

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

S.C., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
Oak Park, MI, Employer)

**Docket No. 11-468
Issued: September 22, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2010 appellant filed a timely appeal from the November 9, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she had disability from January 8 to March 19, 2010 causally related to her accepted employment condition.

FACTUAL HISTORY

On November 23, 2009 appellant, then a 46-year-old legal assistant/senior case technician, filed a traumatic injury claim alleging that on November 12, 2009 while entering her

¹ 5 U.S.C. §§ 8101-8193.

building after lunch she tripped on a mat and fell injuring her right ankle, knee and chest. She stopped work on November 12, 2009 and returned on November 19, 2009. OWCP accepted right ankle sprain a contusion, right knee contusion, chest contusion and abdominal contusion and expanded appellant's claim to include localized primary osteoarthritis of the right knee and aggravation of osteoarthritis of the left knee. On May 3, 2010 it authorized a total right knee replacement.

Appellant was treated by Dr. David H. Mendelson, a Board-certified orthopedist, from December 7, 2009 to February 5, 2010 for injuries sustained in a slip and fall accident at work. In a December 7, 2009 report, Dr. Mendelson diagnosed significant knee contusion and arthritis of the knees. In a December 28, 2009 disability slip, he diagnosed meniscus tear and knee arthritis. Dr. Mendelson noted on a January 11, 2010 disability slip that appellant would be disabled from January 25 to February 22, 2010, due to right knee arthroscopic surgery on January 25, 2010. On February 5, 2010 appellant presented with progressing symptoms of the right knee with popping and catching. Dr. Mendelson noted that x-rays of the right knee revealed medial narrowing with a marginal spur. He noted restricted range of motion and diagnosed right knee torn meniscus and knee arthritis, which progressed as a consequence of the fall. A December 28, 2009 magnetic resonance imaging (MRI) scan of the right knee revealed advanced degenerative changes in the patellofemoral and medial compartments with a medial meniscal tear. An MRI scan of the left knee revealed degenerative changes at the patellofemoral joint.

Appellant submitted a (Form CA-7), claiming compensation for intermittent total disability for the period January 3 to February 27, 2010. The employing establishment provided a (Form CA-7a), time analysis form, noting that she requested 8 hours of compensation for extreme pain and instability on January 8, 11 and 12, 2010, 4.75 hours; on January 28, 2010, 7 hours; for February 10, 2010, 8 hours; on February 11, 23 and 25, 2010, .25 hours; and on February 26, 2010.

Appellant submitted a February 25, 2010 report from Dr. Mendelson, who noted a history of her November 12, 2009 fall and diagnosed arthritis of the knees, contusion and torn meniscus aggravated by the work-related fall. Dr. Mendelson recommended a total right knee arthroplasty. On March 2, 2010 he diagnosed knee contusion, meniscus tear and knee arthritis and advised that appellant's condition had deteriorated as a consequence of her November 12, 2009 fall. Dr. Mendelson advised that there were many days when her pain and right knee instability prevented her from working. He requested that appellant be excused from work all day on January 8, 11, 12, 28 and 29, February 10, 11, 23 and 25, 2010, two hours on January 22 and 27 and February 16, 2010 and 30 minutes on February 22, 2010.

On March 17, 2010 OWCP requested that appellant submit additional information regarding her claim for compensation. It requested that she submit medical evidence showing that she was totally disabled due to her accepted condition for the period claimed.²

² OWCP referred appellant's medical records to its medical adviser, who on March 18, 2010, concurred with Dr. Mendelson that her fall contributed to and aggravated her right knee condition. However, the medical adviser noted that a unicompartmental right knee replacement was appropriate instead of the total knee replacement.

Appellant filed a CA-7 form, claiming compensation for intermittent disability from February 28 to March 13, 2009 and from March 14 to 27, 2010.³ The employing establishment provided a CA-7a form, time analysis form, noting that she requested 3 hours of compensation for extreme pain and instability on March 4, 2010, 8 hours for March 8 and 9, 2010, 2 hours, for March 11, 2010, 4 hours, on March 15, 2010, 8 hours, on March 16, 2010, 2 hours, on March 17, 2010, 3.75 hours, on March 19, 2010 and 8 hours on March 25, 2010.

