

sciatica due to the repetitive duties of her job. She stated that she first became aware of her claimed conditions on March 1, 2005. Appellant stopped work on April 12, 2005 and was terminated from the employing establishment effective April 14, 2005.²

In a May 6, 2005 report, Dr. Christopher J. Keenan, an attending Board-certified family practitioner, restricted appellant from climbing stairs due to an “internal injury” of her right knee. He did not specify the purpose for the restriction.

In a March 1, 2006 report, Dr. Christopher B. Ryan, an attending Board-certified physiatrist, provided a description of his first examination of appellant. He noted that her complaints began in late March 2005 or early April 2005 due to her new duties of carrying mail. Dr. Ryan described the reported April 12, 2005 incident³ and detailed appellant’s employment duties at K-Mart which were performed after she stopped working for the employing establishment on April 12, 2005. He reviewed medical records from 2005 and found that they showed slight swelling and minimal effusion of the right knee. Dr. Ryan provided a diagnosis of substantial permanent aggravation of right knee osteoarthritis which he stated was related to the employment duties appellant described in filing her Form CA-2.

In an April 3, 2007 report, Dr. Ryan reiterated some of the historical information and noted that he had reviewed an October 24, 2003 magnetic resonance imaging (MRI) scan study which showed significant degenerative changes, bursitis and chondromalacia. He again reviewed the 2005 medical records and described the results of a right knee MRI scan study dated February 15, 2007, which showed moderate osteoarthritis, very significant patellofemoral joint space loss and chondromalacia.

In an April 3, 2008 report, Dr. Ryan noted that appellant’s walking in the snow at work in early April 2005 contributed to the aggravation of her right knee condition. He termed the reported April 12, 2005 incident as the “straw that broke the camels back,” but indicated that her exposure was over the course of more than one day and therefore was properly classified as an occupational illness. Dr. Ryan noted that performance of the physical examination was difficult and provided little, if any, evidence of the aggravation, but indicated that the diagnostic testing from October 2003 demonstrated convincing objective findings. He stated that osteoarthritis does not generally resolve and indicated that appellant’s performance of work duties in March and April 2005, including actions involved in the April 12, 2005 incident, contributed to her degenerative arthritis. Dr. Ryan stated that appellant suffered a worsening of her condition during that time frame. He stated that any aggravation of an underlying degenerative condition could not be determined by physical examination and posited that his earlier reports could be seen as highlighting the traumatic injury, but in reviewing the circumstances more closely, he

² After April 12, 2005, appellant worked for private employers, including K-Mart, where she worked as a sales clerk.

³ On April 25, 2005 appellant filed a Form CA-1, notice of traumatic injury, stating that on April 12, 2005, at 11:00 a.m., her knee tore when going up and down stairs at work. She described the nature of her injury as torn ligament fibers to the right knee. OWCP denied this traumatic injury claim in decisions dated June 22, 2005, January 19 and December 11, 2007 and July 23, 2008. It acknowledged that appellant sustained an occupational disease due to her repetitive work duties prior to April 12, 2005 and the issue of whether she sustained a traumatic work injury on April 12, 2005 is not currently before the Board.

believed that the April 12, 2005 incident should be included as part of the longer term occupational exposure.

After extensive development of the claim, OWCP found in a July 23, 2008 decision that appellant's case should be accepted for the occupational condition of temporary aggravation of right knee osteoarthritis. It later effectively accepted that she suffered a work-related permanent aggravation of right knee osteoarthritis due to her repetitive job duties, including engaging in extensive walking, prior to stopping work on April 14, 2005.

OWCP issued three letters dated July 24, 2008. In a letter to appellant's employer, it described the medical evidence from April and May 2005 and the contents of an April 3, 2008 medical report of Dr. Ryan. OWCP asked for a copy of appellant's job description as a casual carrier, any limited-duty job offers and copies of paperwork which described her termination from employment. In a letter to Dr. Ryan, it sought clarification of whether a temporary or permanent aggravation of osteoarthritis had occurred. OWCP provided definitions of temporary and permanent aggravations and asked Dr. Ryan to describe the objective findings which supported that a material worsening of the condition had occurred, with medical rationale for his belief that a permanent aggravation had occurred, if he believed that had occurred. In a letter to appellant, it asked for detailed information about her employment after April 12, 2005, including pay rates, the employer's name, physical requirements of the jobs and any special skills she needed to perform those jobs.

By submission of a Form CA-7 dated August 24, 2008, appellant requested compensation for the period April 12, 2005 through August 15, 2008.

By letter dated September 17, 2008, OWCP advised appellant that her claim was so deficient it was impossible to process and that the case was being administratively closed. It informed her that she could refile a claim for any periods for which there was a factual and legal basis to claim compensation. Appellant's attorney responded to the September 17, 2008 letter on September 25, 2008, asking that OWCP issue a formal denial of the claim.

