

fracture of the upper end tibia, closed fracture of the calcaneus, sprain of the right knee, other disorders of the bone and cartilage of the right knee, saphenous neuritis and osteoarthritis of the right knee. It authorized multiple arthroscopic procedures between February 26, 2002 and December 14, 2009. These include a February 26, 2002 right knee partial medial and lateral meniscectomies with anterior cruciate ligament reconstruction; a November 23, 2003 revision of the anterior cruciate ligament reconstruction; and a December 8, 2006, removal of necrotic aseptic abscess at the tibial tunnel.

Appellant was treated by Dr. Angelo J. Colosimo, a Board-certified orthopedic surgeon, from April 19 to August 3, 2007. Dr. Colosimo noted that she had a history of multiple surgeries to her right knee. On August 3, 2007 he performed a revision of the right anterior cruciate ligament, reconstruction and diagnosed failed right anterior cruciate ligament reconstruction.

Appellant sought treatment from Dr. Frank R. Noyes, a Board-certified orthopedic surgeon, from September 2, 2008 to July 16, 2009, for instability and pain of the right knee. Dr. Noyes diagnosed significant tunnel enlargement in the femur and tibia, recurrent right anterior cruciate ligament deficiency with enlarged bone tunnels and neuroma over the anterior medial right knee joint. On November 19, 2008 he performed a right knee arthroscopy with debridement, iliac crest bone graft, bone graft of the femoral and tibial tunnels and scar revision and diagnosed right knee failed anterior cruciate ligament reconstruction with femoral and tibial bone defects. On February 17, 2009 Dr. Noyes returned appellant to work at limited duty four hours a day for two weeks and then eight hours a day.

On February 24, 2009 the employing establishment offered appellant a limited-duty position, four hours a day. Appellant accepted the position and returned to work. On March 10, 2009 the employing establishment offered her a full-time limited-duty position which she accepted.

Appellant was treated by Dr. Noyes from April 2 to August 24, 2009, for right knee anterior cruciate ligament insufficiency.² On June 2, 2009 Dr. Noyes advised that she could perform full-time limited duty. In a July 16, 2009 report, he noted that appellant presented with worsening posterior medial knee pain progressing over the prior two weeks. Dr. Noyes diagnosed status post right knee iliac crest bone grafting femoral and tibial bone tunnels for multiple anterior cruciate ligament revision, right knee patellofemoral arthrosis and right knee Baker's cyst. In a prescription note of July 16, 2009, he noted that appellant was out of work until further notice pending a magnetic resonance imaging (MRI) scan and follow up. A July 23, 2009 MRI scan of the right knee revealed a small Baker's cyst, no meniscal tear, tricompartment mild to moderate chondromalacia, small joint effusion, evidence of prior bone grafting with femoral and tibial tunnels and incomplete incorporation of a mature osseous union of the bone graft. On August 6, 2009 Dr. Noyes treated appellant for pain on the anterior aspect of the knee and instability. He diagnosed right knee anterior cruciate ligament insufficiency with incomplete incorporation of the right femoral tunnel bone grafting, chondromalacia of the right knee and Baker's cyst. Dr. Noyes noted that appellant was taken off work due to right knee instability and pain. He returned her to work in a sedentary position on August 10, 2009 at four hours a day for

² Appellant received wage-loss compensation for certain intermittent periods in which she was unable to work.

five days and then increased her work to eight hours a day limited duty. On August 11, 2009 Dr. Noyes diagnosed lateral meniscus deficiency and recommended a total right knee replacement.

Appellant submitted a CA-7 form, claiming compensation for total disability for the period August 31 to September 3, 2009 and 3.5 hours on September 10, 2009 for physical therapy or a total of 35.5 hours.

In a letter dated September 18, 2009, OWCP requested that appellant submit additional information regarding her claim. It requested clarification of her work status and that she submit medical evidence to establish that she was totally disabled due to her accepted condition for the period claimed.

