

FACTUAL HISTORY

On March 21, 2007 appellant, then a 45-year-old receiving/dispatch clerk, injured her right knee when she stepped out of a traveling trailer.¹ She did not stop work following the injury.² The Office accepted the claim for right knee lateral collateral ligament strain.

On April 6, 2007 Dr. Bruce M. McCarthy, a treating Board-certified orthopedic surgeon, released appellant to limited duty with no climbing and no squatting. On November 26, 2007 he diagnosed back pain, checked that appellant was disabled from working and recommended a lumbar magnetic resonance imaging (MRI) scan.

In a December 5, 2007 work status report, Dr. McCarthy recommended an L5 MRI scan be performed to determine when appellant could be released to work.

On December 13, 2007 appellant filed wage-loss compensation claims for the period November 26 to December 22, 2007.

On January 21, 2008 Dr. Keith P. Melancon, a treating Board-certified orthopedic surgeon, related that appellant was seen for complaints of pain in her right hip, right upper leg and lower back. Appellant stated that she had no problems with her right leg until her 2007 employment injury. Dr. Melancon noted that on February 11, 2008 that appellant was seen for pain in her right hip, knee and her lumbar problem. He reported that her right knee pain was improving while her lumbar problem was worsening.

Appellant submitted claims for wage-loss compensation for the period September 4 to 5 and December 23, 2007 to March 1, 2008.

Dr. Melancon, in March 26, 2008 progress notes, reported that appellant was seen for right knee and lumbar back pain. A review of an MRI scan revealed an L4-5 disc bulge which Dr. Melancon related “coincides with the mechanism injury that she states happened when she fell.”

Appellant’s employment was terminated on April 16, 2008 as her services were no longer required. The Office noted that accommodation was not an issue.

¹ The Office assigned claim number xxxxxx332. On June 22, 2008 it combined claim number xxxxxx089 with claim number xxxxxx332, with the latter claim number as the master file. The Office noted that these claims were duplicate claims. Claim number xxxxxx089 was based on a traumatic injury claim while claim number xxxxxx632 was based on a recurrence claim form.

² Appellant filed a time analysis form (CA-7a) and claim for wage-loss compensation (Form CA-7) for the period July 2 to August 3, 2007 for physical therapy treatment. The record contains no evidence that the Office authorized physical therapy for appellant’s employment injury. On January 29, 2008 the Office informed appellant that it could not process her claim for wage-loss compensation for the period July 2 to August 3, 2007 as her time analysis form listed no leave without pay for the period claimed, but only indicated that the hours worked and leave used. Thus, the Office noted that there was no compensable wage-loss compensation for the period claimed. Appellant was advised that for routine medical appointments no more than four hours of wage-loss compensation is authorized. The Office paid appellant wage-loss compensation for four hours on September 5, 2007 for a medical appointment.

In an April 16, 2008 decision, the Office denied acceptance of appellant's claim for an L4-5 disc bulge. It also denied her claim for wage-loss compensation for the period November 26, 2007 to March 1, 2008 due to her lumbar condition.

On April 30, 2008 the Office received a March 26, 2008 work status report from Dr. Melancon releasing appellant to work with restrictions. Dr. Melancon advised that appellant was only capable of working a sit down job.

On June 9, 2008 Dr. Melancon noted that appellant was seen for lumbar back pain. He related that significant improvement had been made with her lumbar condition. Dr. Melancon noted that appellant was able to return to work, but had been fired.

On September 2, 2008 the Office received progress notes dated April 6, September 5 and November 26, 2007 from Dr. McCarthy, who diagnosed a probable right torn medial meniscus in an April 6, 2007 report and noted that she was developing more back complaints than knee complaints in his November 26, 2007 report.

On October 27, 2008 Dr. Melancon noted that appellant was seen for lumbar and right knee pain. He diagnosed left L5 radiculopathy and noted that appellant's right knee was bothering her more. Dr. Melancon recommended an MRI scan to determine whether she had a meniscal tear.

On December 2, 2008 Dr. Melancon noted that appellant was seen for right knee pain and that she was complaining of left knee problems. He diagnosed bilateral patellar chondromalacia and intraligamentous ganglion, which he attributed to the March 21, 2007 employment injury.

On February 10, 2009 Dr. Melancon reported that treating appellant for right patellar chondromalacia. He diagnosed patellar chondromalacia and intraligamentous ganglion, which he attributed to her employment injury. On February 10, 2009 Dr. Melancon diagnosed bilateral post-traumatic knee arthritis. On February 18, 2009 he indicated that appellant was seen for her bilateral knee pain.

