

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

B.R., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, OK, Employer**

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**Docket No. 09-330
Issued: September 1, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 17, 2008 appellant filed a timely appeal from a November 5, 2008 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he had any continuing employment-related disability after April 4, 2006. On appeal appellant argues that the reports of Dr. Abraham S. Abdo, an attending orthopedic surgeon, are sufficient to establish entitlement to total disability after April 4, 2006, the day appellant's wage-loss compensation was terminated.

FACTUAL HISTORY

This case has been before the Board on four prior occasions. By decision dated January 6, 2000, the Board found that the Office improperly failed to reopen appellant's case for

a merit review.¹ Following the Board's remand, in a February 4, 2000 decision, the Office found that the record was sufficient to establish that appellant was entitled to wage-loss compensation for total disability beginning December 19, 1996.² In a June 1, 2001 decision, it found that appellant had not established clear evidence of error regarding the February 4, 2000 decision,³ and on January 17, 2006 the Board dismissed appellant's appeal on the grounds that the record did not contain a final decision over which it had jurisdiction.⁴ By decision dated August 7, 2007, the Board found that the Office met its burden of proof to terminate appellant's compensation benefits effective April 4, 2006 and that appellant failed to meet his burden of proof to establish that he had any disability after April 4, 2006 causally related to his accepted conditions. The Board, however, found that the Office improperly denied appellant's request for a merit review pursuant to section 8128(a) of the Federal Employees' Compensation Act.⁵ In a June 10, 2008 decision, the Board affirmed a September 19, 2007 merit decision of the Office, finding that appellant had not established disability on or after April 6, 2006 due to his accepted injury.⁶ The law and the facts of the previous Board decisions and orders are incorporated herein by reference.

On August 14, 2008 appellant again requested reconsideration, asking that wage-loss compensation be resumed from the date of his termination on April 6, 2006 and submitted additional reports from Dr. Abdo. In a July 9, 2008 report, Dr. Abdo advised that appellant was last seen on September 1, 2004 and recommended that he have his knee checked. By report dated August 11, 2008, he noted the history of injury and appellant's complaint of continued knee pain and discomfort due to injury-related traumatic arthritis. Physical examination findings included tenderness and pain in the right knee along the medial joint space with an intact neurovascular supply and mild anterior laxity of the knee. Dr. Abdo advised that the patella tracked normally, with minimal grinding and minimal fluid inside the joint and no calf pain or tenderness. He stated that he had a long discussion with appellant regarding his condition and options for treatment, noting that he continued to have knee difficulty due to traumatic knee arthritis caused by the employment injury. Dr. Abdo advised that appellant could return to work as an aircraft mechanic but was limited in his ability to climb steps, should avoid bending and squatting, and had a 25-pound weight restriction. He concluded that appellant should seek

¹ Docket No. 98-336 (issued January 6, 2000).

² On April 4, 1988 appellant, then a 31-year-old aircraft mechanic, sustained an employment-related internal derangement of the right knee. He stopped work on September 27, 1988, returned briefly in 1989 and was placed on the periodic rolls. In 1991 appellant was granted a schedule award for a 45 percent permanent impairment of the right leg. He worked periodically in the private sector and in 1994 was referred for vocational rehabilitation. Appellant was retrained as an automobile mechanic technician and underwent corrective surgery in 1988, 1989 and 1998. He was involved in nonwork-related motor vehicle accidents in March 1990 and July 1995. The job duties of the aircraft mechanic position are considered arduous with extensive walking, climbing, bending, stooping and crawling, and lifting up to 74 pounds.

³ Appellant was seeking compensation from June 23, 1996 when a wage-earning capacity decision was put in place and the resumption of total disability compensation on December 19, 1996.

⁴ Docket No. 05-1385 (issued January 17, 2006).

⁵ 5 U.S.C. §§ 8101-8193. Docket No. 06-2100 (issued August 7, 2007).

⁶ Docket No. 08-252 (issued June 10, 2008).

medical attention by an orthopedic surgeon close to his home.⁷ In an August 13, 2008 report, Dr. Abdo restricted standing and walking to 2 hours at a time, with no more than 30 minutes of bending, and no climbing.

By decision dated November 5, 2008, the Office denied modification of appellant's claim on the grounds that the medical evidence was insufficient to establish continued periods of disability.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.⁸ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁹

To establish a causal relationship between a condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

The Board finds that appellant failed to establish that he continued to be disabled after April 4, 2006 due to his May 19, 1988 employment injury. In support of his request, appellant submitted reports from his attending orthopedist, Dr. Abdo. The Board, however, finds these reports insufficient to establish appellant's burden of proof.

⁷ Appellant's claim remains open for medical treatment.

⁸ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *Tammy L. Medley*, 55 ECAB 182 (2003).

¹⁰ *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹¹ *Id.*

¹² *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In a July 9, 2008 report, Dr. Abdo merely advised that appellant was last seen on September 1, 2004 and recommended that he have his knee checked. By report dated August 11, 2008, he noted the history of injury and appellant's complaint of continued knee pain and discomfort. Dr. Abdo provided right knee examination findings of tenderness and pain along the medial joint space with an intact neurovascular supply and mild anterior laxity and noted that the patella tracked normally, with minimal grinding and minimal fluid inside the joint and no calf pain or tenderness. While he advised that appellant continued to have knee difficulty due to traumatic knee arthritis caused by the employment injury, Dr. Abdo also stated that appellant could return to work as an aircraft mechanic but was limited in his ability to climb steps, should avoid bending and squatting, and had a 25-pound weight restriction. In an August 13, 2008 report, he restricted standing and walking to 2 hours at a time, with no more than 30 minutes of bending and no climbing.

Appellant's job as an aircraft mechanic required arduous activity with extensive walking, climbing, bending, stooping and crawling and lifting up to 74 pounds. The Board finds Dr. Abdo's reports are of insufficient probative value, as they do not provide a rationalized explanation as to why appellant continued to be disabled from the 1988 employment injury, especially noting that the record shows that appellant also injured his right knee in motor vehicle accidents in 1990 and 1995. Whether a particular injury causes an employee to be disabled for employment must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹³ To establish a causal relationship between a condition, as well as any disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁴ Appellant has not provided such evidence in this case and has therefore not met his burden of proof to establish that he continues to be disabled from the employment injury.

CONCLUSION

The Board finds that appellant did not establish that he continued to be disabled after April 4, 2006 due to his May 19, 1988 employment injury.

¹³ *Tammy L. Medley, supra* note 9.

¹⁴ *Jennifer Atkerson, supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 5, 2008 be affirmed.

Issued: September 1, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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