

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, QUEBEC PRIORITY)
MAIL ANNEX, Kansas City, MO, Employer)

**Docket No. 08-323
Issued: June 2, 2008**

Appearances:

*Alan J. Shapiro, 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 November 13, 2007 appellant filed a timely appeal from an October 16, 2007 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant had intermittent disability between December 23, 2002 and December 2, 2006.

FACTUAL HISTORY

On April 1, 2002 appellant, then a 46-year-old clerk, sprained her knee in the performance of duty. She stopped work on April 2, 2002 but returned later that day. In an April 23, 2002 magnetic resonance imaging (MRI) scan report, Dr. Mary E. MacNaughton, a Board-certified diagnostic radiologist, diagnosed right knee lateral meniscal tear, small joint effusion, developing patellar chondromalacia and lateral patellar subluxation. The Office

accepted appellant's claim for right knee strain and torn lateral meniscus. It paid appropriate compensation.

Appellant stopped work and, on August 23, 2002, underwent a right knee arthroscopy with partial medial and lateral meniscectomy. Dr. James Reardon, a Board-certified orthopedic surgeon, performed the procedure and diagnosed right knee lateral meniscal tear and medial meniscal tear. Appellant returned to light-duty work by October 11, 2002 and was released to perform regular-duty work on or about November 1, 2002.

On October 8, 2003 the Office granted appellant a schedule award for 10 percent impairment of the right leg. The period of the award began on August 25, 2003 and continued through October 4, 2003.

On April 14, 2006 appellant filed an occupational disease claim. She asserted that, after her right knee injury, she was assigned to work as a mail processing clerk and was required to stand for long periods of time. Appellant stated that her new assignment caused an aggravation of her right knee condition. She did not stop work.

In a June 8, 2005 report, Dr. Reardon explained that appellant presented with degenerative joint disease of the knee. He noted that she had diffuse degenerative changes and trouble with ambulation. In reports dated July 15 to August 15, 2005, Dr. Reardon certified that appellant was seen in his office and treated with Supartz injections to her right knee. Dr. Reardon noted improvement with continued treatment. In a November 21, 2005 note, Dr. Reardon stated that appellant was disabled on November 10 and 11, 2005, due to knee pain and swelling due to right knee degenerating arthritis. On December 16, 2005 Dr. Reardon reported that appellant presented in his office that day with degenerative joint disease of the knee. He noted that she displayed good motion, no meniscal signs and no signs of infection. Dr. Reardon released appellant to return to work with restrictions on the amount of time she could spend standing. In a note dated the same day, he diagnosed "right knee" and recommended that appellant be allowed to sit for 20 minutes out of each hour. Appellant also provided a November 1, 2005 form report, on which the signature was illegible, stating that she was disabled between October 7 and 25, 2005.

In a May 19, 2006 statement, appellant explained that she experienced intermittent pain and symptoms since her original injury and that she was required to perform various work assignments which bothered her knee. She took intermittent days off work due to her pain.

By decision dated July 11, 2006, the Office denied appellant's April 14, 2006 occupational disease claim.

Appellant requested an oral hearing. In a July 5, 2006 report, Dr. Reardon noted that appellant had injured her right knee at work in November 2002 and continued to experience pain and symptoms. He explained that appellant returned to his office in November 2005, presenting with degenerative changes and visco-supplementation in the right knee. Dr. Reardon opined that appellant's present symptoms were directly related to her 2002 injury and her loss of cartilage. Appellant began working in a limited-duty position on July 5, 2006.

By decision dated January 12, 2007, the hearing representative reversed the July 11, 2006 Office decision and accepted the claim for aggravation of degenerative joint disease of the right knee. She directed that appellant's claims be combined.¹ The Office accepted appellant's claim for aggravation of right knee degenerative joint disease and advised her of how to claim disability compensation if her injury resulted in lost time from work.

In a February 1, 2007 e-mail memorandum, an Office nurse stated that appellant would be taking off from work on the day of and the day after her Supartz injections.² The nurse noted that she had "never heard of anyone needing the day after these injections off." On February 8, 2007 she indicated that she had spoken with appellant's attending physician, who "advised he does not usually put patients off the day following an injection." The nurse stated that she informed the physician that if he did hold appellant off work on the day following an injection, he would need to provide a report with medical reasoning explaining the need for additional time off.

