

right knee arthroscopic surgery, which appellant underwent July 2002.¹ Appellant received appropriate compensation. She returned to work and sustained a recurrence of disability on July 15, 2002, which the Office accepted.

On August 20, 2001 appellant filed a CA-7 claim for compensation for intermittent disability from February 6 to August 21, 2001. She worked intermittently as a real estate agent. In a time analysis (Form CA-7A) of September 13, 2001, the employing establishment indicated that appellant was claiming 56 hours of leave without pay (LWOP) for work-related knee pain. This was comprised of eight hours LWOP for dates February 6, 7, 22, July 23 through 25 and August 21, 2001. As appellant indicated that she earned real estate commissions, on September 26, 2001 the Office requested specific information from her private employment concerning the wages earned since 1999, hours worked and length of employment.

Medical evidence pertaining to the period of compensation claimed from February 6 to August 21, 2001 consists of medical excuses, by a physician with an illegible signature, from Sports Medicine New Jersey. In an undated medical excuse, the physician from Sports Medicine New Jersey indicated that appellant was under his care for “knee injury from [February 6 and 7, 2001].” A February 22, 2001 medical excuse advised that appellant was out of work that day. In a July 25, 2001 prescription slip, Dr. Helen A. Atienza, a family practitioner, released appellant from work from July 23 to July 25, 2001. In an August 21, 2001 note, she released appellant from work on August 21, 2001

By decision dated June 28, 2003, the Office denied compensation from February 6 to August 21, 2001 on the basis she did not provide sufficient proof of her outside earnings.

Appellant subsequently provided evidence as to her real estate commission earnings. By decision dated June 14, 2004, an Office hearing representative denied appellant’s claim as the additional evidence failed to establish appellant’s actual earnings during the period claimed. By decisions dated November 16 and 18, 2005 and September 1, 2006, the Office denied modification of its previous decision.

On March 2, 2007 appellant again requested reconsideration and submitted additional evidence pertaining to her real estate commissions during the relevant period. By decision dated June 5, 2007, the Office affirmed, as modified, the denial of appellant’s claim for compensation for the above period. It found that, while appellant submitted sufficient evidence to show that she earned \$9,817.00 in real estate commissions during the period claimed, the medical evidence was not sufficient to establish that her intermittent disability was due to her accepted right knee condition.

¹ Appellant has an approved claim for contusion of the right shoulder, cervical strain, lumbar strain and supraspinatus tendinopathy of the right shoulder under claim number xxxxxx608. On March 5, 2007 the Office combined the current claim, claim number xxxxxx478, with claim number xxxxxx608 and made claim number xxxxxx608 the master file.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.² As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁴ Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.⁷ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.⁸ However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof which includes the necessity to submit supporting rationalized medical evidence.⁹

ANALYSIS

Appellant filed claims for wage-loss compensation alleging intermittent disability for work from February 6 through August 21, 2001. However, she did not submit sufficient probative medical evidence to establish her total disability was due to her accepted right knee condition.

The record contains notes from appellant's physician excusing her from work February 6, 7 and 22, 2001, July 23 through July 25, 2001 and August 21, 2001. However, neither physician addressed whether appellant's disability was due to her accepted right knee condition or what

² *William A. Archer*, 55 ECAB 674 (2004).

³ *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

⁴ See *Fred Foster*, 1 ECAB 21 (1947).

⁵ *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, *supra* note 2.

⁷ 5 U.S.C. § 8103(a).

⁸ *Vincent E. Washington*, 40 ECAB 1242 (1989).

⁹ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

medical services were rendered on such dates. As the physician fails to offer any opinion on whether appellant was disabled on those dates, the medical excuse forms are of diminished probative value.¹⁰ There also is no clear indication if any time was lost from work due to treatment for accepted conditions and the record does not contain progress reports from examinations on those dates. There is no other probative medical evidence of record which addresses her disability on the dates claimed or whether she lost any time from work due to treatment for accepted conditions.

The Board finds that appellant has failed to submit sufficient rationalized medical evidence to establish that she was unable to work on intermittent days she used one way. Appellant has failed to establish that she was disabled and thus is not entitled to wage-loss compensation for the days claimed. She has not established intermittent disability from February 6 to August 21, 2001.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for intermittent periods of disability from February 6 to August 21, 2001.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ See *Sandra D. Pruitt*, *supra* note 6.