



employment-related back strain. A form report dated July 15, 2005 from Dr. Edward Cusick, an attending osteopath, included a 20-pound lifting restriction, 2 hours walking or standing, and 15 minutes per hour of intermittent bending or stooping. Appellant had received a notice of proposed removal from employment on July 19, 2005 for unsatisfactory attendance and abuse of leave. Her employment was terminated August 25, 2005.

The Office accepted the claim for a right knee sprain/strain. In an undated form report (CA-20), Dr. Cusick diagnosed lumbar strain and right knee strain. He reported a period of partial disability from August 7 to 29, 2005.

In a treatment note dated September 6, 2005, Dr. Cusick diagnosed lumbar strain, chronic but improved, and right knee strain, also improved. He stated, "Avoid bending, stooping and lifting. [Appellant] is still on 20 [pounds] lifting restriction at work. No repetitive bending of the knees. [Appellant] should n[o]t be standing more than two [hours] at a time." In a narrative report dated October 5, 2005, Dr. Cusick provided a history that appellant had twisted her knee at work and developed knee pain. He reported that appellant had initially been treated for knee symptoms by a Dr. Couch, and on August 22, 2005 she still had tenderness over the medial collateral ligament. According to Dr. Cusick, appellant was last seen on September 6, 2005 and her knee was almost back to normal. He stated that appellant was having a little pain and was told to avoid repetitive bending. By report dated November 7, 2005, Dr. Cusick reiterated the history provided in his October 5, 2005 report and concluded that appellant had a 20-pound lifting restriction, no standing more than two hours and no repetitive bending.

In a decision dated January 5, 2006, the Office found that appellant had not established any period of disability causally related to the right knee sprain/strain. The Office also found that appellant was not entitled to continuation of pay.

Appellant requested reconsideration and submitted a report dated January 17, 2006 from Dr. Cusick, who repeated the prior history and stated that appellant had been released to work on light duty on September 26, 2005.

By decision dated April 13, 2006, the Office denied modification of the January 5, 2006 Office decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim, including that any disability for which compensation is claimed are causally related to the employment injury.<sup>2</sup> Whether a particular injury causes an employee to be 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 medical evidence.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

## ANALYSIS

At the time of the August 7, 2005 injury appellant was working a full-time light-duty position based on work restrictions provided by Dr. Cusick. According to his July 15, 2005 report, appellant was limited to 20 pounds lifting, 2 hours standing or walking, with intermittent bending, stooping or twisting of no more than 15 minutes per hour.

The Office accepted that appellant sustained a right knee sprain/strain on August 7, 2005. It is appellant's burden to submit probative and reliable medical evidence that establishes disability for work as a result of her knee injury. Since appellant was working a light-duty position when injured, she must submit medical evidence showing that she was unable to perform the light-duty job as a result of the accepted August 7, 2005 knee injury.<sup>4</sup>

Dr. Cusick did not provide a report that established disability for the light-duty job. He provided specific work restrictions in a September 6, 2005 treatment note, when he limited appellant to 20 pounds lifting, two hours standing and no repetitive bending. It does not appear, however, that these restrictions represented any change in appellant's ability to work. The prior restrictions limited lifting to 20 pounds, standing of two hours and bending to intermittent, short-term periods. Dr. Cusick did not find that appellant was unable to perform her light-duty job. He did not provide a rationalized medical opinion supporting a period of total disability. Dr. Cusick referred in his January 17, 2006 report of "releasing" appellant to light duty on September 26, 2005.

In the absence of probative medical evidence, the Board finds that appellant did not meet her burden of proof in this case. The Office properly determined that appellant had not established entitlement to compensation for wage loss as a result of the August 7, 2005 right knee sprain/strain.

## CONCLUSION

The medical evidence of record is not sufficient to establish a period of disability causally related to the August 7, 2005 employment injury.

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<sup>4</sup> The term "disability" as used under the Act means the incapacity, because of injury in employment, to earn the wages which the employee was receiving at the time of injury. *Donald Johnson*, 44 ECAB 540, 548 (1993); 20 C.F.R. § 10.5(17).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 13 and January 5, 2006 are affirmed.

Issued: May 2, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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