Appellant submitted a February 12, 2010 disability slip from Dr. Mendelson, who diagnosed knee arthritis, meniscus tear and knee contusion and noted that she was excused from work for two hours on January 22 and 27 and February 16, 2010. In a February 24, 2010 disability slip, Dr. Mendelson diagnosed knee arthritis, medial meniscus tear and knee contusion and excused her from work for 30 minutes on February 22, 2010 and eight hours on February 23, 2010. On March 15, 2010 he diagnosed knee contusion, meniscal tear and knee arthritis sustained after a work fall on November 12, 2009. Dr. Mendelson advised that appellant's condition deteriorated due to her fall and there were days when her pain and right knee instability prohibited her from working. He requested that she be excused from work for three hours on March 4, 2010, all day on March 8 and 9, 2010 and two hours on March 11, 2010. In a March 25, 2010 disability note, Dr. Mendelson diagnosed meniscus tear, knee contusion and knee arthritis diagnosed meniscus tear, knee contusion and knee arthritis and noted that appellant could return to work on May 10, 2010 with restrictions. In a March 25, 2010 report, he noted exhausting conservative treatment options and her right knee condition was progressing. Dr. Mendelson noted that appellant was unable to work because of her knee dysfunction and was awaiting approval for a total knee replacement. Right knee x-rays revealed 90 percent joint loss on the medial side. Dr. Mendelson diagnosed history of November 12, 2009 fall with right knee injury, torn meniscus and traumatic arthritis. He returned appellant to light-duty job, three days a week. In a March 26, 2010 report, Dr. Mendelson noted that her condition deteriorated as a consequence of her fall and there were many days when her pain and right knee instability prevented her from working. He requested that appellant be excused from work all day on March 15, 16 and 25, 2010, two hours on March 17, 2010 and four hours on March 19, 2010. On April 2, 2010 Dr. Mendelson noted that she was unable to work on several days due to her knee and ankle conditions and advancing joint deterioration that caused episodes of pain, locking and discomfort. The days missed from work were consistent with the pathology seen, including limited motion, difficulty walking and tenderness. In an April 2, 2010 treatment note, Dr. Mendelson noted that appellant continued having a buckling right knee with tenderness on the medial joint and patellofemoral joint. Right knee x-rays revealed end stage medial narrowing, spur formation and advanced patellofemoral arthrosis. Dr. Mendelson diagnosed right knee status post fall, torn meniscus and traumatic arthritis. April 19 and 26, 2010 notes from his diagnosed torn meniscus of the right knee noted that appellant was disabled from April 5 to May 3, 2010.

In a decision dated May 4, 2010, OWCP denied appellant's claim for compensation for total disability for 94.75 intermittent hours from January 8 to March 19, 2010, on the grounds that the evidence did not establish that her total disability was due to her accepted work injury. It

³ The CA-7 form notes a disability period of February 28 to March 13, 2009; however, this appears to be a typographical error and should be February 28 to March 13, 2010.

noted that the evidence supported that appellant was treated for her work-related injury on February 25, March 15 and 25, 2010 and would be granted four hours of compensation for each day.

On May 24, 2010 appellant requested an oral hearing which was held on September 2, 2010. She submitted a February 25, 2010 report from Dr. Mendelson, who diagnosed right knee torn meniscus, arthritis with a history of a fall and recommended a knee replacement. On March 8, 2010 Dr. Mendelson treated appellant for left knee pain. Appellant reported playing basketball in her youth and having an arthroscopy in 1987. Dr. Mendelson noted that she fell on November 12, 2009 and had increasing soreness since that time and diagnosed left knee traumatic chondromalacia with meniscus pathology and arthritis. On May 3, 2010 he performed a complex total right knee arthroplasty and diagnosed right knee osteoarthritis and morbid obesity. In reports dated May 14 to July 23, 2010, Dr. Mendelson noted that appellant was progressing well post right knee arthroplasty. In a June 3, 2010 operative report, he noted performing a left knee arthroscopy, medial meniscectomy, tricompartmental chondroplasty, synovectomy, partial lateral meniscectomy and diagnosed left knee torn medial meniscus with arthritis and synovitis. Dr. Mendelson continued noting appellant's status after her surgery.⁴

In a decision dated November 9, 2010, the hearing representative affirmed the May 4, 2010 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.⁵ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁶ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁷ 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.⁸

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

⁴ Appellant also submitted statements and evidence concerning expansion of her claim and OWCP undertook further development. This matter is not before the Board on the present appeal.

