accepted facts included the physical requirements of appellant's social scientist position in Afghanistan. In a February 28, 2014 report, Dr. Wallace noted the history of injury, her medical and surgical history, and her complaint of limiting mechanical symptoms, mainly around the kneecap, and some quadriceps weakness. He

⁴ In June 2013, appellant was referred for vocational rehabilitation. Rehabilitation services were placed in interrupted status in February 2014.

described physical examination findings, noting minimal atrophy, excellent Lachman testing, a negative pivot shift test, and no effusion. Appellant was stable at varus and valgus. Sensation was intact and strength was good with the exception of quadriceps. There was tenderness and pain around the patella and pain with patellar compression maneuvers and crepitus around the patella. Dr. Wallace diagnosed two years status-post right ACL reconstruction with failure to return to work. He opined that appellant should at least try to return to work but indicated that, with some evidence of mechanical symptoms on examination, it would be reasonable to consider arthroscopy due to the potential of some scar tissue related to the previous surgery. Dr. Wallace further stated that the ACL reconstruction was done very well and that she had no limitations and should be able to do the job she was doing previously.

By decision March 4, 2014, OWCP found that the weight of the medical evidence established that appellant was no longer disabled from work and finalized the termination of wage-loss compensation, effective March 9, 2014.

On May 27, 2014 appellant, through counsel, requested reconsideration. She asserted that the medical evidence established that she was not at maximum medical improvement and that her compensation should not have been terminated.⁵ In an April 29, 2014 report, Dr. Makman noted the history of injury and that appellant had ACL reconstruction. He advised that she continued to have problems with the knee, including crepitus, tenderness, and quadriceps atrophy which were consistent with a cyclops lesion and intra-articular scar tissue. Dr. Makman indicated that appellant's knee warranted an arthroscopic debridement and excision of scar tissue.

In a merit decision dated July 9, 2014, OWCP found that the medical evidence, based on the work capacity evaluation completed by Dr. Makman, did not establish that appellant was totally disabled. It informed her that if she underwent the recommended right knee surgery, she would again be entitled to total disability compensation.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn

⁵ In separate correspondence, counsel also questioned whether appellant was compensated at the correct rate of pay. On June 25, 2014 OWCP informed her that, because appellant was compensated at the maximum pay rate allowed, she was not underpaid.

⁶ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *Id.*

wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless 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 in FECA.⁸ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁹

ANALYSIS -- ISSUE 1

The Board finds that the weight of the medical evidence established that appellant was no longer disabled from work due to the accepted right knee condition on March 9, 2014 when it terminated her wage-loss compensation.

In September 24, 2013 reports, Dr. Makman, an attending orthopedic surgeon, described the history of injury, provided examination findings, and advised that appellant was no longer disabled from work and could return to her previous position. Likewise, on February 28, 2014, Dr. Wallace, an OWCP referral orthopedist, reviewed the physical requirements of the date-of-injury position and provided an extensive report in which he advised that appellant had no limitations and should be able to do the job she was doing previously. Although both physicians indicated that it would be reasonable for her to have additional surgery to correct scarring, as noted above, disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁰ Both physicians indicated that appellant had no disability from work. Appellant's medical benefits were not terminated. There is no additional medical evidence probative on the issue of whether she was disabled due to the accepted right knee condition on March 9, 2014. OWCP therefore met its burden of proof to terminate appellant's wage-loss compensation effective that day.¹¹

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's wage-loss compensation on March 9, 2014, the burden shifted to her to establish that she had any disability causally related to the accepted right knee condition.¹² Causal relationship is a medical issue. 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.¹³

⁸ 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Supra* note 8.

¹¹ *Jaja K. Asaramo*, *supra* note 6.

¹² *See Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

¹³ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has continued to be disabled due to her accepted right knee injury on or after March 9, 2014. With her May 27, 2014 reconsideration request, appellant submitted an April 29, 2014 report in which Dr. Makman advised that she continued to have right knee crepitus, tenderness, and that this warranted an arthroscopic debridement and excision of scar tissue. Dr. Makman, however, did not comment on whether appellant was disabled from work.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific periods of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁴ The issue of disability for work is an issue that must be resolved by competent medical evidence.¹⁵ The Board finds Dr. Makman's April 29, 2014 report to be of insufficient probative value to meet appellant's burden to establish that she had continued work-related disability due to the accepted March 7, 2012 right knee injury after the termination of wage-loss compensation on March 9, 2014.

As noted by OWCP in its merit decision dated July 9, 2014, if appellant underwent the recommended right knee surgery, she would again be entitled to total disability compensation.

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 OWCP met its burden of proof to terminate appellant's wage-loss compensation effective March 9, 2014 because she was no longer totally disabled due to the accepted right knee condition and that she did not establish that she had any continuing employment-related disability after that date causally related to the March 7, 2012 employment injury.

¹⁴ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁵ *See R.C.*, 59 ECAB 546 (2008).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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