

FACTUAL HISTORY

On June 18, 2013 appellant, a 52-year-old courier, sustained a traumatic injury in the performance of duty while pushing a large, heavy crate off the back of a truck in an embassy compound. He felt a pop in his right knee. Appellant did not stop working.

When the pain did not go away, appellant saw Dr. Randall S. Peyton, a Board-certified orthopedic surgeon, in September 2013. An imaging study showed a horizontal tear of the posterior horn and body of the right medial meniscus.

On January 2, 2014 Dr. Peyton noted that appellant's symptoms were moderate to severe and constant. Aggravating factors included walking down stairs, walking, and bearing weight. Relieving factors included elevation, pain medication, and rest. Appellant indicated that his symptoms had worsened. His knee locked up once and was very painful. Appellant had numbness and pain that went up on the right thigh. Pain was not constantly 7/10, but it was now much more painful most of the day. Appellant was no longer able to sit for prolonged periods of time. He wanted to discuss the merits of stopping work for a while until he got things sorted out at work to get a more definitive treatment for his knee. Appellant was awaiting OWCP's approval of surgery. Physical examination showed moderate effusion, tenderness at the medial joint line, mild crepitation, a positive McMurray's test, positive valgus stress with pain, limited active range of motion, and passive painful range of motion. Dr. Peyton diagnosed right medial meniscal tear, right medial collateral ligament tear/sprain/strain, right knee internal derangement, and unspecified joint effusion. He advised that appellant was still a candidate for surgery. Dr. Peyton found that appellant was currently unable to perform more than sedentary activities so he imposed work restrictions.

On January 28, 2014 Dr. Peyton wrote a work status note indicating his history of treatment, aggravating factors, and the fact that appellant has constant knee pain. He advised that appellant needed surgery and that, if the meniscal tears were left untreated, the right knee would continue to worsen, and there would be further damage to the articular cartilages in the joint. Dr. Peyton found that appellant was unable to stand, walk, sit for prolonged periods of time, climb stairs, or rest comfortably. Appellant would not be able to return to work until he got the right knee surgically treated.

Dr. Peyton completed an attending physician's form report indicating that appellant was totally disabled for work beginning January 28, 2014. He explained that meniscal tears, even with treatment, were likely to cause degeneration of the cartilage in the knee, and were likely to cause pain, swelling, and necessitate further treatment.

Appellant claimed a recurrence of disability beginning December 16, 2013. He noted that he previously had continued to work until the joint failed on December 11, 2013.

On March 6, 2014 Dr. Peyton performed a right partial medial meniscectomy and chondroplasty of the patella.

On April 9, 2014 Dr. Peyton provided a fitness-for-duty report. He noted the history of injury and the successful treatment appellant received through arthroscopic knee surgery.

Appellant was greatly improved and ready to return to work. It was very possible, however, that he would need further treatment in the future including further surgery. Dr. Peyton opined, “Finally, [appellant] may return to work 14 April 2014.”

Shortly thereafter OWCP accepted appellant’s claim for a tear of the right medial meniscus. It advised that, if the injury resulted in lost time from work, appellant could claim compensation using Form CA-7.

Appellant filed a claim seeking wage-loss compensation from December 15, 2013 to April 10, 2014. He submitted a time analysis form. The employing establishment indicated that appellant used annual leave from December 23 to 27, 2013, sick leave from December 30, 2013 to March 27, 2014, and leave without pay from March 28 to April 4, 2014.

In a decision dated August 12, 2014, OWCP denied appellant’s claim for wage-loss compensation. It noted that Dr. Peyton did not explain the additional medical conditions and treatment appellant received during the time in question, including right knee internal derangement and right knee effusion. Further, OWCP had requested but did not receive a time analysis form and leave buyback worksheet/certification.

On appeal, appellant argues that Dr. Peyton’s June 2, 2014 note provided a rationalized opinion based on an accurate medical history that the compensable right knee meniscus tear rendered him unable to perform his job duties until April 14, 2014.²

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submitting medical evidence for each period of disability claimed.⁵ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁶ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁷

² Dr. Peyton’s June 2, 2014 fitness-for-duty report was identical to his April 9, 2014 fitness-for-duty report.

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f).

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

⁶ *Id.*

⁷ C.S., Docket No. 08-2218 (issued August 7, 2009).

The Board will not require OWCP to pay compensation for disability in the absence of 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 his disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁸

ANALYSIS

Appellant did not stop working when he injured his right knee on June 18, 2013. When the pain did not cease after three months, he saw Dr. Peyton, an orthopedic surgeon, who discovered that appellant had a tear of the right medial meniscus.

Appellant continued to work until, as he explained in his recurrence claim, the joint failed on December 11, 2013. He claimed compensation for wage loss beginning December 15, 2013, but the record contains no medical evidence from October 4, 2013 to January 2, 2014. Dr. Peyton saw appellant on January 2, 2014, but he did not find appellant totally disabled for work. He wanted to discuss the merits of stopping work, but he found that appellant could work with restrictions.

It was not until his January 28, 2014 work status note that Dr. Peyton found appellant disabled for work. He had already described positive clinical findings during the January 2, 2014 physical examination. Appellant was now unable to stand, walk, sit for prolonged periods of time, climb stairs, or rest comfortably. He would not be able to return to work until he underwent right knee surgery.

The Board finds that the medical evidence is insufficient to establish that appellant's June 18, 2013 work injury caused disability for work beginning December 15, 2013, as appellant claimed. The record is devoid of medical evidence to support this. However, the medical evidence does support that appellant was unable to work beginning January 28, 2014. He was clearly disabled for work as a result of the March 6, 2014 surgery Dr. Peyton performed to repair the accepted medical condition. Further, it seems reasonable that this surgery disabled appellant for approximately five weeks, during which time he greatly improved and was ready to return to work on April 14, 2014.

The Board will set aside OWCP's August 12, 2014 decision denying appellant's wage-loss claim and will remand the case for further development of the medical opinion evidence on the issue of disability for work. OWCP shall provide Dr. Peyton a statement of accepted facts and a description of the physical demands of appellant's position as a courier. Following such further development as may be necessary, it shall issue a *de novo* decision on appellant's wage-loss claim.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development is warranted.

⁸ Sandra D. Pruitt, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: May 4, 2015
Washington, DC

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

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

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