

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

S.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Detroit, MI, Employer)

**Docket No. 09-226
Issued: July 20, 2009**

Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 11, 2008 which affirmed a February 8, 2008 decision denying appellant's claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she had any disability beginning February 1, 2001 to December 8, 2004 causally related to her accepted employment condition.

FACTUAL HISTORY

On December 15, 2004 appellant, then a 40-year-old carrier, filed an occupational disease claim alleging that she developed a right knee condition as a result of walking and climbing stairs while in the performance of duty. She did not stop work. On December 29, 2005 the Office accepted the claim for aggravation of osteoarthritis of the right knee and aggravation of occupational bursitis of the right knee.

Appellant was treated by Dr. Hend Aljundi, a Board-certified internist, from December 9, 2004 to March 17, 2005 for chronic knee pain. She reported that her mail route involved walking three hours and climbing stairs while carrying a 30-pound satchel. Dr. Aljundi diagnosed patella femoral osteoarthritis of the right knee and bursitis of the right knee. He opined that appellant's knee condition was aggravated by her work duties and recommended restrictions of no excessive walking, standing and little or no stair climbing for a period of six weeks. In reports dated October 6 and December 6, 2005, Dr. Aljundi diagnosed patella femoral osteoarthritis of the right knee with bursitis of the right knee and recommended short-term restrictions on walking and stair climbing. He opined that appellant's job as a city carrier required extensive walking and climbing stairs with a heavy mail satchel which aggravated her right knee condition.

Appellant submitted reports from Dr. Aljundi dated January 16 to June 29, 2006 who provided additional restrictions due to the compromised condition of appellant's knee joint. He noted a maximum of three hours working in the field and the remainder of the day performing light-duty activities. On March 1, 2006 Dr. Aljundi treated appellant in follow up and diagnosed degenerative joint disease of the right knee, tension headaches and hypertension. He opined that appellant's postal duties exacerbated her arthritis. In return to work slips dated August 1 and 2, 2006, Dr. Aljundi diagnosed right knee sprain, exacerbation of osteoarthritis with joint effusion and noted that appellant was totally disabled from August 1 to 6, 2006. Appellant was also treated by Dr. Salah Fares, a Board-certified internist, on February 15, 2006. Dr. Fares diagnosed acute right knee pain and recommended oral analgesics and rest for two days with continued work restrictions.

Appellant submitted several CA-7 forms, claiming compensation for intermittent total disability for the period February 1, 2001 to December 23, 2005. The employing establishment submitted several CA-7a time analysis forms for January 27, 2001 to December 23, 2005. It noted that there was no medical documentation for the leave used.

In a letter dated August 17, 2006, the Office requested that appellant submit medical evidence establishing partial disability from work beginning February 1, 2001.

Appellant submitted a grievance summary dated February 1, 2006 and alleged that she was denied available light duty from December 7 to 9, 2005. The grievance was denied on the grounds that she was given full consideration within restrictions and work availability. In statements dated September 6 and 15, 2006, appellant asserted that she was denied opportunities to work an eight-hour day after the development of her condition but prior to acceptance of her claim. She submitted a report dated August 1, 2006 from Dr. Aljundi who treated her for increasing pain in her right knee. Dr. Aljundi noted appellant's work history and diagnosed gastritis and osteoarthritis of the right knee and recommended three days' rest. In reports dated August 24 to October 16, 2006, he diagnosed osteoarthritis of the right knee and continued appellant's work restrictions. In duty status reports dated December 20, 2006 to April 10, 2007, Dr. Aljundi continued to recommend full-time work with restrictions.

The employing establishment submitted a statement from Angela Isby, a manager, who noted that appellant was off work in late 2001 and early 2002 due to maternity leave and was

otherwise provided with work within her restrictions. Also submitted were light-duty job offers dated August 11, 2006, July 26, August 20 and December 12, 2007.

Appellant submitted several statements dated April 10 to August 9, 2007 asserting that prior to approval of her claim, she was sent home due to the employer's policy of not guaranteeing eight hours of work to employee whose disabilities that had not been approved by the Office.

Appellant submitted CA-7 forms, claiming compensation for partial disability for intermittent hours for the period November 27, 2004 to December 23, 2005. The employing establishment submitted several CA-7a time analysis forms for November 27, 2004 to December 23, 2005.

Appellant submitted duty status reports dated October 11, 2007 and January 9, 2008 from Dr. Aljundi who diagnosed anserine bursitis and patella femoral osteoarthritis and advised that appellant could work full time with restrictions. Dr. Aljundi submitted an Office questionnaire dated January 9, 2008 and diagnosed overuse of the knees with continuing residuals.

