

injury, left knee and sprain, tear of anterior cruciate ligament (ACL) left knee and arthroscopic surgery were due to her employment injury that day.

Appellant has undergone numerous surgeries and procedures that were accepted by the Office as being related to her injury of January 14, 1982. Appellant initially returned to work, with restrictions, on January 11, 1983. Since that time, appellant underwent numerous surgeries after which she had periods of total disability, but she always returned to her restricted work for the employing establishment. Dr. Roderick W. Beer, a treating Board-certified anesthesiologist with a subspecialty in pain medication, performed numerous left L2 and L4 sympathetic blocks, fluoroscopies and contrast material injection with interpretations, as treatment of her left knee pain.

On February 27, 2004 appellant filed a claim for compensation for February 26 through 27, 2004. On March 5, 2004 she filed a claim for a recurrence of disability for these two days, on which she noted that she had to undergo nerve blocks every three months to alleviate pain due to reflex sympathetic dystrophy (RSD). The employing establishment controverted the claim contending that the medical evidence does not explain why appellant was unable to work the date of the nerve block and the entire day after the procedure.

In an attending physician's report dated February 26, 2004, Dr. Beer indicated that he did a lumbar sympathetic block on appellant on that date, that appellant was advised on February 26, 2004 that she could return to work, and that she may resume her regular work on February 28, 2004.

By letter dated March 11, 2004, the Office expanded appellant's claim to include acceptance of RSD of the left knee.

By decision dated April 14, 2004, the Office denied appellant's claim for wage loss for February 26 and 27, 2004 on the basis that she had not submitted medical evidence that she was totally disabled on those days.

On May 12, 2004 Dr. John K. Morris, a Board-certified orthopedic surgeon, indicated that appellant had left knee ACL tear with RSD, that she could sit and stand at will, and that she would be off work from May 6 through 17, 2004. On May 24, 2004 Dr. Morris indicated that appellant had to leave work early on May 21, 2004 because of increasing left knee pain. He noted that she had difficulty sitting and that when she took a shower at home, she had difficulty with the water hitting her leg. Dr. Morris listed his impression as status postoperative ACL reconstruction left knee with RSD. He noted that he was extending her medical leave until June 9, 2004.

On June 1, 2004 appellant filed a claim for a recurrence of disability from May 6 through 17, 2004, and for another recurrence of disability beginning May 21, 2004. She also filed claims for compensation for the period May 21 to June 17, 2004. The employing establishment controverted these claims. On June 8, 2004 appellant underwent another nerve block by Dr. Beer, who recommended that she return to work on June 10, 2004. Dr. Beer stated that appellant reported that the employing establishment had "disallowed her paid leave post-

procedure today, despite the fact that she will be unable to return to work after this procedure with sedation.”

By letter dated June 8, 2004, the Office requested that appellant submit further information in support of her claim. In a June 16, 2004 report, Dr. Morris indicated that appellant continued to have occasional anteromedial sharp pain. He noted that it was the character of RSD to have recurrent flare-ups from time to time, and that the objective findings in RSD are often minimal, but nonetheless it is a legitimate cause of disability and inability to work. Dr. Morris stated that he would release appellant to work as of June 17, 2004. In a form of the same date, Dr. Morris indicated that appellant had left knee ACL tear with RSD, was unable to work from May 21 to June 16, 2004 and that she could return to work with restrictions on June 17, 2004. In a May 27, 2004 report, Dr. Morris indicated that appellant was totally disabled from May 6 to June 8, 2004.

In a June 22, 2004 letter, appellant noted that the June 8, 2004 nerve block was delayed due to Dr. Beer’s heavy schedule, and that she was accordingly in excruciating pain which prohibited her from walking. She further noted that it took her a few days after the June 8, 2004 nerve block to respond. Appellant added that she was currently able to resume her normal work schedule with permanent restrictions.

By decision dated July 19, 2004, the Office accepted appellant’s claim for wage loss on June 8 and 9, 2004 but denied compensation from May 6 through 17 and from May 21 through June 17, 2004.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹ Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work. The Board has stated that, when a physician’s statements regarding an employee’s ability to work consist only of a repetition of the employee’s complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.²

ANALYSIS

The Office accepted that on January 14, 1982 appellant sustained a soft tissue injury and sprain of her left knee, a tear of the anterior cruciate ligament in the left knee and RSD of the left

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Fereidoon Kharabi*, 52 ECAB 291 (2001).

knee. Appellant returned to restricted duty for the employing establishment on January 11, 1983, although she missed various periods of work for subsequent surgeries and periods of disability. Beginning November 2001, appellant underwent nerve blocks for her left knee pain approximately every three months. Appellant alleged that she was disabled on February 26 and 27, 2004 for undergoing a nerve block. In his report regarding the February 26, 2004 nerve block, Dr. Beer indicated that appellant was advised on February 26, 2004 that she could return to work on February 28, 2004. However, Dr. Beer did not specifically state that appellant could not work on February 26 and 27, 2004 due to the sedation associated with the February 26, 2004 nerve block, never gave any rationale explaining why he listed her first date back at work as February 28, 2004, nor did Dr. Beer explain why appellant could not perform her limited-duty position. Dr. Beer's opinion is not sufficiently rationalized to establish that appellant was totally disabled on these dates.

With regard to her claims for disability from May 6 through 17, 2004, the only medical evidence indicating that appellant was totally disabled during this time was the reports of Dr. Morris, who indicated that appellant was disabled during this period but offered no reason why appellant could not perform her limited-duty employment. Therefore, appellant did not establish her claim for disability during this period.

With regard to the period May 21 to June 16, 2004, Dr. Morris does state in a June 16, 2004 report that appellant was unable to work due to her left knee ACL tear and RSD, and noted that it was the character of RSD to have recurrent flare-ups. Dr. Morris also stated that objective findings in RSD were often minimal but that it was a legitimate diagnosis and a legitimate cause of disability. However, Dr. Morris did not provide any explanation why appellant was not able to work her limited-duty position for the employing establishment during this period, or explain why the disability related to the increased pain she experienced on May 21, 2004 lasted almost a month. For this reason, his reports are insufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained recurrences of disability for February 26 and 27, 2004, May 6 through 17, 2004 and May 21 to June 17, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 19 and April 14, 2004 are affirmed.

Issued: July 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member