



as appellant had previously undergone arthroscopic surgery in February 2004. Dr. Bethune advised that, while the left knee had stabilized a little since the May 2004 work injury, the pain in the right knee had persisted. He related that her work allowed her to change positions and to sit and stand alternately, although her symptoms persisted. On examination, appellant had an intra-articular effusion in the right knee with some global tenderness, most marked along the lateral joint line and crepitus in the lateral compartment. The left knee was stable with some joint line tenderness and slight swelling. Dr. Bethune recommended a reduction in work to four hours per day.

By decision dated January 21, 2005, the Office denied the claim. On February 14, 2005 appellant requested an oral hearing, before an Office hearing representative. By decision dated April 3, 2006, an Office hearing representative reversed the January 21, 2005 decision and accepted the claim for bilateral knee strains. The hearing representative authorized payment for all medical care and treatment and advised appellant to file a Form CA-7 to claim compensation for time missed from work.

In a telephone call dated April 13, 2006, appellant informed the Office that she was off work from September 30, 2004 to February 4, 2005, when she had surgery. By letter dated April 20, 2006, the Office advised her that the medical evidence was insufficient to pay compensation for disability beginning October 1, 2004. The Office noted that the only medical evidence she submitted in support of her claim was Dr. Bethune's September 30, 2004 report, which recommended that she reduce her work hours to four per day. The Office advised appellant to have Dr. Bethune address the four-month period between the injury and his examination. The Office instructed Dr. Bethune to explain, with medical rationale, how he determined that the disability was due to the May 5, 2004 knee strain and not to the underlying knee condition for which she had surgery on her right knee in February 2004.

By letter dated May 8, 2006, the Office indicated that appellant would be receiving compensation for wage loss for September 15, 22, 29 and 30, 2004. The Office informed appellant that it had received her Form CA-7 requesting compensation for the periods October 1 to 15, 2004 and October 18 to November 15, 2004.<sup>1</sup>

Dr. Bethune submitted reports dated October 27 and December 1, 2004 and February 3, 2005. On October 27, 2004 Dr. Bethune noted that appellant continued to experience pain in both knees, with greater pain in the right knee. He stated:

“She is coping work four hours a day and that is about all she can tolerate. Having to get up and down and move around in the office is difficult in light of persistent knee pain and swelling.... She continues to have ongoing symptoms despite analgesics and attempts to strengthen it and five months have passed. I have recommended magnetic resonance imaging [MRI] scan, at least of the right knee.”

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<sup>1</sup> These CA-7 forms are not contained in the instant record.

On December 1, 2004 Dr. Bethune noted that appellant remained symptomatic with right and left knee pain. He diagnosed left knee lateral meniscus tear and right knee osteoarthritis. On February 3, 2005 he stated:

“[Appellant] remains troubled with left knee pain with a documented lateral meniscus tear on MRI [scan]. We plan to proceed with arthroscopy and partial lateral meniscectomy to help with her symptoms.

“I gather there has been some confusion regarding her claims. She had a work-related injury May 5, 2004, which injured both knees. In fact the right was an aggravation of a preexisting arthritic condition and MRI [scan] images have not shown a dramatic worsening of the condition therefore her current right knee symptoms clearly have a substantial apportionment to preexisting pathology. The left knee was never symptomatic and never had any documented injury, and now has a documented lateral meniscus tear with definite ongoing symptoms, therefore, it would appear a simple intellectual exercise to connect the left knee condition with the injury of May 5, 2004.”

By decision dated May 22, 2006, the Office denied appellant’s claim for compensation finding that the medical evidence was not sufficient to support disability as of October 1, 2004.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>2</sup> Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.<sup>3</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>4</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>5</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>6</sup> The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>4</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> *Manual Garcia*, 37 ECAB 767 (1986).

for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>7</sup>

### ANALYSIS

In support of her claim, appellant submitted Dr. Bethune's reports. Dr. Bethune indicated that appellant was experiencing right knee pain which had persisted since the May 2004 work injury. He noted intra-articular effusion in the right knee with some global tenderness on examination, most marked along the lateral joint line and crepitus in the lateral compartment. Dr. Bethune opined that the left knee condition had stabilized somewhat since the May 2004 work injury, with some joint line tenderness and slight swelling. He recommended a reduction of appellant's work hours to four hours per day. On October 27, 2004 Dr. Bethune noted continued pain in both knees, greater on the right. Appellant was found capable to work for four hours a day. Dr. Bethune reiterated on December 1, 2004 that appellant remained symptomatic with bilateral knee pain and diagnosed a left knee lateral meniscus tear and right knee osteoarthritis. In a February 3, 2005 report, Dr. Bethune noted complaints of left knee pain with a lateral meniscus tear as indicated by MRI scan. He stated that the May 2004 work injury constituted an aggravation of a preexisting right knee arthritic condition. Because the MRI scan images did not show a dramatic worsening of the condition, her current right knee symptoms were substantially attributable to the preexisting pathology. With regard to the left knee, Dr. Bethune advised that it was never symptomatic and never had any documented injury. Because of the documented lateral meniscus tear with definite ongoing symptoms, he stated that it was "a simple intellectual exercise to connect the left knee condition with the injury of May 5, 2004."

The reports from Dr. Bethune do not establish that appellant sustained disability causing wage loss after October 1, 2004. Dr. Bethune's opinion is of limited probative value as it does not contain any medical rationale explaining how or why appellant's accepted bilateral knee strains, rather than her preexisting right knee condition caused disability after October 1, 2004. This is essential, as appellant sustained bilateral knee strains in May 2004, did not miss work after the injury, but claimed that the effects of these injuries caused her to miss work four months later, and the evidence of record suggests that during the time period which appellant claimed to be disabled her diagnosis was no longer bilateral knee strain, but had changed to right knee osteoarthritis and left knee lateral meniscus tear. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>8</sup> The reports from Dr. Bethune were generalized in nature and equivocal. He did not adequately state the basis for concluding that appellant's bilateral knee strains caused her to miss work during the periods claimed. Dr. Bethune's conclusion that it would appear to be "a simple intellectual exercise to connect the left knee condition with the injury of May 5, 2004" is not a sufficient basis to attribute her time off from work to her accepted employment condition. Thus, appellant failed

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<sup>7</sup> *Amelia S. Jefferson*, 57 ECAB \_\_\_\_ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

to provide a probative, rationalized medical opinion establishing that she was entitled to compensation for wage loss as of October 1, 2004.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. Consequently, appellant has not met her burden of proof to establish that she sustained any employment-related disability as of October 1, 2004. The Board will affirm the Office's May 22, 2006 decision.<sup>11</sup>

### CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she was entitled to compensation for wage loss after October 1, 2004 causally related to her federal employment.

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<sup>9</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>10</sup> *Id.*

<sup>11</sup> The Board notes that appellant submitted additional evidence to the record following the October 26, 2004 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 16, 2006  
Washington, DC

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

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

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