



On February 24, 2010 appellant underwent right knee arthroplasty. He stopped work and returned to light duty on April 27, 2010.

Appellant filed various claims for disability compensation for the period September 27, 2010 to February 9, 2011.<sup>2</sup>

In a January 25, 2010 report, Dr. Calvin S. Oishi, a Board-certified orthopedic surgeon, noted appellant's complaints of persistent right knee pain. The examination revealed antalgic gait, definite lateral thrust and range of motion of 5 to 85 degrees. Dr. Oishi diagnosed bone-on-bone arthritis and scheduled appellant for a knee replacement.

In a February 24, 2010 operative report, Dr. Oishi noted appellant's diagnosis of severe osteoarthritis of the right knee and explained his procedure for a right knee arthroplasty.

In a March 4, 2010 physical therapy report, co-signed by Steven Tom, P.T. and Dr. Oishi, appellant was authorized to undergo physical therapy from March 4 to April 1, 2010. Appellant also submitted various physical therapy examination records and progress notes dated March 4 to April 23, 2010.

In March 15, April 26 and May 24 2010 reports, Dr. Oishi stated that appellant had less pain and was recovering well after surgery. Upon examination, he observed extension to 0 degrees and flexion up to 120 degrees. Appellant's neurovascular status was intact and radiographs revealed no migration, fracture and dislocation. Dr. Oishi authorized appellant to return to light duty with restrictions for four hours a day and recommended that he continue physical therapy.

In June 21, July 19 and August 16, 2010 reports, Dr. Oishi stated that appellant was progressing well and related that he had less pain. The examination revealed range of motion of 0 to 130 degrees and no effusion and tenderness. Dr. Oishi concluded that appellant had stable alignment and had definitely improved, but needed to continue with physical therapy and remain on light duty.

In a September 13, 2010 report, Dr. Oishi stated that appellant experienced less pain and requested to return to full duty. The examination revealed no effusion and tenderness and range of motion was 0 to 130 degrees. Dr. Oishi concluded that appellant had definitely improved and authorized him to return to full duty.

In a September 17, 2010 report, Dr. Oishi related that appellant reported less pain and was doing well. He observed that appellant's range of motion was 0 to 120 degrees and that radiographs revealed acceptable alignment.

In a September 17, 2010 disability certificate, Dr. Oishi noted that appellant was disabled from work from September 27 to December 13, 2010 and needed help to complete his route.

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<sup>2</sup> According to appellant's time analysis forms, he worked occasional hours on September 29 and November 27 and 29, 2010. He submitted other claims for disability compensation for the period February 19 to April 15, 2011. Because OWCP did not address these compensation claims, this issue is not before the Board at this time.

In a September 27, 2010 report, Dr. Oishi noted appellant's complaints of knee pain. The examination revealed range of motion of 0 to 120 degrees and no effusion or tenderness. Dr. Oishi authorized appellant to return to light duty.

On November 16, 2010 OWCP advised appellant that his disability compensation claim for September 27 to October 2, 2010 was not payable because according to Dr. Oishi's September 27, 2010 report he was released to light duty. It informed him that, if his employing establishment was unable to accommodate his restrictions, he needed to submit written documentation in order for compensation to be paid.

In an October 29, 2010 statement, the employing establishment reported that, although appellant was released to limited duty, management could not provide work that fit within those restrictions. Accordingly, appellant worked less than four hours when he returned to work on April 27, 2010.

In a November 22, 2010 statement, appellant explained that two weeks prior to September 27, 2010 he worked eight hours per day, five days per week. On the week of September 27, 2010, his knee was painful, swollen and was giving out on him so he called in sick that week. Appellant's physical therapist informed him that he was working too much and needed to rest his knee. He explained that he presently worked half days and was going to therapy twice a week.

In a December 1, 2010 disability slip, Dr. Oishi stated that appellant was totally incapacitated from December 1, 2010 to January 26, 2011.

In a December 1, 2010 report, Dr. Oishi related that appellant's knee was more painful, stiff and swollen. The examination revealed no effusion and redness. Appellant stated that he could not handle work and would like eight weeks off work. In a December 10, 2010 addendum, Dr. Oishi explained that his decision to keep appellant off work for eight weeks was based on his statement that he physically could not handle his work. He stated that there were limited physical findings and he had to assume appellant was telling the truth.

In a December 6, 2010 statement, appellant noted that he went to see Dr. Oishi on December 1, 2010 for pain in his right knee and was ordered to be "totally incapacitated" for eight weeks. He requested that a nurse be assigned to his case.

In a December 8, 2010 treatment plan certification co-signed by Dr. Oishi and Mr. Tom, they provided the goals of appellant's physical therapy and noted his knee symptoms of restricted range of motion, weakness, functional strength loss, gait deviations and inability to return to normal work duties. Appellant submitted additional physical therapy reports dated December 8, 2010 to February 23, 2011.

In a January 26, 2011 report, Dr. Oishi stated that despite ongoing therapy he could not do his job and was unable to do his work at all.

On January 31, 2011 OWCP advised appellant that his claims for disability compensation could not be processed because the medical evidence was not sufficient to support complete disability.

In a February 9, 2011 report, Dr. Oishi related that appellant felt like he could do at least light duty. On examination, his range of motion was 0 to 100 degrees with a 1+ effusion. Dr. Oishi provided a disability slip authorizing appellant to return to light duty on February 10, 2011.

In a February 18, 2011 disability slip, Dr. Oishi stated that appellant was partially incapacitated from February 18 to March 16, 2011.

In a February 18, 2011 duty status report with an unknown signature, appellant was authorized to work three hours per day, five days a week with certain restrictions.