Appellant submitted a September 29, 2009 prescription note from Dr. Noyes, who indicated that she was out of work from September 25 to 28, 2009 due to her right knee condition and would return to work on October 12, 2009. In a September 29, 2009 report, Dr. Noyes treated appellant for right knee osteoarthritis with increased pain in the past three weeks and paresthesias. He diagnosed lumbar spinal stenosis, anterior cruciate ligament deficiency. Dr. Noyes opined that due to the increased paresthesias and the inability to drive safely appellant was totally disabled from September 25 to October 12, 2009. He noted that she was out of work due to increased pain and instability in her knees on August 31, September 1, 2 and 10, 2009. In an October 7, 2009 attending physician's report, Dr. Noyes diagnosed anterior cruciate ligament deficiency, Baker's cyst and chondromalacia and noted that appellant was totally disabled from October 19, 2009 to January 19, 2010. He treated her on October 14, 2009 for increased right knee pain with paresthesias beginning September 29, 2009. Dr. Noyes noted that appellant was out of work from September 29, 2009 until January 19, 2010 and would undergo a total right knee replacement on October 19, 2009.

In a decision dated October 21, 2009, OWCP denied appellant's claim for compensation for 32 hours of total disability from August 31 to September 3, 2009 and 3.5 hours on September 10, 2009.

On October 26, 2009 appellant requested an oral hearing which was held on February 16, 2010. She submitted a surgical report of October 19, 2009 from Dr. Noyes who performed a total right knee replacement. Dr. Noyes diagnosed degenerative osteoarthritis of the right knee with associated complex ligament instability. On December 8, 2009 he opined that appellant developed mild contracture and required a manipulation to free up scar tissue. On December 14, 2009 Dr. Noyes performed a right knee closed manipulation and diagnosed right knee arthrofibrosis status post total right knee arthroplasty. In a March 4, 2010 duty status report, he noted that appellant was totally disabled until April 20, 2010. Also submitted were physical therapy notes dated December 18, 2009 to January 20, 2010.

In a decision dated October 21, 2009, an OWCP hearing representative affirmed the October 21, 2009 decision.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.³ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁴ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁵ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁶

The Board will not require OWCP 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 his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁷

ANALYSIS

OWCP accepted appellant's claim for closed fracture of the upper end tibia, closed fracture of the calcaneus, sprain of the right knee, other disorders of the bone and cartilage of the right knee, saphenous neuritis of the right knee and osteoarthritis of the right knee. It authorized multiple right knee surgeries. The Board finds that the medical evidence submitted in support of 32 hours of wage loss for the period August 31 to September 3, 2009 and 3.5 hours on September 10, 2009 is insufficient to establish disability for the hours claimed.

In an August 6, 2009 report, Dr. Noyes returned appellant to work in a sedentary position on August 10, 2009 for four hours a day for five days. He then increased her hours to eight a day at limited duty. On August 11, 2009 Dr. Noyes diagnosed lateral meniscus deficiency and recommended a total right knee replacement. He did not advise that appellant's accepted right injury rendered her totally disabled during the claimed period or precluded her from working full time, within restrictions. Therefore, these reports are insufficient to establish that she had compensable wage loss.

In a September 29, 2009 report, Dr. Noyes treated appellant for right knee osteoarthritis, increased pain and paresthesias. He diagnosed lumbar spinal stenosis and anterior cruciate ligament deficiency. Dr. Noyes opined that appellant was totally disabled from September 25 to

³ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁴ *Id.*

⁵ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

October 12, 2009 and was out of work on August 31 and September 1, 2 and 10, 2009 due to increased pain and instability in her knees. He did not provide a reasoned opinion explaining why she was disabled causally related to the accepted conditions. Dr. Noyes did not address how any specific date of disability was due to the accepted right knee condition or state that he had treated appellant on the listed dates. The evidence is insufficient to establish that appellant had compensable wage loss. As noted, the employee has the burden to establish that she was disabled for work as a result of the accepted employment injury.

Other reports from Dr. Noyes address periods subsequent to the claimed period. In an October 7, 2009 attending physician's report, Dr. Noyes found total disability beginning October 19, 2009. On October 14, 2009 he addressed disability beginning September 29, 2009. As these reports do not pertain to whether appellant sustained any employment-related disability from August 31 to September 10, 2009 causally related to her June 22, 2001 employment injury, they are insufficient to meet her burden of proof.

Appellant also alleged that the time missed from work on September 10, 2009, 3.5 hours, was for physical therapy treatment.⁸ Although she submitted records from a physical therapist, she did not submit documentation that she missed work to attend physical therapy for her work injury on September 10, 2009.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that her disability for the period of August 31 to September 3, 2009 and September 10, 2009 is causally related to the accepted employment injury.

⁸ See *Daniel Hollars*, 51 ECAB 355 (2000) (an employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2010 is affirmed.

Issued: May 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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