

FACTUAL HISTORY

This case has previously been before the Board on appeal. In a May 13, 2003 decision, the Board found that the Office properly denied appellant's request for a new motor vehicle.¹ By order dated August 13, 2003, the Board denied appellant's petition for reconsideration.²

To summarize, on April 29, 1960 appellant, then a 28-year-old warehouseman, filed a traumatic injury claim alleging on that date he hurt his left knee while driving a lift. He stated that, when he turned around quickly to look back, he struck his left knee on the steering post. The Office accepted appellant's claim for left knee contusion, torn medial meniscus of the left leg, bilateral chondromalacia with traumatic synovitis and arthritis. The Office subsequently expanded acceptance of appellant's claim to include a sprain and torn medial meniscus of the right knee, which he sustained on October 30, 1968. The Office authorized total knee replacement surgeries, which were performed on both knees. Appellant received compensation for periods of total disability for work.

By decision dated September 10, 1980, the Office found that the selected position of telephone solicitor represented appellant's wage-earning capacity.³ In a letter dated October 15, 1980, appellant requested an oral hearing before an Office hearing representative. By decision dated February 2, 1982 and finalized on February 8, 1982, the hearing representative affirmed the Office's September 10, 1980 decision. On March 3, 1982 appellant requested reconsideration. In a decision dated April 15, 1982 and finalized on April 23, 1982, the Office denied appellant's request for modification based on a merit review of his claim.

The Office accepted that appellant was totally disabled beginning October 1, 1994. Appellant was receiving a retirement annuity from OPM and he elected to receive compensation from the Office. Appellant subsequently underwent left total knee replacement on December 13, 1994 and right total knee replacement on March 25, 1996 and received appropriate compensation.

Appellant contended that he was totally disabled for work due to his accepted employment-related injuries during the period February 4 through September 30, 1994. He argued that his compensation should have started from February 4, 1994 rather than October 1, 1994. Appellant submitted a February 3, 1994 medical report of Dr. Charles H. Classen, Jr., a treating Board-certified orthopedic surgeon, who noted appellant's history of right and left knee problems. He reported his findings on physical and x-ray examination. Dr. Classen diagnosed severe degenerative osteoarthritis of both knees with complete collapse, a bone-on-bone situation in the medial compartment of the left knee and almost the same situation

¹ Docket No. 02-2139 (issued May 13, 2003).

² Docket No. 02-2139 (issued August 13, 2003).

³ At the time of the Office's September 10, 1980 decision, appellant was receiving a retirement annuity from the Office of Personnel Management (OPM). The Office offered appellant an opportunity to elect to receive compensation benefits payments based on its loss of wage-earning capacity decision. He elected to receive compensation from the Office. He subsequently received a schedule award for permanent impairment of his lower extremities and elected to receive OPM benefits.

in the right knee with multiple loose bodies in the right knee. He opined that appellant's ability to function was severely limited due to severe arthritis. Dr. Classen stated that appellant would need a total knee replacement in both knees. He concluded that appellant was able to perform office work but was incapable of performing any work which required squatting, climbing, standing or walking for over five minutes. Dr. Classen further concluded that appellant was essentially confined to a desk job.

In an August 16, 1994 letter, Dr. Classen noted that appellant was treated in 1979 by Dr. Preston B. Spigner, Jr., a Board-certified orthopedic surgeon, for meniscal disease. He noted appellant's 20-year history of injury to his knees and medical treatment and stated that progression of the degenerative disease had apparently continued. He stated that x-rays showed complete collapse of the medial compartment of the left knee and calcification of the meniscus in the compartment which was secondary to the progress of the disease. He indicated that this led to appellant's need for total knee replacement, which would provide a good result in that appellant would be able to carry out his daily activities. Dr. Classen stated, however, that appellant would not be able to return to heavy work or prolonged squatting or climbing and that postoperatively he would need physical therapy for one to two months.

In an undated note, Dr. Classen stated that "[appellant] was totally disabled, beginning February 4, 1994 until present." An unsigned medical bill contained a handwritten note providing that appellant had been "partial[ly] disabled since February 4, 1994."

On December 5, 1996 an Office medical adviser reviewed appellant's medical records including Dr. Classen's medical reports. The Office medical adviser agreed with Dr. Classen as to appellant's physical limitations and opinion that appellant should be confined to a desk job. The Office medical adviser opined that appellant was able to perform the duties of a telephone solicitor and that he was not totally disabled as of February 4, 1994.

By letter dated December 13, 1996, the Office advised appellant that the medical evidence of record including, Dr. Classen's February 3, 1994 report and undated note, was insufficient to support total disability beginning February 4, 1994.

By decision dated January 15, 2003, the Office denied appellant's claim for compensation for the period February 4 through September 30, 1994. The Office found the medical evidence of record insufficient to establish that he was totally disabled during the claimed period.