In a December 4, 2006 treatment note, Dr. Reardon indicated that appellant had permanent restrictions and diagnosed right knee degenerative joint disease.

On February 16, 2007 appellant filed claims for compensation for intermittent disability between January 1 and December 27, 2003. She submitted time analysis sheets noting the following leave days taken: January 1, 6, 13, 21 to 22 and 25, February 1 and 22, March 3 and 26, April 3 to 4 and 6, May 2 and 28, July 9, October 2, November 11 and 23 and December 27, 2003. On February 16, 2007 appellant filed a claim for compensation for intermittent wage loss between June 8 and December 23, 2004.³ She provided a time analysis sheet noting the dates: June 18 and 25 to 26, September 2 and 25, November 20, December 8 and 23, 2004. Appellant also filed a claim for wage loss from January 7 to December 16, 2005 and submitted a time analysis sheet noting leave taken on: January 7 and 17, February 3, 11, 16, 20 and 27, March 19, April 5, 9 and 25, May 7, 25 and 28, June 6, 9 and 13, June 22 to 23, July 21, July 26 to 27, August 9, 11, 16 and 22 to 23, September 4 to 5, 12 to 14, 22, 26 and 29, October 3 to 5, 7 to 9, 11, 13, 18 to 19 and 25 to 26, October 31 to November 1, November 10 to 11, 16 to 17 and 28 to 29, December 6 to 8, 12 to 13 and 16, 2005. On February 16, 2007 she filed a claim for wage loss from January 6 to December 2, 2006. She submitted time analysis sheets noting leave taken on the following dates: January 6, 9, 15 to 22 and 25 to 26, February 1, 3 to 5, 11, 20 to 21 and February 26, March 3, 5, 9, 12 to 15, 18 to 19, 27 and 31, April 2, 10 and 29 to 30, May 6, 11, 13 and 28 to 29, June 10 to 11, 18 and 24 to 25, July 2, 8, 21 to 22 and 27 to 28, August 2 to 5, September 23, 27 and 29 to 30, October 1 to 2, 14 to 15 and 29, November 21 and December 1 to 2, 2006. The remaining dates in October, November and December were illegible on the time analysis sheet. On each time analysis form, the employing establishment noted that appellant did not provide medical documentation supporting total disability on the claimed dates.

¹ On February 26, 2007 the Office combined appellant's two claims, numbers 112008040 and 112034525, under a single master case file, number 112008040.

² The Office authorized the injections.

³ Although appellant's February 16, 2007 compensation claim implicated June 8, 2004, her corresponding time analysis sheet claimed June 18, 2004.

By decision dated March 29, 2007, the Office denied appellant's claim for intermittent disability on the grounds that she did not submit sufficient medical evidence to establish total disability for work. It approved her claim for wage-loss compensation on November 1 and December 16, 2005.

By correspondence dated April 28, 2007, appellant requested an oral hearing.

In a May 4, 2007 statement of accepted facts, the Office noted that appellant underwent Supartz injections on July 15, 22 and 29, August 5 and 15, 2005 and on April 13, 20 and 27, 2007. On May 21, 2007 the Office referred appellant to Dr. Edward J. Prostic, a Board-certified orthopedic surgeon, for a second opinion examination to address appellant's current condition and ability to work.

In a June 11, 2007 report, Dr. Prostic noted appellant's history of injury and stated that she had continued to see Dr. Reardon for recurrent difficulties. He explained that she continued to experience frequent pain in the right knee and recommended that she continue working with restrictions. Dr. Prostic noted that she would ultimately need a total knee replacement. He opined that appellant's right knee osteoarthritis was aggravated by her April 1, 2002 work injury and also contributed to by her weight.

In an undated statement, appellant noted the dates she took off from work, using leave without pay and Family Medical Leave Act (FMLA) entitlement. She stated that the employing establishment has a liberal return to work policy and asserted: "We as employees *are not* required to submit documentation for each absence related to a chronic condition as long as the circumstances are unchanged. Once the original documentation states probable number of and the interval between episodes of incapacity which stated that I will be having intermittent leave entitlement under the FMLA. Intermittent absences due to a chronic condition which incapacitated me are covered by the FMLA."