In an October 9, 2008 report, Dr. Ryan indicated that osteoarthritis was a condition which would have occurred in any case, but noted that appellant had encountered significant challenges to her knee. He stated that in the course of her work performance carrying mail in deep snow up and down hills, she had an aggravation of her condition. Dr. Ryan stated that recent x-rays had revealed significant osteophytes and a loss of substantial cartilage and that this demonstrated a permanent aggravation. He noted that appellant had been able to work and use her legs vigorously before the occupational exposure, but indicated that she was now relegated to a sedentary state. Dr. Ryan commented that September 3, 2008 x-rays showed that articular cartilage in the right knee had decreased to three millimeters.

By submission of a Form CA-7 dated November 1, 2008, appellant claimed a schedule award due to her accepted work injury.

In a letter dated December 5, 2008, OWCP asked the employing establishment several questions, including a request for an explanation of the circumstances of appellant's failure to return to federal employment after April 12, 2005.

On December 23, 2008 counsel submitted a copy of part of a transcript and decision from Administrative Judge Marianna Warmee of the Equal Employment Opportunity Commission (EEOC). Judge Warmee found that a supervisor had discriminated against appellant with respect to her termination of employment by recommending that she not be rehired. Various forms of restitution and remedial action were ordered by Judge Warmee.

Appellant submitted excerpts from testimony Dr. Ryan provided at EEOC hearings held on April 16 and 17, 2007. In this testimony, Dr. Ryan indicated that, prior to April 12, 2005, she sustained a permanent aggravation of her right knee osteoarthritis. He stated that appellant required various work restrictions, including limiting the amount of carrying, stair climbing, squatting and kneeling she could perform.⁴

In a January 30, 2009 letter, Dianna Kremheller, a human resources official with the employing establishment, stated that appellant had been removed for cause. She asserted that appellant's removal was unconnected to any claimed work injury.

In an April 30, 2009 decision, appellant received a schedule award for a 21 percent permanent impairment of her right leg.

On June 11, 2009 OWCP issued two letters, one to the employing establishment requesting information about appellant's earnings from any postal reemployment which had occurred and payment of any awards for back pay which had been ordered by Judge Warmee. The second letter was issued to counsel and asked for information about appellant's earnings from private employment after April 12, 2005. The employing establishment responded by letter dated July 2, 2009, stating that no action had been taken regarding Judge Warmee's order and noting that it had appealed the decision.

In an August 17, 2009 report, Dr. Ryan stated that diagnostic testing revealed endstage osteoarthritis, that the effects of the injury had not ceased and that appellant would need a total knee arthroplasty which would only be considered after significant weight loss. He stated that her tolerance for walking, standing, kneeling, stooping, squatting and crawling was greatly limited. Dr. Ryan noted that appellant could walk about a block and that she could not perform the job she held when she was injured. He anticipated a return to modified work after the surgery and stated that she could not drive while at work and needed transportation to and from any work activities.

By letter dated July 16, 2010, OWCP wrote to appellant and described the requirements for establishing entitlement to compensation. It requested contemporaneous medical evidence supporting disability for the claimed period from April 12, 2005 through August 15, 2008, including evidence of a cause and effect relationship based upon a proper factual and medical background supported by objective medical evidence.

Counsel responded by letter dated August 5, 2010. He noted that diagnoses of torn and sprained ligaments had been presented by the hospital and noted their restrictions, as well as restrictions imposed by Dr. Keenan on May 6, 2005. Counsel stated that OWCP erred in stating

⁴ Appellant later submitted additional excerpts from this testimony.

that Dr. Ryan had not provided work restrictions and described those restrictions. He discussed Dr. Ryan's testimony at the EEOC hearings held on April 16 and 17, 2007.

By decision dated August 16, 2010, OWCP denied appellant's claim for compensation for the period April 12, 2005 through August 15, 2008. It noted that she had held several jobs after being terminated by the employing establishment and that the medical evidence which was contemporaneous with the beginning dates of claimed disability cited no objective findings that her work-related condition caused disability for any specific period.

Appellant requested a telephonic hearing with an OWCP hearing representative. During the hearing held on December 7, 2010, counsel opined that he believed OWCP did not want to issue a decision until the EEOC had issued a decision on the employing establishment's appeal of the prior EEOC decision. He argued that appellant was being deprived of her rights and indicated that he did not know when another EEOC decision would be issued. Counsel argued that Dr. Ryan had provided adequate evidence to establish the claim and noted that, although OWCP had accepted a temporary aggravation, the payment of the schedule award was a *de facto* acceptance of a permanent aggravation. He stated that he disagreed that Dr. Ryan had provided equivocal opinions, noting that his assertions were of a probable nature. Counsel asserted that while Judge Warmee's decision was not binding, it had some probative and evidentiary value. Appellant testified that she could not return to work for the employing establishment due to her work-related injuries.

