

**United States Department of Labor
Employees' Compensation Appeals Board**

J.I., Appellant)
and) Docket No. 06-2008
U.S. POSTAL SERVICE, POST OFFICE,) Issued: January 12, 2007
Preston, ID, Employer)

)

Appearances:

Stephen J. Muhonen, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 28, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 22, 2006 denying his claim for leave buy back. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant was disabled from November 6, 2004 to March 10, 2006 due to his accepted right meniscus tear.

FACTUAL HISTORY

On January 23, 2002 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on January 15, 2002 he developed swelling and pain in his right knee due to walking on icy surfaces on his mail route. The Office accepted his claim for a right medial

meniscus tear.¹ On January 22, 2002 Dr. Keith J. Nelson, an attending Board-certified orthopedic surgeon, released appellant to case mail with occasional light pushing or pulling, no repetitive walking on steps and no kneeling. On April 10, 2002 appellant underwent right knee surgery. He was released to full duty on October 1, 2002.

On March 18, 2004 Dr. Nelson stated that appellant could perform regular work.²

In notes dated November 4 and 23, 2004, Dr. Nelson stated that appellant was treated for knee and ankle problems that were related to his mail carrying duties. He indicated that his work restrictions included no walking on icy or uneven surfaces. Consequently, appellant was casing mail rather than delivering mail at this time.

Dr. Nelson reviewed appellant's right ankle problems on February 5, March 5 and 18, 2004. He indicated that they were caused by work-related arthritis. On March 15, 2005 Dr. Nelson stated that appellant had significant arthrosis in his ankle and both knees. His work restrictions were unchanged.

In a note dated May 24, 2005, Dr. Nelson indicated that appellant had persistent right knee pain and recommended surgery. On February 1, 2006 appellant underwent total knee arthroplasty for his right knee osteoarthritis. In a March 2, 2006 report, Dr. Nelson indicated that appellant was totally disabled due to his January 15, 2002 employment injury.

Appellant filed a claim for leave buy back for the period November 6, 2004 to March 10, 2006.

On April 4, 2006 the Office noted that appellant had an unadjudicated claim for a right ankle sprain and Dr. Nelson had indicated work restrictions regarding his right ankle. The Office asked him to obtain a narrative report from Dr. Nelson explaining whether he was disabled for any days between November 6, 2004 and March 10, 2006 due to his accepted right meniscus tear. In an April 18, 2006 report, Dr. Nelson indicated only that appellant's work restrictions were for both his knee and ankle conditions.

By decision dated May 22, 2006, the Office denied appellant's claim for leave buy back on the grounds that the evidence did not establish that he was disabled from November 6, 2004 to March 10, 2006 due to his January 15, 2002 employment injury.³

¹ Appellant also has an accepted claim for right patella tendinitis sustained on January 1, 1989. He underwent arthroscopic surgery in 1988 for a previous right knee meniscus tear. Appellant underwent right knee arthroscopic surgery again on June 6, 2001. He returned to full duty by October 2001. The employing establishment indicated that appellant had a history of problems with his knees and ankles.

² The employing establishment indicated that appellant filed a claim for a right ankle sprain on January 29, 2004. He was returned to full duty in March 2004 after the snow melted.

³ Appellant submitted additional evidence subsequent to the Office decision of May 22, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁴ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁵ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶

In situations where compensation is claimed for periods where leave was used, the Office has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.⁷ It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buy back, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.⁸

ANALYSIS

Appellant filed a claim for leave buy back for the period November 6, 2004 to March 10, 2006 due to his accepted torn right meniscus.

In notes dated March 18, 2004, Dr. Nelson stated that appellant could perform regular work. There are no medical reports of record between March and November 2004. On November 4 and 23, 2004 Dr. Nelson stated that appellant was treated for knee and ankle problems that were related to his mail carrying duties. His work restrictions included no walking on icy or uneven surfaces. In notes dated March 15, 2005, Dr. Nelson stated that appellant had significant arthrosis in his ankle and both knees. His work restrictions were unchanged. Dr. Nelson did not find that appellant was totally disabled, therefore, these notes do not establish his entitlement to leave buy back. On February 1, 2006 appellant underwent total knee arthroplasty for his right knee osteoarthritis. However, the Office accepted a torn right meniscus as a result of his January 15, 2002 employment injury, not right knee osteoarthritis. Therefore, any disability from work due to appellant's February 1, 2006 surgery is not established as work related. In a March 2, 2006 report, Dr. Nelson indicated that appellant was totally disabled due to his January 15, 2002 employment injury. However, he did not provide medical rationale explaining how the disability was related to the accepted torn right meniscus. On April 4, 2006

⁴ *David H. Goss*, 32 ECAB 24 (1980).

⁵ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁶ *Edward H. Horten*, 41 ECAB 301 (1989).

⁷ *Laurie S. Swanson*, 53 ECAB 517 (2002); see also 20 C.F.R. § 10.425, which provides: "The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing [establishment]. Forms CA-7 and CA-7b are used for this purpose."

⁸ *Laurie S. Swanson*, *supra* note 7.

the Office asked appellant to obtain a narrative report from Dr. Nelson explaining whether he was disabled at any time between November 6, 2004 and March 10, 2006 due to his accepted right meniscus tear. In an April 18, 2006 report, Dr. Nelson indicated only that his work restrictions were for both his knee and ankle condition. He did not address the issue of whether appellant had any disability between November 6, 2004 and March 10, 2006 causally related to his accepted torn right meniscus. The Board finds that the medical evidence is not sufficient to establish that appellant was entitled to leave buy back from November 6, 2004 to March 10, 2006 due to his January 15, 2002 employment injury.

CONCLUSION

The Board finds that appellant failed to establish that his disability between November 6, 2004 and March 10, 2006 was causally related to his accepted torn right meniscus. Therefore, the Office properly denied his claim for leave buy back.

ORDER

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

Issued: January 12, 2007
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