

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

J.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lemon Grove, CA, Employer**

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**Docket No. 09-1927
Issued: May 3, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 22, 2009 appellant filed a timely appeal from the June 9, 2009 decision of the Office of Workers' Compensation Programs denying his claim for compensation for the period November 6, 2008 through January 15, 2009. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that he was disabled from November 6, 2008 through January 15, 2009 causally related his accepted employment injuries.

On appeal, appellant contends that his disability for this time period was causally related to his injury which affected his performance as a letter carrier.

FACTUAL HISTORY

On June 15, 2005 appellant, then a 45-year-old letter carrier, filed an occupational disease claim alleging that he suffered from pain in his left knee as a result of standing for long periods

of time. He further noted that entering and exiting his postal vehicle put pressure on his left knee. By letter dated June 30, 2005, the Office accepted appellant's claim for left knee strain. It later accepted his claim for left knee medial meniscal tear. On February 17, 2006 appellant underwent a left knee arthroscopy, partial medial meniscectomy, partial lateral meniscectomy, chondroplasty, medial femoral condyle and synovectomy. In a report dated August 24, 2006, his treating Board-certified orthopedic surgeon, Dr. Brad Cohen, released appellant to his "[u]sual work, no restrictions, not permanent and stationary" effective September 19, 2006. In an April 29, 2008 report, he found that appellant was permanent and stationary. Dr. Cohen listed appellant's diagnoses as medial meniscus tear and chondrocalcinosis. He noted that appellant may require further aspirations and injections in the future, and "may require further arthroscopies down the line."

On November 10, 2008 appellant filed claims for compensation from November 10 through December 5, 2008. He later filed claims for compensation for the period December 9, 2008 through January 15, 2009.

Appellant submitted a disability status sheet and a duty status report, both dated November 6, 2008, wherein Dr. Cohen indicated that appellant was temporarily totally disabled due to the injury to his left knee. In an accompanying occupational disability report, Dr. Cohen indicated that appellant had a left knee leg effusion, "MJLT" and "LJMT." He noted that he injected his left knee. In a November 11, 2008 note, Dr. Cohen indicated that he has been taking care of appellant for close to three and one-half years. He noted that, when he last saw appellant on November 6, 2008, both of his knees were filled with synovial fluids and his ankles were extremely swollen. Dr. Cohen recommended that appellant see a rheumatologist, and he noted that he did not believe that at this time appellant could perform his duties as a letter carrier. By letter dated November 18, 2008, the Office asked Dr. Cohen to respond to certain questions, including defining the terms MJLT and LJLT. It asked him to explain whether appellant's total disability was due to his osteoarthritis or to the accepted conditions. In a December 4, 2008 report, Dr. Cohen responded to the Office's questions. He noted that MJLT and LJLT stood for medial joint line tenderness and lateral joint line tenderness. Dr. Cohen opined that appellant had underlying crystalline arthropathy in his knee. He indicated that, at the time of appellant's arthroscopy, he had calcium pyrophosphate throughout the knee which caused him to have joint effusions and pain in his knee on a constant basis. Dr. Cohen noted that the medial meniscal tear also contributes to his pain, but that he believes that the crystalline arthropathy is a significant portion of the problem. In a duty status report dated December 9 2009, he indicated that appellant remained totally disabled.

On December 9, 2008 the Office issued a schedule award for 10 percent impairment of the left lower extremity.

By decision dated December 17, 2008, the Office denied appellant's claim for compensation for the period November 6, 2008 through January 15, 2009.

On December 23, 2008 appellant requested an oral hearing. At the hearing held on April 14, 2009, he indicated that he has not returned to work and retired on an "early out." Appellant noted that he stopped working in the middle of November 2008 and has been home since. He indicated that he developed arthritis as a result of his injury and surgery.

In a December 9, 2008 report, Dr. Cohen listed his impression as crystalline arthropathy, calcium pyrophosphate disease, bilateral knees. In a January 15, 2009 report, he noted that appellant had left mild/moderate effusion and MJLT. In a May 7, 2009 supplemental report, Dr. Cohen noted that, at the time of appellant's surgery in 2006, he had chondrocalcinosis in his knee, which is mild osteoarthritis that was not related to his work. He indicated that appellant's inflammatory reaction in his knee had been aggravated from work. Dr. Cohen opined that appellant's osteoarthritis and chondrocalcinosis themselves are not related to his work, but have become aggravated from his work. He also noted that appellant's meniscus tear was clearly causatively related to his work.

In a decision dated June 9, 2009, the hearing representative affirmed the December 17, 2008 decision denying compensation for the period November 6, 2008 through January 15, 2009. The hearing representative noted that Dr. Cohen's reports failed to provide medical rationale for his opinion that the arthritis condition was related to appellant's employment and therefore the disability which he assigned was based on a condition which had not been accepted as employment related.

LEGAL PRECEDENT

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.¹ When 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, he is entitled to compensation for any loss of wages.² For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury.³ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁴

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving he was disabled on particular dates requires that he furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

¹ *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

² *D.M.*, 59 ECAB ____ (Docket No. 07-1230, issued November 13, 2007).

³ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

⁴ *Fereidoon Kharabi*, *supra* note 3.

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁶ *Mary A. Ceglia*, 55 ECAB 626 (2004).

ANALYSIS

Appellant claims that he was totally disabled from work from November 6, 2008 through January 15, 2009 due to his accepted work injury. The Board finds, however, that he failed to submit probative medical evidence demonstrating total disability for this period of time due to his accepted condition.

Appellant's treating physician, Dr. Cohen, indicated that appellant was totally disabled for the period November 6, 2008 through January 15, 2009. In a December 4, 2008 report, however, he found that appellant had underlying crystalline arthropathy in his knee, and that, at the time of his 2006 surgery, he had calcium pyrophosphate throughout the knee which caused him to have joint effusions and pain. Dr. Cohen opined that, although appellant's accepted medial meniscal tear contributed to his pain, the crystalline arthropathy was a significant portion of the problem. In a May 7, 2007 report, he stated that appellant's disability for this time period was due to chondrocalcinosis, a condition which was preexisting and not related to his work. Although Dr. Cohen indicates that appellant's osteoarthritis and chondrocalcinosis had been aggravated by appellant's work, he provided no explanation or medical rationale for this conclusion. Therefore, his reports are not sufficient to establish that appellant was disabled from November 6, 2008 through January 15, 2009 causally related to the accepted injury.

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as a result of his employment injury. For the reason stated above, the Board finds that appellant failed to sustain his burden of proof to establish that he was totally disabled due to his accepted employment condition from November 6, 2008 through January 15, 2009.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was disabled from November 6, 2008 through January 15, 2009 due to his employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2009 is affirmed.

Issued: May 3, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board