

FACTUAL HISTORY

The Office accepted that on October 2, 2008 appellant, then a 38-year-old modified clerk, sustained a right knee contusion in the performance of duty. She stopped work on that date.

In an April 30, 2009 letter, appellant described several incidents that occurred from November 2008 to April 14, 2009 where she stumbled, experienced dizziness and fainted. She attributed her conditions to a prior accepted employment-related cervical condition.² Dr. Gal G. Margalit, an attending general practitioner and hospital emergency room personnel, evaluated appellant and referred her to a neurologist for treatment of her employment-related cervical condition. He also referred her to a psychiatrist for treatment of her emotional condition which she attributed to the accepted employment-related cervical condition.

On September 14, 2009 appellant filed a claim for wage-loss compensation commencing October 2, 2008.

In medical reports dated October 30, 2008 through September 16, 2009, Dr. Margalit advised that appellant had cervical radiculopathy, chronic pain, depression and fibromyalgia causally related to the accepted October 2, 2008 employment injury. He opined that she was disabled for work. In an April 24, 2009 report, he advised that her current diagnosis remained right knee injury secondary to a contusion with probable instability due to continued episodes of multiple falls and giving way of the knee. Dr. Margalit stated that the right knee instability condition appeared to be a new injury. The dizziness appellant experienced when she rotated her head caused multiple falls for which she received treatment. Dr. Margalit opined that her cervical radiculopathy relating to cervical bulging discs was aggravated by her falls as they tended to jar the spine. He listed findings on physical examination related to appellant's right and left knees. Dr. Margalit concluded that she had not reached maximum medical improvement from the October 2, 2008 employment injury.

By letter dated September 24, 2009, the Office advised appellant about the deficiencies in her claim. It requested that she provide additional medical evidence to support her disability for the claimed period. Appellant was afforded 30 days to submit the requested evidence. She did not respond.

In a November 16, 2009 decision, the Office denied appellant's claim for compensation commencing October 2, 2008. It found the medical evidence insufficient to establish that she was totally disabled due to the accepted October 2, 2008 employment injury.

² Prior to the instant claim, appellant filed a claim assigned OWCP File No. xxxxxx118 for left shoulder and lumbar injuries she sustained while working at the employing establishment on July 26, 2004. The Office accepted her claim for cervical and lumbar strains, post-traumatic headaches and lumbar radiculopathy.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under the Act, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).¹⁰ The opinion of the physician must be based on a complete factual and medical background, 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.¹¹

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson*, *supra* note 4; see also *David H. Goss*, 32 ECAB 24 (1980).

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *A.D.*, 58 ECAB 149 (2006).

¹¹ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

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 their disability and entitlement to compensation.¹²

ANALYSIS

The Office accepted that appellant sustained a right knee contusion in the performance of duty on October 2, 2008. Appellant claimed compensation for disability commencing that date due to the accepted condition. She has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.¹³

Dr. Margalit advised that he treated appellant for cervical radiculopathy, chronic pain, depression, fibromyalgia and right knee contusion due to multiple falls and giving way of the knee. His diagnosis of “probable” right knee instability is speculative in nature and unsupported by rationalized medical evidence explaining the nature of the relationship between her current right knee condition and the accepted employment injury.¹⁴ Although Dr. Margalit found that appellant was disabled for work, he did not address how her disability was due to the accepted right knee condition. Rather, he appeared to attribute disability to appellant’s cervical condition and chronic pain. Dr. Margalit did not explain the basis for appellant’s disability commencing October 2, 2008. His reports do not adequately address whether appellant’s disability for the claimed period was caused by her accepted right knee condition.¹⁵ As noted, it is appellant’s burden to establish her disability by the submission of probative medical evidence.¹⁶ The Board finds that the medical evidence from Dr. Margalit is insufficient to establish appellant’s claim.

The Board finds that there is insufficient rationalized medical evidence to establish that appellant was disabled commencing October 2, 2008 due to residuals of her accepted right knee contusion. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she was totally disabled commencing October 2, 2008 due to her accepted October 2, 2008 employment injury.

¹² See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁵ The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee’s condition is of limited probative value. *A.D.*, *supra* note 10; *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2010
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