

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDY R. WEISSINGER and DEPARTMENT OF JUSTICE,
INTERNAL REVENUE SERVICE, Philadelphia, PA

*Docket No. 03-935; Submitted on the Record;
Issued August 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established entitlement to compensation from January 18 to July 29, 2002.

On December 11, 2001 appellant, then a 24-year-old clerk, filed a claim for traumatic injury alleging that on December 5, 2001 she tore a ligament in her left knee as a result of a fall at work. She stopped work on that date.¹

In a report dated December 11, 2001, Dr. Danail Vatev, Board-certified in internal medicine, stated that appellant was under his care due to injuries sustained on December 5, 2001, that she was unable to work from December 6, 2001 and it was unknown when she would return to work pending an appointment with an orthopedic surgeon.

In a report dated January 14, 2002, Dr. Paul Steinfield, appellant's treating physician and a Board-certified orthopedic surgeon, stated that a magnetic resonance imaging (MRI) scan revealed a left knee stenosis and that appellant was disabled from work as a result.²

In a report dated February 8, 2002, Dr. Steinfield stated that he examined appellant that day and noted her subjective complaints of nonspecific knee pain and related that she "does not feel that she is able to work at this time." He noted pain with forced knee flexion and tenderness of the medial and lateral patellar facet, patellar tendon, medial and lateral joint line, femoral condyle and calf as well as tenderness along the posteromedial and posterolateral corners.

¹ The employing establishment noted that appellant's 45-day period began on December 6, 2001, but checked a box "no" indicating that she was not injured while in the performance of duty.

² In a report dated that same day, Dr. Steinfield noted appellant's subjective complaints of pain and stated that her MRI scan demonstrated degeneration within the medial meniscus but no clearcut tear.

On February 6, 2002 appellant filed a Form CA-7 (claim for compensation), claiming compensation from January 18 to April 19, 2002. On February 26, 2002 the Office of Workers' Compensation Programs accepted the claim for left knee strain.

In a report dated February 26, 2002, Dr. David A. Cautilli, a Board-certified orthopedic surgeon, stated that he had treated appellant on December 27, 2001 and diagnosed posterior tear, medial meniscus, left knee. He placed her on sedentary work but had not seen nor treated her since that time.³

In a report dated November 7, 2002, Dr. Steinfield noted that appellant was totally disabled from December 6, 2001 to July 29, 2002 as a result of her left knee condition.

By decision dated December 12, 2002, the Office denied appellant's claim for compensation commencing January 18, 2002 on the grounds that the medical evidence was insufficient to establish that she was disabled from her work-related injury from January 18, 2002.

The Board finds that appellant has not established that she was totally disabled from January 18 to July 29, 2002 as a result of her December 5, 2001 work-related left knee strain.

Under the Federal Employees' Compensation Act,⁴ the term "disability" means incapacity, because of 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 wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he was receiving at the time of injury, has no disability as that term is used in the Act and, whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical 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.⁶

Dr. Vatev's December 11, 2001 report did not include a diagnosis of appellant's condition and did not provide a causal relationship between her disability from work from

³ A December 21, 2001 left knee MRI scan revealed a tear of the posterior horn of the medial meniscus.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Roberta L. Kaaumoana*, 54 ECAB ____ (Docket No. 02-891, issued October 9, 2002).

⁶ *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002)

January 18, 2002 and her employment. To be of probative value, the medical evidence must contain an opinion, based on a complete factual and medical background and supported by sound medical reasoning, on disability causally related to the employment injury.⁷

Similarly, in his January 14, 2002 report, Dr. Steinfield diagnosed left knee stenosis and placed appellant on total disability, but he failed to establish a causal relationship between her knee condition and her disability.⁸

In his February 8, 2002 report, Dr. Steinfield noted appellant's subjective complaints of pain and stated that she did not feel that she could work at that time. This report lacks a rationalized medical opinion to establish a causal relationship between her accepted knee condition and her claim for total disability. Dr. Steinfield did not provide an opinion as to the cause of appellant's inability to work. An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship. Therefore, this report is insufficient to establish that appellant's claim for compensation is related to her work-related injury.⁹

Dr. Cautilli's February 26, 2002 report did not establish a causal relationship between appellant's condition and her claim for disability compensation, nor did he place her on total disability. Thus, his report also is insufficient to establish appellant's claim for total disability from January 18, 2002.¹⁰

Dr. Steinfield's November 7, 2002 report, in which he noted appellant's total disability status from December 6, 2001 to July 29, 2002, lacks any medical opinion explaining how her disability is related to her left knee condition and is insufficient to establish her claim.¹¹

It is appellant's burden of proof to establish that total disability as of January 18, 2002 was causally related to her federal employment. The Board finds that the medical evidence of record is not of sufficient probative value to meet appellant's burden of proof in this case.

⁷ *Derrick C. Miller*, 54 ECAB ____ (Docket No. 02-140, issued December 23, 2002).

⁸ *Id.*

⁹ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001).

¹⁰ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹¹ *Id.*

The decision of the Office of Workers' Compensation Programs dated December 12, 2002 is affirmed.¹²

Dated, Washington, DC
August 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹² The Board notes that this case record contains evidence which was submitted subsequent to the Office's December 12, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).