

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 on December 19, 1996.² In a June 1, 2001 decision, it found that he had not established clear evidence of error regarding a February 4, 2000 decision,³ and on January 17, 2006, dismissed his 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, in decisions dated April 6 and May 26, 2006, the Office met its burden of proof to terminate appellant's compensation benefits effective April 4, 2006 and that he 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 by its August 2, 2006 decision, the Office improperly denied his request for a merit review.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 By decision dated September 1, 2009, the Board found that he did not establish that he continued to be disabled after April 4, 2006 due to his employment injury and affirmed a November 5, 2008 decision of the Office.⁷ The law and facts of the previous Board decisions and orders are incorporated herein by reference.

On September 18, 2009 appellant again requested reconsideration and submitted additional evidence including an April 21, 2009 report of a right knee x-ray that demonstrated severe osteoarthritic changes of the lateral compartment and less pronounced changes of the medial meniscus, with an intact-appearing anterior cruciate ligament graft. In a form report dated June 1, 2009, Dr. Abraham S. Abdo, an attending orthopedic surgeon, noted that appellant was seen for examination and treatment, diagnosed a sprained right knee and advised that he could work as tolerated.

By decision dated December 18, 2009, the Office reviewed the case on its merits and denied modification of prior decisions, finding that appellant did not submit sufficient medical evidence to establish employment-related disability after April 4, 2006.

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 and retrained as an automobile mechanic technician. Appellant 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, 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 Docket No. 06-2100 (issued August 7, 2007).

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

⁷ Docket No. 09-330 (issued September 1, 2009).

LEGAL PRECEDENT

Under the 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 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 employment injury. As noted above, 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 evidence¹³ and in this case appellant submitted insufficient evidence to establish continuing disability.

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).

¹³ *Tammy L. Medley*, *supra* note 9.

The only relevant medical evidence submitted with appellant's September 18, 2009 reconsideration request were an April 21, 2009 right knee x-ray report and Dr. Abdo's June 1, 2009 form report.¹⁴ The Board, however, finds these reports insufficient to establish his burden of proof. The April 21, 2009 x-ray report contained no opinion regarding appellant's work capacity and the Board has long held that the Office is not required 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.¹⁵ Likewise, Dr. Abdo's June 1, 2009 report is of insufficient probative value, as it does not provide a rationalized explanation as to why appellant continued to be disabled from the 1988 employment injury. Appellant had a sprained right knee and advised that he could work as tolerated.

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.¹⁶ 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.¹⁷ 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 April 4, 1988 employment injury.

Regarding appellant's argument on appeal, that the Office did not follow the Board's instructions following an August 7, 2007 Board decision, a review of that decision shows that the Board set aside an August 2, 2006 Office decision that denied merit review and remanded the case to the Office to conduct a review of the merits of his claim. The subsequent history of the case indicates that the Office thereafter conducted merit review in a September 19, 2007 decision, and on June 10, 2008, the Board affirmed the decision. Appellant's assertion is therefore without merit.

CONCLUSION

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

¹⁴ Appellant also submitted additional evidence that had previously been considered by both the Office and the Board and/or was not relevant to the issue of whether he continued to be disabled after April 4, 2006.

¹⁵ *William A. Archer*, 55 ECAB 674 (2004).

¹⁶ *Tammy L. Medley*, *supra* note 9.

¹⁷ *Jennifer Atkerson*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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