

FACTUAL HISTORY

On July 22, 2003 appellant, then a 41-year-old city carrier, filed an occupational disease claim alleging that she developed chondromalacia and synovitis of the right knee, lateral epicondylitis of the right elbow and tendinitis of the right shoulder in the performance of duty. She indicated that she first became aware of her condition on January 4, 2002 and first attributed her conditions to her employment on that date. On the reverse of the form, appellant's supervisor indicated that appellant opted for disability retirement on November 30, 2000.²

In a report dated March 12, 2004, Dr. Murtagh diagnosed osteochondral defect and loss of articular cartilage in the right knee with resulting arthroscopy on February 21, 2002. He diagnosed rotator cuff tendinitis, bursitis, inflammation and impingement in the left shoulder. Dr. Murtagh stated that appellant could not perform her duties as a letter carrier due to her right knee condition. On March 18, 2004 he stated that it was possible that her job aggravated her osteochondral lesion. Dr. Murtagh also stated, "The rotator cuff tendinitis very well could have had its etiology and irritation and inflammation progression due to her job duties as a mail carrier."

By decision dated June 2, 2004, OWCP accepted appellant's claim for aggravation chondromalacia and right shoulder tendinitis.

On June 12, 2004 appellant filed a claim for compensation from December 1, 2000.³ By decision dated September 29, 2004, OWCP denied her claim for compensation.

In a letter dated May 21, 2007, OWCP noted that appellant requested disability compensation beginning January 4, 2002. It stated that she voluntarily retired and took disability retirement effective December 1, 2000. OWCP informed appellant of her obligation to submit a comprehensive medical report supporting her claim for disability.

Appellant submitted a report dated June 20, 2007 from Dr. Murtagh stating that he treated appellant for right knee symptoms beginning in January 2000 and that she underwent an arthroscopic debridement on February 21, 2002. Dr. Murtagh stated, "[Appellant] did ultimately have to take retirement from her previous position due to inability to perform tasks and duties required as it related to her job as a letter carrier due to the osteochondral involvement in her right knee." By decision dated July 31, 2007, OWCP denied her claim for compensation finding that she had not submitted the necessary medical evidence to meet her burden of proof.

Appellant requested reconsideration on September 26, 2007 and submitted medical evidence. In a report dated September 17, 2007, Dr. Murtagh stated that she had an osteochondral lesion of the left knee in November 2000 and required arthroscopic surgery in

² The record indicates that appellant opted for disability retirement due to endometriosis as well as the presence of degenerative symptomatology of knees and shoulders.

³ On June 12, 2004 appellant requested a schedule award. On August 26, 2005 OWCP granted her a schedule award for 11 percent impairment of her right lower extremity. On February 23, 2006 appellant filed reconsideration of the August 26, 2005 decision requesting an increase in her schedule award. By decision dated October 26, 2006, OWCP denied appellant's claim for an increased schedule award.

February 2002. He opined that appellant was currently totally disabled as she could not stand, walk, twist, stoop, squat, bend or perform the tasks and duties required due to the osteochondral lesion. On January 19, 2000 Dr. Murtagh noted her right shoulder, right elbow and right knee conditions. He stated that appellant had increasing symptoms over the last two months. Dr. Murtagh diagnosed inflammation of the right shoulder, lateral epicondylitis of the right elbow, mild chondromalacia and inflammation of the right knee. He stated that appellant should continue her full activities. On July 22, 2004 Dr. Murtagh stated that he planned to proceed with arthroscopy and debridement for the right knee. By decision dated December 10, 2007, OWCP reviewed the merits, but denied modification of its prior decisions finding that appellant had failed to submit the necessary medical opinion evidence to establish disability due to her accepted conditions beginning December 1, 2000.

Appellant requested reconsideration on December 8, 2008 through counsel submitting narrative statements. On December 31, 2007 Dr. Murtagh repeated his September 17, 2007 report. By decision dated December 23, 2008, OWCP reviewed the merits and denied modification of appellant's claim.

