

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

C.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
San Bernardino, CA, Employer)

**Docket No. 07-545
Issued: June 14, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs' dated March 7, April 25 and October 5, 2006, which denied appellant's claim for compensation for the period September 9 to November 6, 2005. 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 met his burden of proof to establish that he was entitled to wage-loss compensation for the period September 9 to November 6, 2005 causally related to his accepted employment injury.

FACTUAL HISTORY

On September 7, 2005 appellant, then a 43-year-old modified carrier, filed an occupational disease claim alleging that standing, lifting and carrying mail over the prior 15

years caused him to sustain knee problems, a torn meniscus and a floating knee cap. He alleged that he first realized that the condition was related to his employment in April 2005.¹

In a September 7, 2005 disability certificate from, Dr. Philip W. Lee, a Board-certified family practitioner, advised appellant to remain off work until October 30, 2005 due to significant knee pain. In a September 7, 2005 report, Dr. Robert Walter, a radiologist, stated that an x-ray of the left knee showed mild degenerative spurring of the knee and prominent spurring of the anterior tibial tubercle. In a report dated September 8, 2005, Dr. Lee noted that appellant had a condition that required treatment and advised that he was temporarily off work until October 30, 2005, “due to aggravation to the left knee due to work.” In an October 19, 2005 duty status report, he diagnosed knee pain and advised that appellant could not return to work as his knee pains had worsened and were exacerbated by his work. In a December 16, 2005 disability certificate, Dr. Lee placed appellant off work from September 8, to November 6, 2005 due to chronic knee pain and advised that appellant’s type of work was increasing his symptoms.

On December 13, 2005 the Office accepted appellant’s claim for left knee sprain and dislocation of the patella, left knee.²

In a December 20, 2005 duty status report, a physician whose signature is illegible, diagnosed left knee pain and advised that appellant could return to work on December 20, 2005.

On December 22, 2005 appellant filed a Form CA-7, claim for compensation for the period September 9 to November 6, 2005.

By letter dated January 3, 2006, the Office advised appellant that his claim for total temporary disability was not payable for the period September 9 to November 6, 2005. The Office requested additional medical evidence.

In a January 17, 2006 report, Dr. James R. Watson, a Board-certified orthopedic surgeon, noted appellant’s history of injury and treatment which included arthroscopic surgery to the left knee while in the military. He advised that this was followed by a Marquette procedure. Dr. Watson noted that appellant began having increasing discomfort in the left knee “spontaneous in origin” and he did not recall a specific injury. He indicated that appellant had problems which included walking any distance, twisting, turning, pivoting, going up and down stairs and getting out of chairs. Dr. Watson conducted an examination and noted findings which included that appellant had full range of motion without effusion and no evidence of any ligamentous instability on varus or rotary stress. He diagnosed left knee pain with a possible tendon tear, quadriceps tendinitis, chronic in nature for the left knee. Dr. Watson advised that appellant’s duties as a mail handler “seems” to aggravate his condition.

In a report dated January 23, 2006, Dr. Lee noted that he has treated appellant since 2002 for a left knee condition with chronic pain. He advised that appellant sustained a knee injury in

¹ The record reflects that appellant was working in a light-duty position as a modified carrier performing window clerk duties. Appellant alleged that he had an injury to his knee while in the military which was prior to his service with the employing establishment.

² Appellant stopped work on June 19, 2006.

1983, while in the military and that he had four surgeries, as a result. Dr. Lee stated that appellant had severe left knee pain, which caused him to be unable to walk any distance, twist, turn or pivot and that appellant was unable to work from September 9 to November 6, 2005.

By decision dated March 7, 2006, the Office denied appellant's claim for compensation on the basis that the medical evidence failed to support that he was totally disabled as a result of any objective factors related to his accepted work injury.

By letter dated April 2, 2006, appellant requested reconsideration. He alleged that he believed that his job contributed to the decline of his knee. Appellant alleged that his job included standing for long periods of time, as well as bending, standing, stooping and lifting packages, which caused his problems with his knee. He alleged that he was taken off work by his physician and his employer did not have light-duty work available. Appellant also alleged that his employer did not honor or accommodate his work restrictions and he was off work due to pain.