At the hearing, OWCP's hearing representative advised appellant and counsel that he would not revisit the decisions which had been made in appellant's April 12, 2005 traumatic injury claim and could not base payment of compensation on disability arising from that claim, but indicated that he had reviewed medical evidence that was submitted in connection with that claim.⁵ The hearing representative noted that the medical evidence from after April 12, 2005 was sparse and did not support either partial or total disability. He indicated that he agreed with counsel that, given the granting of a schedule award, appellant actually had a work-related permanent aggravation of right knee osteoarthritis. The hearing representative indicated that appellant needed to submit rationalized medical evidence supporting her claim for periods of work-related disability after April 12, 2005.

In a February 2, 2011 decision, OWCP's hearing representative affirmed the August 16, 2010 decision. He found that the reports of Dr. Ryan discussed the permanent aggravation of appellant's right knee condition, but did not contain a rationalized opinion on specific periods of work-related disability between April 12, 2005 and August 15, 2008.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, 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

⁵ The Board notes that the relevant medical evidence from the traumatic injury claim has been included in the file for the present claim.

and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁷

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁸

ANALYSIS

OWCP accepted that appellant suffered a work-related permanent aggravation of right knee osteoarthritis due to her repetitive job duties, including engaging in extensive walking, prior to stopping work on April 14, 2005. By submission of a Form CA-7 dated August 24, 2008, appellant requested compensation for the period April 12, 2005 through August 15, 2008.

The Board finds that appellant did not meet her burden of proof to establish that she had work-related disability for the claimed period. The medical evidence from the period immediately following April 12, 2005 is sparse and does not provide objective evidence or medical reasoning for the claimed period of disability. Dr. Ryan, a Board-certified physiatrist, began serving as appellant's physician on March 1, 2006. He submitted narrative reports dated March 1, 2006, April 3, 2007, April 3 and October 9, 2008 and August 17, 2009, along with other brief reports. The record also contains excerpts from testimony Dr. Ryan provided at EEOC hearings held on April 16 and 17, 2007. Although he expressed his belief that appellant sustained a permanent occupational injury prior to April 12, 2005, Dr. Ryan did not provide a clear, rationalized opinion that appellant sustained disability due to her employment duties for specific periods between April 12, 2005 and August 15, 2008. Such medical rationale is especially necessary as Dr. Ryan did not begin to treat appellant until well after she stopped working for the employing establishment.

In his reports, Dr. Ryan asserted that a permanent aggravation of the preexisting condition occurred, although he admitted that physical examinations were difficult to perform and did not demonstrate such an aggravation. He cited the diagnostic testing as the indicator for the aggravation. As OWCP's hearing representative noted at the hearing and in his February 2, 2011 decision, OWCP effectively accepted that appellant sustained a permanent aggravation of

⁶ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁷ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁸ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

her preexisting right knee condition rather than a temporary aggravation by virtue of its schedule award determination. However, that does not necessarily confer entitlement to disability compensation as requested. The hearing representative noted that nearly all of the discussion in Dr. Ryan's reports has concerned the nature of appellant's conditions and treatment, but not her disability status. In an October 9, 2008 report, Dr. Ryan stated that appellant was relegated to sedentary status. That report was prepared after the period of claimed disability and the report does not specify any specific period of disability. Moreover, Dr. Ryan did not clearly specify that this sedentary status was caused by a work-related condition. In an August 17, 2009 report, he stated that appellant could not perform the job she held when first injured, but this report did not specify the cause of the reported disability and was prepared after the period of claimed disability.

On appeal, counsel argued that the reports of Dr. Ryan established appellant's claim for periods of work-related disability between April 12, 2005 and August 15, 2008. He placed great emphasis on excerpts from testimony Dr. Ryan provided at EEOC hearings held on April 16 and 17, 2007 and quoted various portions of this testimony. Counsel also discussed the above-described narrative reports of Dr. Ryan and quoted portions of the reports which he felt helped to establish appellant's claim. These narrative reports do not contain a rationalized medical opinion on the claimed work-related disability for the reasons previously discussed herein. The Board has reviewed the April 2007 testimony excerpts and finds that they have the same deficiencies as the above-detailed narrative reports of Dr. Ryan. In this testimony, Dr. Ryan discussed his belief that appellant sustained a permanent occupational injury prior to April 12, 2005, but he did not provide a clear, rationalized opinion that she sustained disability from employment due to this condition between April 12, 2005 and August 15, 2008 as claimed.⁹

The record contains numerous medical reports concerning appellant's medical condition, including her right knee osteoarthritis. However, no medical evidence has been received which adequately addresses the issues OWCP's hearing representative described at the hearing. Absent medical evidence establishing specific periods of disability as a result of the medical conditions which arose from the accepted occupational disease claim, appellant has failed to meet her burden of proof in establishing entitlement to disability compensation under FECA.

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 her burden of proof to establish that she had work-related disability for the period April 12, 2005 to August 15, 2008.

⁹ On appeal, counsel suggested that an EEOC decision of record helped to establish appellant's claim. However, the issue in the present case is medical in nature and must be resolved by the submission of relevant, probative medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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