

2006 Dr. Manuel P. Daugherty, Jr., a Board-certified orthopedic surgeon, performed a video arthroscopy of the right knee with partial medial meniscectomy. By decision dated May 4, 2007, the Office Branch of Hearings and Review accepted appellant's claim for torn medial meniscus of the right knee. The Office authorized compensation benefits from November 6, 2006 through February 25, 2007.

Dr. Daugherty stated that appellant was experiencing marked patellofemoral crepitus in the right knee with tenderness over the medial and lateral joint line. On June 17, 2008 he found joint line tenderness medially and laterally in the right knee, loss of range of motion and effusion. Dr. Daugherty found that x-rays confirmed medial compartment narrowing in the right knee and noted that appellant was considering a total knee replacement. The district medical adviser reviewed appellant's request for total knee replacement on August 5, 2008 and noted that Dr. Daugherty had not offered a definitive opinion regarding appellant's need for knee replacement and recommended that the surgery not be authorized. On July 29, 2008 Dr. Daugherty stated that appellant had a severely degenerated right knee with severe patellofemoral crepitance, mild quadriceps wasting and tenderness. He diagnosed severe osteoarthritis of the right knee and noted that as appellant was unable to take NSAIDS, had completed and failed an injection regimen and that the next treatment option was total knee replacement. Dr. Daugherty opined that the work-related medial meniscectomy had resulted in a substantial increase in appellant's right knee symptoms which, when combined with appellant's inability to tolerate pain medications, supported a total knee arthroplasty.

The Office referred appellant for a second opinion evaluation with Dr. Charlton Barnes, a Board-certified orthopedic surgeon, to determine the need for surgical intervention. In a December 3, 2008 report, Dr. Barnes diagnosed work-related chondromalacia of the patella and stated that the significance of cartilaginous damage would have to be determined by arthroscopy. He found that appellant's employment injury had not resolved and that he had not yet reached maximum medical improvement. Dr. Barnes recommended additional physical therapy for strengthening. He found that a total knee replacement was not necessary and recommended an arthroscopy to determine the extent of the right knee damage.

By decision dated December 31, 2008, the Office denied appellant's request for right knee total arthroplasty.

Appellant appealed this decision to the Board.

In a dated November 10, 2009 decision,¹ the Board affirmed the Office's December 31, 2008 decision. The facts and the circumstances of the case as set out in the Board's prior decision are incorporate herein by reference.

On December 29, 2008 Dr. Daugherty released appellant to return to work with restrictions as of January 5, 2009. He indicated that appellant wanted to try to go back to light-duty work and that he asked that appellant return in three weeks for a follow-up appointment. On January 8, 2009 Dr. Daugherty provided appellant's restrictions. Appellant returned to light-duty work on January 9, 2009. Dr. Daugherty referred appellant for physical therapy on

¹ Docket No. 09-1049 (issued November 10, 2009).

January 26, 2009. On January 27, 2009 he advised that appellant was totally disabled from July 20, 2008 through January 4, 2009 due to osteoarthritis of the right knee. Dr. Daugherty indicated with a checkmark “yes” that appellant’s condition was due to his employment. He provided work restrictions and indicated that appellant was partially disabled beginning January 5, 2009.

Appellant filed a claim for compensation for the period July 20, 2008 through January 5, 2009. The employing establishment converted the claim on the grounds that he was absent due to his alleged need for total knee replacement but was capable of light-duty work during the period claimed. In a letter dated February 12, 2009, the Office requested additional medical evidence in support of appellant’s claim and allowed 30 days for a response. On February 23, 2009 Dr. Daugherty stated that appellant was “off work for related injuries and/or abdominal problems....”

In a March 27, 2009 decision, the Office found that appellant failed to submit adequate medical evidence supporting his claimed period of disability.

Dr. Daugherty examined appellant on April 1, 2009 and reported that he could sit for four hours at work and get up for six hours. He examined appellant on July 29, 2008 and found that the only viable treatment option was total knee arthroplasty. Dr. Daugherty noted that appellant experienced a gastrointestinal hemorrhage and cardiac problem, but was under care for his right knee from July 20, 2008 through January 5, 2009.

Appellant filed a claim on May 11, 2009 requesting compensation for intermittent leave without pay from January 5 through April 29, 2009. In a letter dated May 19, 2009, the Office requested additional medical evidence for the dates January 23, 28, 30, February 13, 19, 23, 24, 26, 27, March 6 and 10 and April 24, 2009. It authorized wage-loss compensation for 35.6 hours. The Office allowed 30 days for a response. In a decision dated June 18, 2009, the Office denied appellant’s claim for additional hours of disability.