In a March 25, 2011 decision, OWCP denied appellant's claim for disability compensation for the period September 27, 2010 to February 9, 2011 finding that the medical evidence did not demonstrate that he was disabled from work during the period claimed as a result of his employment injury. It noted that Dr. Oishi's medical report merely stated that the patient stated that he was unable to handle work and did not provide any objective medical findings to support appellant's disability.<sup>3</sup>

On April 1, 2011 appellant submitted a request for reconsideration contending that the evidence he submitted contained objective medical findings to support his claimed disability. He resubmitted his treatment plan certificates, various physical therapy treatment plans and duty status report.

In a December 2010 knee outcome survey, appellant indicated how his daily activities were affected by various symptoms.

In a March 18, 2011 knee progress note, a physical therapist noted appellant's complaints of knee pain, stiffness and weakness. The examination revealed range of motion was 0 degrees extension and 130 to 143 degrees flexion. It was recommended that appellant continue physical therapy for four weeks.

In a March 18, 2011 treatment plan, a physical therapist indicated that appellant underwent physical therapy from March 4 to April 1, 2011.

In an April 13, 2011 disability certificate, Dr. Oishi reported that appellant should continue light duty three hours per day from April 13 to May 11, 2011.

In an April 13, 2011 report, Dr. Oishi related that appellant felt his knee was still weak and that he could not handle full duty because his leg got swollen and tired. Examination revealed range of motion 0 to 140 degrees with minimal effusion and tenderness. Dr. Oishi recommended that appellant continue therapy and be on light-duty status permanently.

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<sup>3</sup> Appellant received compensation for the periods June 15 to September 10, 2010; February 19 to March 4, 2011; and March 5 to 18, 2011; and March 19 to May 13, 2011 for total disability and because the employing establishment was unable to provide light duty.

By decision dated April 29, 2011, OWCP refused to modify its March 25, 2011 denial decision finding that the evidence did not contain a physician's rationalized medical opinion explaining how appellant's disability resulted from his employment injury.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.<sup>5</sup> Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy his burden of proof by showing a change in the nature and extent of the injury-related condition such that he is no longer able to perform the light-duty assignment.<sup>6</sup>

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence of disability is causally related to the original injury.<sup>7</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.<sup>8</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>9</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a right knee condition as a result of his federal employment as a postal worker. Appellant underwent total right knee arthroplasty and stopped work. On April 27, 2010 he returned to light duty. Appellant filed various compensation claims for total disability from September 27, 2010 to February 9, 2011. OWCP denied appellant's disability compensation claims on the grounds that the medical evidence failed to establish that he was disabled as a result of his accepted right knee injury. The Board finds that he failed to meet his burden of proof to establish that his claimed disability was causally related to his accepted right knee injury.

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Id.*

<sup>6</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>7</sup> 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>8</sup> *Helen K. Holt*, 50 ECAB 279 (1999).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (March 2011).

Appellant submitted various medical reports from Dr. Oishi during the time period in question. In his September 13, 2010 report, just 14 days before appellant stopped light duty work, Dr. Oishi noted that appellant was doing well and requested to return to full duty. He also provided various disability slips. In September 17 and December 1, 2010 disability certificates, Dr. Oishi noted that appellant was disabled from work from September 27 to January 26, 2011 and needed help to complete his route. In a January 26, 2011 note, he reported that appellant was unable to do his work at all. Although Dr. Oishi states that appellant was unable to work during the aforementioned periods, he did not address the cause of appellant's inability to work or explain how his claimed disability resulted from his employment injury. Thus, these disability slips are of little probative value on the issue of causal relationship.<sup>10</sup>

In his December 1, 2010 narrative report, Dr. Oishi observed no effusion and redness and stated that appellant requested eight weeks off work because he could not handle it. In a December 10, 2010 addendum, he explained that he decided to keep appellant off work for eight weeks based on his statement that he physically could not handle the job. Dr. Oishi noted that there were limited physical findings. The Board has found that findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.<sup>11</sup> Dr. Oishi, however, did not provide any objective medical findings to support appellant's disability but indicated that he recommended appellant stay off work due to his request. Because the record fails to contain objective medical findings to support that appellant was disabled from work due to his employment injury, the Board finds that he did not meet his burden of proof to establish his claim.

The other evidence of record is likewise insufficient to establish appellant's claim. The various physical therapy reports, treatment plans, and progress notes are not sufficient to demonstrate that appellant was disabled from work as a result of his employment injury because physical therapists are not "physicians" as defined by FECA.<sup>12</sup> Thus, their opinions regarding diagnosis and causal relationship are of no probative medical value.<sup>13</sup> Similarly, the knee outcome survey is insufficient to establish causal relationship because it was not completed by a physician. Because the other medical evidence either failed to address appellant's disability from work or addressed time periods for disability compensation not before the Board at this time, the Board finds that the evidence of record is void of probative medical evidence to establish that appellant was disabled from work from September 27 to February 9, 2011 as a result of his employment.

On appeal, appellant contends that the evidence submitted was sufficient to establish that he was unable to work from September 27, 2010 to February 9, 2011. The record in this case, however, does not contain a well-rationalized medical opinion from a physician demonstrating that his claimed disability resulted from his right knee employment injury. Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized

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<sup>10</sup> *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm*, 57 ECAB 117 (2008).

<sup>11</sup> *See S.F.*, 59 ECAB 525 (2008); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>12</sup> 5 U.S.C. § 8101(2).

<sup>13</sup> *See Roy L. Humphrey*, 57 ECAB 238 (2005).

medical evidence.<sup>14</sup> Neither the fact that appellant's claimed condition became apparent or worsened during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>15</sup>

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 did not meet his burden of proof to establish a recurrence of disability for the period September 27, 2010 to February 9, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25 and April 29, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 10, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> *G.T.*, 59 ECAB 447 (2008); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>15</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).