⁵ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ C.S., Docket No. 08-2218 (issued August 7, 2009).

of establishing that he or she was disabled for work as a result of the accepted employment injury.⁹

ANALYSIS

OWCP accepted appellant's claim for right ankle sprain and contusion, right knee contusion, chest contusion and abdominal contusion, localized primary osteoarthritis of the right knee and aggravation of osteoarthritis of the left knee. The Board notes that OWCP found that the record supported that she received treatment for her accepted condition on February 25 and March 15 and 25, 2010 and granted her four hours of compensation on each of those dates.¹⁰

However, the medical evidence submitted in support of the wage-loss compensation claim for intermittent partial and total disability for intermittent periods beginning January 8 to March 19, 2010 is otherwise insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

On January 11, 2010 Dr. Mendelson noted that appellant would be disabled from January 25 to February 22, 2010, due to right knee arthroscopic surgery on January 25, 2010 but the record does not indicate that she underwent surgery on that date and he did not otherwise explain the reasons why she could not work on the specified dates. On February 5, 2010 he noted that her symptoms were worsening but he did not specifically explain why the work injury caused total disability on the claimed dates. In disability slips dated February 12 and 24, 2010, Dr. Mendelson diagnosed knee arthritis, meniscus tear and knee contusion and noted that appellant was excused from work for two hours on January 22 and 27 and February 16, 2010, 30 minutes on February 22, 2010 and eight hours on February 23, 2010. Other reports dated March 2, 15 and 26, 2010 diagnosed knee contusion, meniscus tear and knee arthritis and advised that her condition had deteriorated as a consequence of her November 12, 2009 fall and pain and right knee instability prevented her from working. Dr. Mendelson excused appellant from work all day on January 8, 11, 12, 28 and 29 and February 10, 11, 23 and 25, 2010, two hours on January 22 and 27 and February 16, 2010 and 30 minutes on February 22, 2010, three hours on March 4, 2010, all day on March 8 and 9, 2010, two hours on March 11, 2010 all day on March 15, 16 and 25, 2010, two hours on March 17, 2010 and four hours on March 19, 2010. Although these notes indicated that appellant was disabled from work on certain days, the physician failed to provide a reasoned opinion explaining why she was totally disabled due to her work injury for any of the particular dates. As Dr. Mendelson did not adequately explain how any specific period of disability was due to the accepted work injury of November 12, 2009, these reports are insufficient to establish that appellant had compensable wage loss. As noted, part of appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the alleged disabling condition and the accepted injury.

Other reports from Dr. Mendelson and other physicians do not specifically address the period of claimed disability at issue. Neither Dr. Mendelson nor any other physician provided a

⁹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁰ 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).

specific opinion on causal relationship explaining the reasons why appellant's total disability on the claimed dates was caused or aggravated by the accepted employment injury of November 12, 2009. Consequently, the medical evidence does not establish that the claimed period of disability is due to appellant's employment injury of November 12, 2009.

On appeal, appellant asserts that she continued to be totally disabled due to her work injury and her condition was documented by Dr. Mendelson. The Board notes that Dr. Mendelson's reports set forth her symptoms and restrictions. However, none of the reports explained whether appellant was totally disabled during the period in question as a result of the accepted conditions. Appellant further asserted that the May 4, 2010 decision incorrectly noted that she requested 94.75 hours of leave when she also requested to buy back leave for a total of 124.75 hours of leave. The Board notes that OWCP did not issue a final decision on her request to buy back leave for other periods and therefore the Board does not have jurisdiction over the matter.¹¹

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 June 10, 2008 to September 4, 2009 is causally related to the accepted employment injury.

¹¹ See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 9, 2010 is affirmed.

Issued: September 22, 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