In a March 28, 2006 report, Dr. Watson, noted that he last saw appellant on February 16, 2006. He advised that diagnostic testing suggested that "there may not be anything going on." Dr. Watson noted that appellant was in need of an arthroscopy of the left knee with a mini arthrotomy in the area of tenderness over the lateral aspect of the knee and opined that he could not "give an accurate diagnosis without the above mentioned surgical procedure."

In a March 29, 2006 report, Dr. Lee noted that appellant was "given an off work notice from September 6 through October 27, 2005 secondary to his left knee pain."

By decision dated April 25, 2006, the Office denied modification of the March 7, 2006 decision.

On July 24, 2006 appellant requested reconsideration.

In an April 19, 2006 report, Dr. Leisure Yu, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment and conducted a physical examination. He diagnosed left knee chronic patellar dislocation and left knee chondromalacia of the patella. Dr. Yu opined that 95 percent of appellant's knee pain was a result of "nonindustrial trauma" and that 5 percent of his present pain and discomfort was a result of "industrial trauma arising out of employment." He added that appellant was not disabled and could return to modified work of no pushing and pulling over 10 pounds and limited standing, walking and sitting. The Office also received several progress reports from Dr. Yu dated after April 19, 2006. The Office also received an April 19, 2006 duty status report from a physician whose signature is illegible who advised that appellant could work with restrictions.

In a May 30, 2006 report, Dr. Watson, noted that appellant was diagnosed with chronic quadriceps tendinitis of the left knee and suffered from chronic knee pain, swelling, tenderness and weakness. He noted that these symptoms prevented him from performing his job duties on

October 27 through November 13, 2005 and March 3 to 12, 2006. Dr. Watson explained that the condition of quadriceps tendinitis was not a subjective complaint but an objective finding.³

In a July 20, 2006 report, Dr. Lee noted that appellant was given an off-work note from September 6 through October 27, 2005 secondary to persistent left knee pain, which caused him to be unable to walk any distance, twist, turning, pivot the knee, stand or sit for prolonged periods. He noted that appellant had intermittent swelling of the knee with pain and tenderness and weakness. Dr. Lee indicated that light duty was recommended because of appellant's chronic knee condition. However, the employing establishment did not have light duty and appellant elected to be off from work because of his medical condition during that time. Dr. Lee noted that appellant's x-rays showed degenerative spurring of the knee and prominent spurring of the anterior tibial tubercle.

In an August 14, 2006 report, Dr. Yu diagnosed left knee patella dislocation, left knee chondromalacia, left knee meniscus tear and post arthroscopy of the left knee with micro fracture. He noted that appellant could return to modified work and opined that he had two percent whole person impairment.

On August 15, 2006 appellant returned to modified duty for eight hours a day and on August 25, 2006 he accepted a limited-duty job offer.

By decision dated October 5, 2006, the Office denied modification of its decision dated April 25, 2006.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁵ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁶

As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁷ When the medical

³ The Office received additional reports which postdated the period of disability and included a May 31, 2006 disability certificate from Dr. Yu advising that appellant would be off work from June 20 to August 20, 2006, June 19, 2006 preoperative report, a June 20, 2006 operative report in which Dr. Yu performed left knee arthroscopy and an attending physician's report dated June 21, 2006 in which he advised that appellant was totally disabled from June 20 to August 20, 2006, due to surgery on June 20, 2006.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁸

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 the reliable, probative and substantial evidence.⁹ Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹⁰ The Board has held 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.¹¹ While there must be a proven basis for the pain, pain due to an employment-related condition can be the basis for the payment of compensation.¹² The Board, however, will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹³

When employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.¹⁴

ANALYSIS

On December 13, 2005 the Office accepted appellant's claim for dislocation of the patella, left knee. The Office denied appellant's claim for compensation on the basis that the evidence of record failed to establish that he was totally disabled as a result of any objective factors related to his accepted work injury. As noted, appellant bears the burden of proof in establishing entitlement to such compensation.

