

injured her right leg. He diagnosed severe bilateral patella femoral degenerative arthritis with right knee medial meniscus tear.

Appellant submitted two magnetic resonance imaging (MRI) scans. The April 7, 2006 MRI scan revealed severe patellofemoral degenerative changes. The April 12, 2006 MRI scan showed lumbar spine degenerative disc disease.

On May 1, 2006 Dr. Javors opined that appellant had reached maximum medical improvement and that she had permanent work restrictions of limited walking, no kneeling and squatting and no lifting more than 10 pounds. He noted that appellant did not have a meniscal tear and then released her from his care for her knee condition.

In a May 5, 2006 report, Dr. Javors diagnosed significant degenerative lumbar spine disc disease and arthritis. He noted that appellant injured her knee and back in her December 23, 2005 fall. Dr. Javors stated that appellant had been released from his care for her knee condition the prior week. He opined that appellant required permanent work restrictions and recommended a functional capacity evaluation to determine the extent of the restrictions.

In a letter dated May 5, 2006, the employing establishment informed appellant that it was terminating her limited-duty assignment effective May 5, 2006 based upon Dr. Javors' May 5, 2006 report, which released her from care for her knee condition. He noted that he had "been following her for the knee condition and she was released last week, as far as the knee goes."

On July 17, 2006 Dr. Javors indicated that he has been treating appellant for her back and right knee injuries which were due to a December 23, 2005 employment injury. He diagnosed severe degenerative arthritis in both the right knee and lumbar spine. Dr. Javors concluded that appellant's preexisting degenerative arthritic conditions had been aggravated by the December 23, 2005 injury and provided permanent work restrictions. He noted that appellant's supervisor had not honored the restrictions, which were to prevent future injury.

In a July 20, 2006 attending physician's report (Form CA-20), Dr. Javors diagnosed severe degenerative disc disease and arthritis of the lumbar spine and possible medial meniscus tear. He indicated that appellant had been released to restricted work on March 22, 2006. Dr. Javors checked "yes" to the question of whether the diagnosed conditions had been caused or aggravated by appellant's employment.

On July 26, 2006 Dr. Javors stated that x-ray interpretations showed significant arthritic changes in both her knees and lumbar spine and that he had placed her on permanent restrictions.

On August 16 and 17, 2006 the Office received appellant's claims for compensation (Form CA-7) for the period June 20 to July 12, 2006 and time analysis forms. A July 12, 2006 time analysis form revealed that appellant used 4.18 hours of leave without pay and worked 3.82 hours and that she was "told to clock out" because there was no available work. A July 13, 2006 time analysis form revealed that she used 2.40 hours of leave without pay and worked 5.6 hours and that she was "told to clock out" because there was no available work. A July 14, 2006 time analysis form revealed that appellant used 14.5 hours of leave without pay, 4.5 hours of sick leave, 8 hours of annual leave and that she worked 13 hours for the period June 24 to 29, 2006 and that she was "told to clock out" because there was no available work. For the dates June 20

and 23, 2006, a time analysis form reveals appellant worked 8 hours and used 1.16 hours of leave without pay and worked 6.74 hours on June 23, 2006 and that she was “told to clock out” because there was no available work

In a letter dated August 18, 2006, the Office requested that Dr. Javors provide additional information regarding appellant’s condition and permanent restrictions as her claim had only been accepted for multiple contusions. The Office then provided a statement of accepted facts and a list of questions for Dr. Javors. No response was received.

By decision dated November 3, 2006, the Office denied appellant’s claim for wage-loss compensation for the period June 20 to July 12, 2006. The Office found that the evidence was insufficient to establish that right knee and lumbar spine conditions and the work restrictions set by her physician were caused or aggravated by her December 23, 2005 employment injury.

On November 7, 2006 the Office received a September 29, 2006 report from Dr. Javors, responding to the Office’s August 18, 2006 letter. Dr. Javors diagnosed severe patella femoral arthritis and severe degenerative lumbar spine arthritis. He noted that appellant still had fluid in her knee when he saw her in March 2006, which he opined indicated an aggravation of her right knee condition due to the December 23, 2005 injury. Dr. Javors opined that the December 23, 2005 injury would have caused a temporary aggravation of her preexisting right knee condition. Any aggravation of the preexisting right knee condition ended on May 1, 2006, the date he released her from his care for this condition. With respect to her lower back injury, Dr. Javors noted that objective evidence revealed significant degenerative disc disease and arthritis of the lumbar spine, which had been temporarily aggravated by her December 23, 2005 employment injury. He stated that appellant’s lumbar spine arthritis was unrelated to the employment injury as the condition takes years to develop and the MRI scan showed no “signs of any acute injury such as a fracture or herniated disc.” Dr. Javors noted that she required permanent work restrictions for her knees and back due to her preexisting conditions.

By letter dated November 27, 2006, appellant’s counsel requested an oral hearing before an Office hearing representative, which was held on May 3, 2007.

