



internal derangement of his right knee. He underwent arthroscopic surgery on November 13, 1997, returning to light duty on December 15, 1997. Appellant underwent a second surgical procedure on October 13, 1999 again returning to modified duty on December 13, 1999. On December 29, 1999 he filed a schedule award claim. The record indicates that an anterior cruciate ligament tear of the right leg has been accepted as employment related.

By decision dated March 17, 2000, the Office determined that appellant's modified duty as a custodial worker fairly and reasonably represented his wage-earning capacity. On June 12, 2001 he was granted a schedule award for a two percent permanent impairment of the right knee. Following a January 18, 2002 hearing, in a March 27, 2002 decision, an Office hearing representative remanded the case for further development of the schedule award claim. In a decision dated August 6, 2002, appellant was granted a schedule award for an additional eight percent permanent impairment of the right lower extremity. This was affirmed by a hearing representative in a decision dated July 18, 2003.<sup>1</sup>

Dr. Pezeshki continued to submit reports and on May 30, 2003 advised that appellant had continued complaints of pain and swelling in his right knee which could give out. He noted that appellant walked with a slight limp, had decreased range of knee motion and tenderness on physical examination. Dr. Pezeshki diagnosed post-traumatic arthritis of the right knee.

On July 6, 2004 appellant submitted a Form CA-7 claim for compensation for the period May 14 to 25, 2004 and submitted a medical report dated May 14, 2004 in which Dr. Pezeshki reported that appellant heard a pop the prior Wednesday with immediate pain and swelling of his right knee which caused him to use crutches. Examination of the right knee revealed diffuse tenderness with a tremendous amount of effusion requiring aspiration. Dr. Pezeshki recommended magnetic resonance imaging (MRI) and advised that appellant should use crutches and stay off work until seen again. In a treatment note dated May 21, 2004, Dr. Pezeshki reported that the MRI scan revealed an anterior cruciate ligament tear with arthritic changes and advised that appellant could return to restricted duty on May 25, 2004. He provided a disability slip indicating that appellant could not work from May 14 to 25, 2004.

By letter dated July 29, 2004, the Office informed appellant that he should file a CA-1 claim as the medical evidence indicated he sustained a new injury on May 14, 2004. In a report dated April 19, 2005, Dr. Pezeshki advised that, upon review of his records dating back to 1999, it was his opinion that appellant's current knee condition was an aggravation of his 1997 injury, stating he had no evidence of a new injury. In a decision dated May 9, 2005, the Office denied appellant's claim for compensation for the period May 9 to 25, 2004, finding that the medical evidence of record failed to establish that the claimed disability was due to the January 10, 1997 employment injury.

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<sup>1</sup> The hearing representative found that appellant did not have more than a 10 percent impairment of the right lower extremity.

## LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,<sup>2</sup> the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the 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 or she was receiving at the time of injury has no disability as that term is used in the Act,<sup>4</sup> and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>5</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>6</sup> Once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> 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.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

## ANALYSIS

The issue is whether appellant has established that he was totally disabled due to his right knee condition for the period May 14 to 25, 2004. The Office accepted that appellant sustained

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>4</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>5</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>6</sup> *Tammy L. Medley*, 55 ECAB \_\_\_\_ (Docket No. 03-1861, issued December 19, 2003); see *Donald E. Ewals*, *id.*

<sup>7</sup> *Bernitta L. Wright*, 53 ECAB 514 (2002).

<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

an employment-related internal derangement of the right knee with anterior cruciate ligament tear for which he underwent two surgical procedures. His attending orthopedic surgeon, Dr. Pezeshki, has treated appellant following his knee injury of January 10, 1997 and performed both surgeries. Dr. Pezeshki provided a May 14, 2004 report in which he noted a history that appellant heard a pop the prior Wednesday (May 12, 2004) with immediate pain and swelling of his right knee which caused him to use crutches. He advised that examination of the right knee revealed diffuse tenderness with a tremendous amount of effusion requiring aspiration. Dr. Pezeshki's recommended MRI scan was reported as demonstrating an anterior cruciate ligament tear with arthritic changes. He advised that appellant could return to restricted duty on May 25, 2004. Dr. Pezeshki also provided a disability slip indicating that appellant could not work from May 14 to 25, 2004 and on April 19, 2005 opined that appellant's current knee condition was an aggravation of his 1997 injury, stating that he had no evidence of a new injury.

The Board finds that, while Dr. Pezeshki's reports are not sufficient to discharge appellant's burden of proof to establish that his disability from May 14 to 25, 2004 is causally related to the January 10, 1997 right knee injury, this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Dr. Pezeshki diagnosed an anterior cruciate ligament tear, an accepted condition, advised that appellant could not work from May 14 to 25, 2004 and opined that appellant's knee condition was an aggravation of his 1997 injury. As stated above, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.<sup>11</sup> In the absence of medical evidence to the contrary, Dr. Pezeshki's reports are sufficient to require further development of the record.<sup>12</sup>

It is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>13</sup> The case shall therefore be remanded to the Office to further develop the medical evidence as appropriate and determine if appellant is entitled to disability for any period between May 14 and 25, 2004.<sup>14</sup>

### **CONCLUSION**

The Board finds that this case is not in posture for decision regarding any period of disability between May 14 and 25, 2004.

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<sup>11</sup> *Bernitta L. Wright, supra* note 7.

<sup>12</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> *See Jimmy A. Hammons, id.*

<sup>14</sup> The Board notes that this case is distinguished from Board cases which address that following a formal wage-earning capacity determination, the Office must evaluate the evidence to determine if modification of wage-earning capacity is warranted. In this case, the Office is not precluded from adjudicating the issue of a limited period of employment-related disability, without a formal modification of the wage-earning capacity determination. *Katherine T. Kreger*, 55 ECAB \_\_\_ (Docket No. 03-1765, issued August 13, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 9, 2005 be vacated and the case remanded to the Office for further proceedings consistent with this opinion of the Board.

Issued: September 12, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board