In support of his claim for the period September 9 to November 6, 2005, appellant submitted numerous disability certificates in which his physicians advised that he was disabled from work. In a September 8, 2005 note, Dr. Lee indicated that appellant should be temporarily off work until October 30, 2005 "due to aggravation to the left knee due to work." In an

⁸ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁹ *Edward H. Horton*, 41 ECAB 301 (1989).

¹⁰ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

¹¹ *John L. Clark*, 32 ECAB 1618 (1981).

¹² *Barry C. Peterson*, 52 ECAB 120 (2000).

¹³ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁴ *See James L. Hearn*, 29 ECAB 278 (1978); *see also Raymond W. Behrens*, 50 ECAB 221 (1999).

October 19, 2005 duty status report, he diagnosed knee pain and advised that appellant could not return to work as his knee pain had worsened and was exacerbated by his work. In a December 11, 2005 disability certificate which placed appellant off work from September 8 to November 6, 2005 due to chronic knee pain and Dr. Lee noted that appellant's type of work was increasing his symptoms. In January 23 and March 29, 2006 reports, Dr. Lee noted that appellant was unable to work from September 9 to November 6, 2005 and that he had treated appellant since 2002 for a chronic left knee problem with chronic pain and referenced appellant's 1983 military knee injury and the four resultant surgeries. On July 20, 2006 Dr. Lee placed appellant off-work from September 6, through October 27, 2005 secondary to his persistent left knee pain and advised that appellant was unable to walk any distance, twist, turning, pivot the knee, stand or sit for prolonged periods. The Board notes that these reports are insufficient to support the claimed periods of disability as Dr. Lee did not provide any rationale as to the cause of appellant's disability for which he recommended that appellant not work. This is particularly important in light of his nonwork-related knee condition. Dr. Lee did not adequately explain how appellant's work duties contributed to his claimed disability or why it was not solely due to his preexisting left knee condition.

In a January 17, 2006 report, Dr. Watson noted that appellant began having increasing discomfort in the left knee "spontaneous in origin" and that appellant did not recall a specific injury. He diagnosed left knee pain with a possible tendon tear, quadriceps tendinitis to the left knee and advised that appellant's duties as a mail handler "seems" to aggravate his condition. Dr. Watson's support for causal relationship is equivocal in nature and also he did not show an awareness of appellant's preexisting knee injury. As noted, appellant had a prior knee injury which was not work related and Dr. Watson does not appear to be aware of this factor.¹⁵ Dr. Watson did not specifically address the claimed period of disability. Therefore, this report is of limited probative value.

In a May 30, 2006 report, Dr. Watson, repeated his diagnoses and noted that appellant had chronic knee pain, swelling, tenderness and weakness that prevented him from performing his job duties on October 27 through November 13, 2005 and March 3 to 12, 2006. He explained that the condition of quadriceps tendinitis was not a subjective complaint but an objective finding. However, as noted above, Dr. Watson does not appear to be aware of the nonwork-related injury. Furthermore, quadriceps tendinitis was not an accepted condition. Dr. Watson did not address why appellant was totally disabled due to residuals of the accepted employment injury. 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.¹⁶

The record contains other reports; however, they did not address whether appellant was disabled from September 9 to November 6, 2005 due to the accepted employment injury and, therefore, are not relevant to the claim for disability during this time frame. For example,

¹⁵ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹⁶ *Sandra D. Pruitt*, 57 ECAB ____ (Docket No. 05-739, issued October 12, 2005).

Dr. Yu's reports noted appellant's status but did not address whether he was disabled from September 9 to November 6, 2005 due to the accepted employment injury.

As appellant has submitted no other reasoned evidence supporting disability during the period claimed or a change in the nature and extent of the light-duty requirements necessitated by his employment injury,¹⁷ he has not met his burden of proof to establish entitlement to compensation.

CONCLUSION

The Board finds that appellant failed to provide rationalized medical evidence establishing that his claimed disability for the period September 9 to November 6, 2005 to the present was causally related to his employment-related knee condition.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 5, April 25 and March 7, 2006 are affirmed.

Issued: June 14, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁷ See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).