

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

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**K.G., Appellant**

**and**

**U.S. POSTAL SERVICE, NARRERO POST  
OFFICE, Marrero, LA, Employer**

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**Docket No. 07-2073  
Issued: February 20, 2008**

*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 August 6, 2007 appellant timely filed an appeal from a May 10, 2007 merit decision of the Office of Workers' Compensation Programs denying his claim for wage-loss compensation for the intermittent period October 31, 2006 through February 8, 2007. He also appealed a July 11, 2007 nonmerit decision denying his request for written review of the evidence. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.<sup>1</sup>

**ISSUES**

The issues are: (1) whether appellant established that he was disabled on October 31, November 30 through December 2, 2006, January 22 through 25 and February 6 through 8, 2007 and (2) whether the Office properly denied his request for written review of the evidence as untimely filed.

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<sup>1</sup> The record includes evidence received after the Office issued the May 10, 2007 decision. The Board cannot consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2004).

## **FACTUAL HISTORY**

On February 18, 1999 appellant filed a traumatic injury claim alleging that on the same day while pushing dispatch equipment he felt a sharp pain and his knees gave away. On February 23, 2000 the Office accepted his claim for right medial meniscal tear and aggravation of preexisting degenerative joint disease in the right knee.

On January 16, 2007 appellant filed a claim for compensation for October 31, November 30, December 1 and 2, 2006 and 40 hours between December 9 and 15, 2006.<sup>2</sup> He was compensated for 40 hours between December 9 and 15, 2006.

On February 16, 2007 appellant filed a claim for compensation for October 31, November 30 and December 1 and 2, 2006 as well as 16 hours between January 22 and 25 and 24 hours between February 5 and 9, 2007.<sup>3</sup>

Medical evidence was received by the Office. In a November 30, 2006 physical therapy discharge summary, it was stated that appellant attended therapy from September 20 through October 20, 2006, but then did not return.

On March 1, 2007 the Office requested medical evidence to support disability for the claimed dates between October 31, 2006 and February 9, 2007.

On March 7, 2007 appellant underwent arthroscopy and partial medial meniscectomy on his right knee.

On March 20, 2007 appellant filed a claim for compensation for the period March 5 through 18, 2007. He was compensated for the claimed period.

On April 4, 2007 appellant filed a claim for compensation for the period March 19 through April 1, 2007. He was compensated for the claimed period.

In a May 3, 2007 letter, the Office outlined appellant's entitlement to compensation benefits and his responsibility to return to work in connection with his injury.

On May 10, 2007 the Office denied appellant compensation for the period October 31, 2006 through February 9, 2007. It compensated him for eight hours for the period February 5 through 9, 2007. The Office found that the medical evidence failed to support disability on the dates: October 31, November 30 through December 2, 2006, January 22 to 25 and February 6 to 8, 2007. On June 15, 2007 appellant requested a review of the written record.

On July 11, 2007 the Office denied appellant's request for review of the written record on the grounds that his request was untimely.

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<sup>2</sup> Appellant did not identify the specific days he was disabled during this time period.

<sup>3</sup> *Id.*

### LEGAL PRECEDENT -- ISSUE 1

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. Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues which must be established, probative and substantial evidence.<sup>4</sup>

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability during the intermittent period October 31, 2006 through February 8, 2007 and his accepted right knee condition.<sup>5</sup> The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish 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 particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>7</sup>

### ANALYSIS -- ISSUE 1

Appellant has an accepted injury for medial meniscal tear and aggravation of preexisting degenerative joint disease in the right knee. He claims that he was disabled from work on October 31, November 30 through December 2, 2006 and January 22 through 25 and February 6 through 8, 2007.

Appellant bears the burden to establish through medical evidence that he was totally disabled during this time period and that his disability was causally related to his accepted injury. He submitted numerous medical reports but none of them provided evidence to establish that his disability, during the alleged time periods was causally related to his accepted conditions.

The only medical evidence either dated or referencing the dates at issue is a November 30, 2006 physical therapy discharge summary. Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.<sup>8</sup> 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.<sup>9</sup> The discharge summary does not establish that appellant was at physical therapy on that day as the last service date is noted as

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<sup>4</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>5</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996)

<sup>6</sup> *Id.*

<sup>7</sup> *Fereidoon Kharabi*, *supra* note 4

<sup>8</sup> *Vincent E. Washington*, 40 ECAB 1242 (1989).

<sup>9</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996).

October 20, 2006. The Board finds that appellant has not established that he was disabled during the claimed time period as a result of his employment injury

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.<sup>10</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides that a hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's request for a review of the written record was untimely. The Office denied his claim on May 10, 2007 and his request for a review of the written record was postmarked June 15, 2007. Because appellant requested a review of the record more than 30 days after the merit decision was issued he is not entitled to a review as a matter of right. In its May 10, 2007 decision, the Office also denied appellant's request for a review of the written record on the grounds that the issue could be addressed by requesting reconsideration and submitting evidence not previously considered which establishes that he was entitled to disability compensation. The Office exercised its discretionary powers in denying appellant's request for a hearing and in so doing, did not act improperly.<sup>12</sup> Moreover, there is no evidence in the case record to establish that the Office otherwise abused its discretion in denying appellant's review of the written request. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's request for a review of the written record.

### **CONCLUSION**

Appellant failed to establish that he was disabled for intermittent periods from October 31, 2006 through February 8, 2007 and the Office properly denied his request for an oral hearing as untimely filed.

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<sup>10</sup> 5 U.S.C. § 8124(b)(1).

<sup>11</sup> 20 C.F.R. § 10.615.

<sup>12</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 11 and May 10, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 20, 2008  
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