Appellant, through counsel, requested reconsideration on December 22, 2009. On June 18 and July 16, 2009 Dr. Murtagh evaluated her right knee and diagnosed bilateral/lateral epicondylitis of the elbows of minimal involvement and right knee contusion with medial femoral condylar chondral lesion. On August 13, 2009 he recommended osteochondral grafting procedure. In a report dated December 16, 2009, Dr. Murtagh reviewed appellant's medical history and diagnosed right knee chondromalacia, chronic right shoulder tendinitis and chronic right elbow lateral epicondylitis. He reviewed her date-of-injury positions description and stated, "By December 2000, I advised her that she needed to go on disability. In my opinion, [appellant] has not been able to work as a U.S. Postal Service City Carrier since December 1, 2000." Dr. Murtagh stated:

"With respect to [appellant's] shoulder, the [magnetic resonance imaging scan] on September 11, 2000, a short two months before she was forced to stop work, demonstrated changes consistent with a tendinosis of the supraspinatus tendon and fraying or tearing of the superior labrum. Significant joint effusion was also present. Even absent the physical demands placed on [appellant] right elbow and right shoulder once she stopped work in December 2000, her accepted right shoulder and right elbow conditions did not markedly improve, supporting my opinion that those conditions became chronic while she was working. Given those chronic conditions, she has not been able to perform the repetitive reaching, particularly above the shoulder reaching, required to case, pull down, deliver and pick up mail. Since December 2000, [appellant] has been unable to carry a mailbag on her right shoulder. Certainly, when viewed in conjunction with her right knee accepted condition, [she] has been disabled from performing her job as a postal employee since December 1, 2000."

In regard to appellant's right knee condition Dr. Murtagh stated:

"Given [appellant's] permanent right knee aggravated chondromalacia, since December 2000 she has not been able to stand for more than [two] hours, walk for

more than 100 feet, drive a vehicle, particularly not a jeep for more than [four] hours or climb stairs for more than 2 flights. With her right knee, she is limited to lifting no more than 40 pounds. Therefore, in my opinion, [appellant] has not been able to perform her job as a U.S. Postal Service City Carrier, ... since December 1, 2000, because of the accepted conditions and has been disabled from all other gainful employment in the absence of further surgery, physical therapy and work hardening.”

By decision dated July 2, 2010, OWCP reviewed the merits of appellant’s claim and denied modification of the December 23, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.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 she 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 OWCP 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

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

⁷ *Id.*

⁸ *Id.*

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

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

ANALYSIS

The record establishes that appellant stopped work in November 2000 and elected to receive disability retirement benefits. Appellant's statements suggest that she had cardiac and reproductive health issues which contributed to her decision to opt for disability retirement. In July 2003, she filed a claim alleging that she developed right knee and arm conditions due to factors of her federal employment. OWCP accepted appellant's occupational disease claim for aggravation chondromalacia and right shoulder tendinitis. Appellant then filed a claim for compensation requesting wage-loss compensation beginning December 1, 2000.

In support of her claim for disability beginning December 1, 2000, appellant has submitted a series of reports from Dr. Murtagh, a Board-certified orthopedic surgeon, who has indicated that he first examined her on January 19, 2000 and that he did not limit her work activities at that time. In Dr. Murtagh's December 2009 report, he reviewed her medical history and provided her diagnosed conditions. He reviewed appellant's date-of-injury position and concluded, "By December of 2000, I advised her that she needed to go on disability. In my opinion, [appellant] has not been able to work as a U.S. Postal Service City Carrier since December 1, 2000." Dr. Murtagh stated that by the time she stopped working her knee and arm conditions were permanent and that she was totally disabled.

The Board finds that this case is not in posture for a decision. While the reports from Dr. Murtagh are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her accepted conditions and periods of disability on and after December 1, 2000 and are sufficient to require OWCP to further develop the medical evidence and the case record.¹²

Appellant claimed that in December 2000 she was totally disabled to her accepted employment injuries. Dr. Murtagh stated that her accepted knee and shoulder condition made her incapable of performing her date-of-injury position. While he did not provide his treatment notes from the time in question and did not provide bridging evidence, the Board finds that his detailed analysis of appellant's knee and shoulder conditions and her employment duties require additional development on the part of OWCP.

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

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

¹² *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

On remand, OWCP should develop a statement of accept facts noting the medical history as provided in the record and refer appellant for a second opinion evaluation to determine her current conditions and disability as it relates to her accepted employment injuries as well as an opinion as to whether her accepted condition disabled her from work on or after December 1, 2000. It should also review the record and determine any intermittent periods of disability to which she may be entitled due to her accepted conditions and resultant surgery. After this and such other development as OWCP deems necessary, OWCP should issue a *de novo* decision regarding any periods of disability established.

CONCLUSION

The Board finds that this case is not in posture for decision and requires additional development of the medical evidence regarding any periods of disability resulting from appellant's accepted employment injuries beginning from December 1, 2000.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this opinion of the Board.

Issued: April 9, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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