Appellant requested reconsideration of the June 18, 2009 decision on July 9, 2009 and resubmitted Dr. Daugherty’s May 4, 2009 report. In notes dated June 29 to August 28, 2009, Dr. Daugherty stated that appellant was under his care from July 2008 through January 5, 2009 when he released appellant to return to work. He completed a duty status report on September 4, 2009 and provided work restrictions due to traumatic osteoarthritis of the right knee.

By decision dated September 22, 2009, the Office denied modification of the June 18, 2009 decision on the grounds that appellant failed to provide probative medical evidence to establish that he was disabled from January 23 through April 24, 2009 due to his accepted right knee condition.²

² The Office issued additional decisions in appellant’s claim regarding his entitlement to a schedule award after the date of his appeal to the Board on October 13, 2009. The Board will not address these issues in this appeal. 20 C.F.R. § 501.2.

LEGAL PRECEDENT -- ISSUES 1 & 2

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁵

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.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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.¹⁰ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the

³ 5 U.S.C. §§ 8101-8193.

⁴ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS -- ISSUE 1

Appellant filed a claim for compensation requesting wage-loss compensation for the period July 20, 2008 through January 5, 2009. The Office denied this claim in a decision dated March 27, 2009.

On December 29, 2008 Dr. Daugherty, a Board-certified orthopedic surgeon, released appellant to return to work with restrictions as of January 5, 2009. He stated that appellant wanted to attempt to return work and noted he would return in three weeks time for a follow-up evaluation. This report does not establish appellant's specific period of total disability or explain why he was unable to perform light-duty work prior to January 5, 2009. The employer noted that light-duty work was available to appellant during this period. This report is not sufficiently detailed or reasoned to establish that appellant was totally disabled from July 2008 through January 2009.

In a form report dated January 27, 2009, Dr. Daugherty stated that appellant was totally disabled from July 20, 2008 through January 4, 2009 due to osteoarthritis of the knee and partially disabled beginning January 5, 2009. He indicated with a checkmark "yes" that appellant's condition was due to his employment. The Board notes that this report is not sufficient to meet appellant's burden of proof as Dr. Daugherty did not explain how he reached his conclusion that appellant was totally disabled due to his employment injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to his employment is of little probative value. Without any explanation or rationale for the conclusion reached, the report is insufficient to establish causal relationship between the accepted condition and the period of disability claimed.¹²

On February 23, 2009 Dr. Daugherty noted that he received the Office's request for additional medical evidence. He stated that appellant was "off work for related injuries and/or abdominal problems ..." during the period claimed. The Board finds that appellant has not submitted the sufficient medical evidence to establish that he was totally disabled from July 2008 through January 2009 due to his accepted medial meniscal tear and resulting surgery. Although the medical evidence in the record establishes that Dr. Daugherty supported a causal relationship between appellant's accepted condition and the diagnosis of osteoarthritis of the right knee, the Office has not accepted this condition as employment related. The second opinion physician, Dr. Barnes, a Board-certified orthopedic surgeon, did not address appellant's ability to work in his December 3, 2008 report, although he found that appellant continued to experience residuals from his accepted employment injury. The medical evidence in the record at the time of the Office's March 27, 2009 decision does not offer adequate medical reasoning in support of the

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

period of total disability as claimed by appellant. Due to these deficiencies in the medical evidence appellant has failed to meet his burden of proof.

ANALYSIS -- ISSUE 2

Appellant filed a claim on May 11, 2009 requesting compensation for leave without pay intermittently from January 5 through April 29, 2009. The Office allowed 35.6 hours of wage loss but otherwise denied this claim by decision dated June 18, 2009. Appellant requested reconsideration on July 9, 2009 and submitted a May 4, 2009 report from Dr. Daugherty, who reiterated that appellant expressed a wish to attempt to return to work on December 29, 2008 and was released to try to do so and to return for a follow-up appointment on January 5, 2009. Dr. Daugherty previously examined appellant on July 29, 2008 and found that the only viable treatment option was total knee arthroplasty. He noted that appellant experienced a gastrointestinal hemorrhage and cardiac problem from July 2008 through January 2009, but was under care for the right knee. Dr. Daugherty completed notes which stated that appellant was under his care from July 2008 through January 5, 2009 when he released him to return to work.

The Board finds that Dr. Daugherty's reports do not address the specific question of disability as claimed by appellant, from January 5 through April 29, 2009. Instead, Dr. Daugherty addressed appellant's disability for work prior to January 5, 2009. As these reports do not address the specific period of compensation claimed by appellant, they are not sufficient to establish that he was disabled for intermittent dates on or after January 23, 2009.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he was totally disabled from July 20, 2008 through January 6, 2009 or from January 23, 2009 intermittently through April 24, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decisions of Office of Workers' Compensation Programs dated September 22 and March 27, 2009 are affirmed.

Issued: September 22, 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