

left knee contusion and strain, left medial meniscal tear and left chondromalacia patella. Appellant received compensation for wage loss.

On January 30, 2003 appellant accepted a limited-duty assignment requiring sitting, lifting and using a tape dispenser. On April 7, 2004 the Office found that her actual earnings in this position fairly and reasonably represented her wage-earning capacity, such that she was no longer entitled to compensation for wage loss. Appellant received a schedule award for a 10 percent permanent impairment of her left lower extremity, which ran from December 9, 2003 to June 27, 2004. She underwent authorized left knee surgery on February 1, 2005 and received compensation for temporary total disability. Appellant returned to limited duty on May 24, 2005.

Appellant claimed compensation for wage loss on February 9, March 9 and 10 and April 1 and 2, 2006. On March 24 and April 17, 2006 the Office asked her to submit medical evidence to substantiate why she was unable to perform any type of work on those dates and how this was related to her September 25, 2001 injury.

Attending physician form reports from Dr. Robert A. Martin, the attending orthopedic surgeon, indicated that appellant received treatment on December 21, 2005, January 30 and March 27, 2006. Dr. Martin reported that appellant would be totally disabled from April 4 through July 4, 2006 for an authorized anterior tibial tubercle osteotomy. The Office received the operative report for the April 4, 2006 procedure and subsequent treatment notes relating to her recovery. Appellant received compensation for wage loss resulting from the surgery.

The Office received undated disability notes from Dr. Martin, who indicated that appellant was off work for eight hours on February 9, 2006 and unable to work on March 9 and 10, 2006. The Office also received a May 4, 2006 letter from Nancy L. Harris, a medical secretary in Dr. Martin's office, who stated that appellant's disability on the specific dates claimed was directly related to her accepted employment injury.

In a decision dated May 8, 2006, the Office denied compensation for appellant's claimed disability on February 9, March 9 and 10, 2006. The Office noted that Dr. Martin provided no objective medical evidence based upon examinations; he supplied only a generalized statement that appellant was unable to work. The Office found that this evidence contained insufficient detail to explain why appellant was unable to perform any type of work on the dates in question. The Office advised appellant: "You should provide a clear statement from your attending physician explaining the dates that he examined you, his findings upon examination and his explanation as to why you were unable to work based on these findings."

Appellant requested reconsideration. She submitted a May 18, 2006 report from Dr. Martin, who stated:

"The above-referenced patient missed work on February 9, March 9 [and] 10 [and] April 1 and 2 2006. The missed dates of work are directly related to the patient's work[-]related injury of September 28, 2001. [sic] The patient has had a medial meniscus tear that was repaired and chondromalacia patella. These two allowed conditions often manifested and caused the patient severe pain and an

inability to perform her work duties. In addition to severe pain the patient's condition also causes swelling that creates an inability to walk and stand, which in turn prevents her from performing her job duties. Days of rest and elevation of the affected extremity provide relief in the form of decreased swelling and decreased pain.”

On June 16, 2006 the Office wrote to Dr. Martin to advise that his May 18, 2006 report was not sufficient to establish temporary total disability because it was not apparent that she suffered an objective and spontaneous worsening of her condition to the point that she could not work on those dates. The Office provided Dr. Martin with a statement of accepted facts and asked him whether he examined appellant on or about the dates in question and if so, to outline the objective findings that convinced him that appellant was medically incapable of working in her limited-duty capacity.

In a decision dated July 25, 2006, the Office denied compensation for appellant's claimed disability on April 1 and 2, 2006. In a decision dated August 14, 2006, the Office reviewed the merits of its May 8, 2006 decision and denied modification. The Office noted that Dr. Martin presented no contemporaneous clinical findings that convinced him that appellant's work-related condition materially worsened on the dates in question to the point that she was incapable of working.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”²

A claimant seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴ For each period of disability claimed, appellant has the burden of proving that she was disabled for work as a result of her accepted employment injury.⁵ Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.⁶ 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,

¹ 5 U.S.C. § 8102(a).

² 20 C.F.R. § 10.5(f) (1999).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *David H. Goss*, 32 ECAB 24 (1980).

⁶ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

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.⁷

ANALYSIS

The only competent medical evidence appellant submitted to support her claim are two undated disability notes and a May 18, 2006 narrative report from her orthopedic surgeon, Dr. Martin.⁸ Although this evidence generally supports that appellant missed work on February 9, March 9 and 10 and April 1 and 2, 2006 due to her September 25, 2001 employment injury, the evidence is insufficient to discharge appellant's burden of proof.

In his May 18, 2006 narrative report, Dr. Martin explained how appellant's work-related meniscal tear and chondromalacia patella often manifested and caused disabling pain and swelling and how days of rest and elevation of the affected extremity can provide relief. But he did not explain how he knew this to be the case on February 9, March 9 and 10 and April 1 and 2, 2006. Dr. Martin did not see appellant on or about those dates. Attending physician form reports show that he treated appellant on December 21, 2005, January 30 and March 27, 2006. These reports give no indication of the disability claimed.

With no contemporaneous examination or clinical findings to support total disability on the specific dates claimed, it appears that Dr. Martin simply signed off on appellant's self-certification. The Board understands that she may have experienced pain and swelling and did not go to work. The Office, however, cannot allow employees to self-certify their disability and entitlement to compensation benefits. 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 Because Dr. Martin offered no clinical evidence of disability for the specific dates at issue, the Board will affirm the Office decisions denying compensation for those dates.¹⁰

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that residuals of her September 25, 2001 employment injury disabled her for work on February 9, March 9 and 10 and April 1 and 2, 2006. There is no clinical evidence to support that appellant was, in fact, medically disabled for work on those dates.

⁷ *John L. Clark*, 32 ECAB 1618 (1981).

⁸ A medical secretary is not a "physician" under the Act and is not competent to render a medical opinion. 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law); see *Barbara J. Williams*, 40 ECAB 649, 657 (1988) (physical therapists); *Vicky L. Hannis*, 48 ECAB 538 (1997) (nurses); *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979) (physician assistants).

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

¹⁰ As appellant claims compensation for five specific dates of disability, modification of the Office's April 7, 2004 loss of wage-earning capacity determination is not an issue. See *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 14, July 25 and May 8, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 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