In a decision dated February 8, 2008, the Office denied appellant's claim for compensation for partial disability, beginning February 1, 2001 to December 8, 2004, on the grounds that the evidence was not sufficient to establish that her partial disability was due to her accepted work injury.

In a letter dated February 8, 2008, the Office advised appellant that she would be paid for intermittent time lost from December 25, 2004 to December 23, 2005 when light-duty work was not made available prior to the adjudication of her claim.

Appellant requested a telephonic hearing which was held on May 28, 2008. She submitted a certificate to return to work dated February 2, 2001 from Dr. Naira Henein, a Board-certified internist, who diagnosed knee pain. Dr. Henein provided work restrictions of no walking distances or climbing stairs from February 3 to 8, 2001. Also submitted was an August 31, 2007 report from Dr. Aljundi who noted treating appellant since April 9, 2001 for right knee pain. Dr. Aljundi provided work restrictions beginning October 21, 2004. Appellant also submitted reports from Dr. Aljundi dated January 24, 2005 and January 9, 2008, which were previously of record.

In a decision dated August 11, 2008, the Office affirmed the February 8, 2008 decision which denied appellant's claim for compensation for the period February 1, 2001 to December 8, 2004.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.¹ Whether a particular injury causes an employee to be

¹ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

disabled for employment and the duration of that disability are medical issues.² The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.³

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁴

ANALYSIS

The Office accepted appellant's claim for aggravation of osteoarthritis of the right knee and aggravation of occupational bursitis of the right knee. The Board finds that the medical evidence submitted in support of the wage-loss compensation claim for partial disability for the period February 1, 2001 to December 8, 2004 is insufficient to establish that the claimed period of partial disability was caused or aggravated by the accepted employment injury.

Appellant submitted a return to work certificate dated February 2, 2001 from Dr. Henein who diagnosed knee pain and returned appellant to work with restrictions from February 3 to 8, 2001. Although Dr. Henein noted that appellant had symptoms of right knee pain, she did not specifically address whether appellant had any employment-related disability beginning February 1, 2001 causally related to her work injury. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Aljundi from December 9, 2004 to March 17, 2005 who treated appellant for chronic knee pain. Dr. Aljundi diagnosed patella femoral osteoarthritis of the right knee and bursitis of the right knee. He recommended that appellant return to work full time with restrictions. In reports dated October 6, 2005 to October 16, 2006, Dr. Aljundi treated appellant for increasing right knee pain. He opined that appellant's job duties required extensive walking and stair climbing with a heavy mail satchel which aggravated her right knee condition. Dr. Aljundi diagnosed patella femoral osteoarthritis of the right knee, bursitis of the right knee and degenerative joint disease of the right knee and recommended short-term restrictions on walking and stair climbing. He did not, however, indicate any periods of disability resulting from the accepted conditions of aggravation of osteoarthritis of the right knee or aggravation of occupational bursitis of the right knee. Therefore, these reports are insufficient to establish that appellant was disabled from February 1, 2001 to December 8, 2004 due to her employment injury. Rather, Dr. Aljundi opined that appellant could continue working full time subject to restrictions. Evidence from the employing establishment indicates that appellant was provided work within her restrictions.

² *Id.*

³ *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

Likewise, duty status reports from Dr. Aljundi dated December 20, 2006 to April 10, 2007 and October 11, 2007 to January 9, 2008 advised that appellant could work full time subject to restrictions. In return to work slips dated August 1 and 2, 2006, Dr. Aljundi diagnosed right knee sprain, exacerbation of osteoarthritis with joint effusion and opined that appellant was totally disabled from August 1 to 6, 2006. Similarly, on August 31, 2007 he noted treating appellant on April 9, 2001 for right knee pain and provided work restrictions beginning October 21, 2004. Even though Dr. Aljundi noted that she had symptoms of her right knee condition and was disabled on certain days in 2006, he did not, in this report or in others, specifically address whether appellant had any employment-related disability beginning February 1, 2001 to December 8, 2004 causally related to her accepted employment conditions. Therefore, these reports are insufficient to discharge appellant's burden of proof.

The remainder of the medical evidence, including a report from Dr. Fares dated February 15, 2006, failed to provide an opinion on causal relationship between the claimed period of disability and the accepted employment injury. Consequently, the medical evidence did not establish that the claimed period of disability was due to appellant's accepted employment injury.

CONCLUSION

The Board finds that appellant has failed to establish that her disability for the period February 1, 2001 to December 8, 2004 is causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 11 and February 8, 2008 are affirmed.

Issued: July 20, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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