In a letter dated January 29, 2003, appellant requested an oral hearing before an Office hearing representative. At the March 25, 2004 hearing, he submitted Dr. Classen's treatment notes dated September 25, 2000 and July 2, 2003. On September 25, 2000 Dr. Classen summarized the findings of Dr. Thomas Parker Vail, a Board-certified orthopedic surgeon, who examined appellant on September 12, 2000. Dr. Classen stated that Dr. Vail reported a history of left total knee replacement and revision of the right knee and considerable swelling in both of appellant's knees and discomfort. He noted Dr. Vail's opinion that appellant was permanently partially disabled and not employable due to massive swelling in his leg. The July 2, 2003 treatment note addressed appellant's weight and pulse reading, his medications, drug allergy and social history background of disability. On physical examination Dr. Classen reported that

appellant was a large male with pain and swelling in both knees. Dr. Classen noted his February 1994 opinion that appellant could perform sedentary work due to the severity of his arthritis condition. He concluded that appellant may need to have further knee replacement surgery.

In a May 17, 2004 decision, the hearing representative affirmed the Office's January 15, 2003 decision. The hearing representative found the evidence of record insufficient to establish that residuals of the accepted work injuries rendered appellant totally disabled for work from February 4 through September 30, 1994.

LEGAL PRECEDENT

The Office's regulation, at section 10.5(f), defines the term disability as 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, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be established by probative and substantial evidence.⁵

To establish a causal relationship between the claimed condition and any attendant disability, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

The Office accepted that, beginning October 1, 1994, appellant was totally disabled due to his employment-related knee conditions. Appellant contends that he was totally disabled from February 4 through September 30, 1994. The Board finds that appellant has failed to submit

⁴ 20 C.F.R. § 10.5(f); *see also Elden H. Tietze*, 2 ECAB 38 (1948).

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

⁶ *See* 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

⁷ *Joan F. Burke*, 54 ECAB ____ (Docket No. 01-39, issued February 14, 2003).

rationalized medical evidence establishing that he was totally disabled due to the April 26, 1960 and October 30, 1968 injuries during the claimed period.

Appellant submitted medical evidence from his treating physician, Dr. Classen. In a February 3, 1994 medical report, Dr. Classen found that appellant had severe degenerative osteoarthritis in both of his knees with complete collapse and a bone-on-bone situation in the medial compartment of the left knee and right knee with multiple loose bodies in the right knee. He noted that appellant was confined to a desk job and was unable to perform any work that required squatting, climbing, standing or walking for over five minutes. In an August 16, 1994 letter, Dr. Classen stated that x-rays showed complete collapse of the medial compartment of appellant's left knee and calcification of the meniscus in the compartment which was secondary to the progress of the degenerative disease and resulted in appellant's need for total knee replacement. He indicated that appellant would not be able to perform heavy work or prolonged squatting or climbing and would require physical therapy for one to two months after surgery. Dr. Classen's reports do not establish that appellant was totally disabled as of February 4, 1994 due to his accepted knee conditions. Rather, the physician noted that appellant could perform limited duty subject to specified restrictions. The Board finds that Dr. Classen's contemporaneous reports are insufficient to establish that appellant was totally disabled from February 4 to September 30, 1994 due to his accepted employment injuries.

Dr. Classen's opinion that "[appellant] was totally disabled beginning February 4, 1994 until the present" is insufficient to establish appellant's claim as he did not address whether appellant's disability was causally related to the accepted April 26, 1960 and October 30, 1968 injuries.

An unsigned medical bill which contained a handwritten note that appellant had been "partial[l]y disabled since February 4, 1994" is insufficient to establish appellant's claim because it is not clear that it is from a physician.⁸ The Board notes that this billing lacks proper identification and does not constitute probative medical evidence.

In a September 25, 2000 treatment note, Dr. Classen summarized Dr. Vail's findings on physical examination. Dr. Classen noted Dr. Vail's opinion that appellant was disabled and not employable due to massive swelling in his leg. Dr. Classen, however, did not address whether appellant was disabled during the period February 4 through September 30, 1994 due to the April 26, 1960 and October 30, 1968 employment injuries. The Board finds that Dr. Classen's treatment note does not establish that appellant was disabled due to his accepted employment injuries during the claimed period.

In a July 2, 2003 treatment note, Dr. Classen noted his February 1994 opinion that appellant could perform sedentary work due to the severity of his arthritis condition and indicated the possibility of further knee replacement surgery. Dr. Classen did not address whether appellant was totally disabled as of February 4, 1994. Rather, he noted his prior opinion

⁸ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

that appellant was capable of sedentary work. The Board finds that Dr. Classen's treatment note is insufficient to establish that appellant was disabled from February 4 to September 30, 1994.

An Office medical adviser reviewed appellant's case record and opined that appellant was capable of performing the duties of the selected position of telephone solicitor and was not totally disabled as of February 4, 1994. The Office medical adviser's opinion does not establish that appellant was totally disabled from February 4 to September 30, 1994.

Appellant has failed to submit rationalized medical evidence establishing that he was totally disabled for the period February 4 through September 30, 1994, due to residuals of his April 26, 1960 and October 30, 1968 employment injuries.

CONCLUSION

The Board finds that appellant has failed to establish that he was disabled for work from February 4 through September 30, 2004 due to his April 26, 1960 and October 30, 1968 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member