By decision dated June 22, 2007, an Office hearing representative found the evidence insufficient to establish that her disability for June 20 to July 12, 2006 was causally related to her accepted employment injury. She found Dr. Javors’ opinion that appellant sustained a temporary aggravation of her back condition due to the employment injury were insufficient to support disability as the physician provided no rationale for his opinion on whether the work restrictions were due to residuals of an employment injury. However, the Office hearing representative modified the November 3, 2006 decision to accept that appellant sustained a temporary aggravation of her right knee degenerative arthritis, which ended on May 1, 2006.

LEGAL PRECEDENT

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

time of injury.¹ 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.² The claimant has the burden of proving that she is disabled for the period claimed as a result of the employment injury. The medical evidence of record must directly address the particular period of disability for which compensation is sought; to do otherwise would essentially allow employee's to self-certify their disability and entitlement to compensation.³ 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.⁴ 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.⁵

ANALYSIS

The Office accepted that appellant sustained multiple contusions as a result of her December 23, 2005 employment-related slip and fall, which the Office hearing representative expanded to include a temporary aggravation of right knee degenerative arthritis that ceased by May 1, 2006. Appellant filed claims for wage-loss compensation alleging that she became disabled from work for intermittent periods from June 20 to July 12, 2006. However, she failed to submit rationalized medical evidence establishing that her intermittent disability during this period resulted from the residuals of her accepted employment injury. The Board finds that she has not met her burden of proof.

The question to be resolved is whether her intermittent disability for the period June 20 to July 12, 2006 was a result of residuals of her accepted employment injury. The medical evidence relevant to this issue includes the reports of Dr. Javors an attending physician.

Dr. Javors' May 1, 2006 report indicated that he had released appellant from his care for her knee condition, but that he would be treating her for a back condition, which he attributed to her December 23, 2005 employment injury. On May 5, 2006 he diagnosed significant lumbar spine degenerative arthritis and disc disease and noted that appellant required permanent work restrictions. Dr. Javors opined that appellant's December 23, 2005 employment injury had aggravated her preexisting back and knee conditions. He provided permanent work restrictions, which were to prevent future injury. In a July 20, 2006 attending physician's report, Dr. Javors noted that appellant had been released to restricted work on March 22, 2007. On September 29,

¹ See *Robert A. Flint*, 57 ECAB ____ (Docket No. 05-1106, issued February 7, 2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

² See *Carol A. Lyles*, 57 ECAB ____ (Docket No. 05-1492, issued December 13, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³ *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005); see also *William A. Archer*, 55 ECAB 674 (2004).

⁴ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁵ *Fereidoon Kharabi*, *supra* note 2.

2006 he opined that appellant sustained a temporary aggravation of her preexisting right knee condition, which had resolved by May 1, 2006. Dr. Javors did not adequately explain why appellant's preexisting lumbar condition had been caused or aggravated by the December 23, 2005 employment injury. He did not address specific dates of disability for work due to residuals of the accepted conditions. Dr. Javors' reports are insufficient to support that her preexisting back condition was aggravated by the accepted December 23, 2005 slip and fall.⁶ The July 20, 2006 attending physician's report is also insufficient to meet appellant's burden. A physician's opinion on causal relationship which consists only of checking "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.⁷ On September 29, 2006 Dr. Javors addressed appellant's preexisting lumbar degenerative disc and arthritic disease and why it was not caused by her employment injury. He noted, however, that the December 23, 2005 employment injury caused a temporary aggravation of this preexisting lumbar condition. His report did not address appellant's disability from June 20 to July 12, 2006 or explain how this was related to her accepted conditions. As Dr. Javors provided insufficient medical rationale explaining how the December 23, 2005 employment injury had temporarily aggravated her preexisting lumbar degenerative disc and arthritic disease, this report is of limited probative value.⁸ None of his reports address the intermittent disability appellant claimed for the period June 20 to July 12, 2006. Dr. Javors noted that appellant's right knee temporary aggravation had resolved by May 1, 2006 and released her from his care for this condition. He failed to provide rationale explaining whether the permanent work restrictions he specified were due to residuals of her accepted employment injury. The Board finds that his reports are insufficient to establish that the December 23, 2005 employment injury aggravated a preexisting back condition or that appellant's intermittent disability for the period June 20 to July 12, 2006 was due to her accepted employment injury.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that her periods of intermittent disability for work were a result of her employment injury. The Board finds that appellant has failed to establish her entitlement to compensation due to her accepted multiple contusions and temporary aggravation of right knee condition for the period June 20 to July 12, 2006.

CONCLUSION

The Board finds that appellant has not established entitlement to intermittent wage-loss compensation for the period June 20 to July 12, 2006.

⁶ *J.M.*, 58 ECAB ___ (Docket No. 06-2094, issued January 30, 2007) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

⁸ *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2007 is affirmed.

Issued: March 14, 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