In an April 23, 2009 decision, the Office denied appellant's request to accept her claim for bilateral patellar chondromalacia, intraligamentous ganglion and bilateral knee post-traumatic arthritis.³

On April 27, 2009 appellant filed a claim for wage-loss compensation for the period April 16, 2008 to May 1, 2009.

In a May 26, 2009 letter, the Office noted receipt of appellant's claim for wage-loss compensation beginning April 16, 2008. It informed her that the evidence of record was insufficient to establish disability and advised her to submit additional evidence. Appellant was given 30 days to submit the requested information.

³ Appellant did not appeal the denial of expansion of her claim. Thus, the Board has not addressed it on this appeal. See 20 C.F.R. § 501.3.

In a May 13, 2009 report, Dr. Melancon noted that appellant sustained an employment injury which caused post-traumatic chondromalacia. He attributed appellant's fall on her right knee as the cause of post-traumatic right knee chondromalacia. Dr. Melancon stated that "post-traumatic chondromalacia is a condition that occurs when a compressive force is applied to two articular surfaces, resulting in degeneration of the cartilage."

In a decision dated July 22, 2009, the Office denied appellant's claim for disability beginning on April 16, 2008.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not, include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁵

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.⁶ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁷ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁸ Moreover, Drs. Melancon and McCarthy conclusion must be supported by sound medical reasoning.⁹

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰ In this regard, medical evidence

⁴ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB ____ (Docket No. 07-2287, issued May 16, 2008).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997).

⁶ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁷ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993)

⁸ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008); *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a) (b).

⁹ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

¹⁰ *See Ricky S. Storms*, *supra* note 8; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

of bridging symptoms between the recurrence and the accepted injury must support Dr. Melancon and Dr. McCarthy's conclusion of a causal relationship.¹¹ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹²

ANALYSIS

The Office accepted the March 21, 2007 employment injury for a right knee lateral collateral ligament strain. The employing establishment terminated appellant effective April 16, 2008 and she filed a claim for compensation beginning that date. The issue is whether her disability commencing April 16, 2008 is causally related to her accepted knee injury.

In support of her claim, appellant submitted medical reports from Drs. Melancon and McCarthy. The medical records from Drs. Melancon and McCarthy dated April 6 to December 5, 2007 predate her claim for a recurrence of disability on April 16, 2008. Dr. McCarthy released appellant to limited duty on April 6, 2007, he provided no opinion as to whether the work restrictions were related to her accepted right knee injury. On November 26, 2007 Dr. Carthy determined appellant was disabled for work as a result of a lumbar condition noting an L4-5 disc bulge. The Board notes that appellant's claim accepted for any lumbar condition related to the accepted incident. As Dr. McCarthy's reports do not address the issue of whether her recurrence of disability on April 16, 2008 was due to her accepted knee condition, they are insufficient to establish appellant's recurrence claim.¹³

From January 21, 2008 to May 28, 2009 Dr. Melancon treated appellant for hip, bilateral knee and lumbar back conditions. He first diagnosed an L4-5 disc bulge on March 26, 2008 and in a work status report that date indicated that she was capable of performing sedentary work. In subsequent reports, Dr. Melancon diagnosed bilateral post-traumatic knee arthritis and patellar chondromalacia and intraligamentous ganglion which he attributed to the employment injury. While he provided diagnoses of L4-5 disc bulge, bilateral post-traumatic knee arthritis, bilateral patellar chondromalacia and intraligamentous ganglion, these conditions have not been accepted by the Office.¹⁴ Dr. Melancon did not provide sufficient explanation addressing how these conditions were caused by the accepted injury or arose as the accepted incident. Moreover he did not adequately explain any disability concerning April 16, 2008 or how it related to the

¹¹ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986)

¹² *See Ricky S. Storms*, *supra* note 8; *Morris Scanlon*, 11 ECAB 384 (1960).

¹³ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁴ *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship).

accepted right knee sprain. The Board has held that opinions unsupported by rationale are of diminished probative value.¹⁵

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence, that she was disabled as of April 16, 2008 due to her accepted right knee lateral collateral ligament strain.

CONCLUSION

The Board finds that appellant has not established that her recurrence of disability on and after April 16, 2008 is causally related to her accepted March 21, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2009 is affirmed.

Issued: August 12, 2010
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

¹⁵ *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).