An oral hearing was conducted on August 7, 2007. On August 23, 2007 the employing establishment noted that appellant had "taken off work intermittently for quite some time. There is no medical documentation or medical rationale for her absences."

On September 14, 2007 the Office approved her claim for compensation on July 17, 2002, August 11 and 23 to 30, 2003 and September 24 to 25, 2003.

By decision dated October 16, 2007, the hearing representative affirmed the denial of appellant's claim for intermittent wage loss. He noted that the Office had paid compensation for leave taken on August 11, September 2 and 24 to 25, 2003 and on November 1 and December 16, 2005. However, the hearing representative found no medical evidence to support appellant's claimed total disability on any other dates.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of

injury.⁴ Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues which must be proved by the weight of substantial and reliable medical evidence.⁵ The claimant has the burden of proving that she is disabled for the period claimed as a result of the employment injury. 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.⁶ 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.⁷

ANALYSIS

The Office accepted that appellant sustained a right knee strain, torn lateral meniscus and aggravation of right knee degenerative joint disease as a result of her April 1, 2002 employment-related injury. She filed claims for wage-loss compensation alleging that she was disabled for work on intermittent dates between December 23, 2002 and December 2, 2006. However, appellant failed to submit rationalized medical evidence establishing that her intermittent disability resulted from residuals of her accepted employment injury. The Board finds that she has not met her burden of proof.

Appellant submitted reports from Dr. Reardon, an attending physician, indicating that she was seen in his office and received treatments for her knee injury on June 8, July 15, 22 and 29 and August 5 and 15, 2005. However, the Board notes that none of the above dates were claimed and he did not otherwise indicate that appellant had employment-related disability on these dates.

In a November 21, 2005 note, Dr. Reardon generally supported appellant's disability on November 10 and 11, 2005, due to "knee pain and swelling due to right knee degenerating arthritis." However, he did not indicate that he treated appellant on these dates for her accepted conditions.⁸ Dr. Reardon did not otherwise address whether her accepted right knee condition caused her to be disabled or what treatment was provided to appellant on the dates claimed. Accordingly, his November 21, 2005 note is insufficient to establish appellant's work-related total disability on November 10 and 11, 2005.

Dr. Reardon also provided a December 16, 2005 report supporting appellant's disability on that date. He noted that she presented in his office and was examined and treated for

⁴ See *Robert A. Flint*, 57 ECAB 369 (2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ See *Carol A. Lyles*, 57 ECAB 265 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁷ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ See *Amelia S. Jefferson*, 57 ECAB 183 (2005) (a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location).

degenerative joint disease, an accepted condition. The Board notes that the Office, in its March 29, 2007 decision, accepted appellant's total disability on December 16, 2005, as well as on November 1, 2005, as work related and paid appropriate compensation.

Appellant presented no other medical evidence supporting that she was totally disabled on the dates claimed. She did not provide treatment notes from Dr. Reardon or any other physician, verifying that she was examined and treated for her accepted condition on any of the dates she claimed disability. Appellant did not submit medical reports explaining, with rationale, why her absence from work on the dates claimed was related to her accepted right knee conditions. In an undated statement, she explained that she utilized the employing establishment's "liberal return to work policy" and the FMLA, which did not require her to submit supporting medical documentation each time she took leave. However, the Board notes that FMLA procedures do not apply to an appellant's claim under federal workers' compensation law, as the determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Federal Employees' Compensation Act.⁹ As noted for purposes of entitlement under the Federal Employees' Compensation Act, appellant must provide supporting medical reports establishing that her disability for each claimed period was related to her accepted condition.¹⁰ Here, appellant has not provided supporting medical documentation and consequently has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing entitlement to intermittent wage-loss compensation between December 23, 2002 and December 2, 2006.

⁹ See *Dianna L. Smith*, 56 ECAB 524, 527 (2005).

¹⁰ See *supra* notes 6, 7.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2008
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