

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

S.K., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
San Diego, CA, Employer)

Docket No. 12-237
Issued: June 7, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 23, 2011 appellant filed a timely appeal of an October 14, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was totally disabled from August 13 through September 9, 2011 due to her accepted June 8, 2002 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 8, 2002 appellant then a 56-year-old canine enforcement officer, filed a traumatic injury claim alleging that her partner landed on her left knee with the weight of his body. On July 15, 2002 OWCP accepted her claim for aggravation of left knee internal derangement. It noted that appellant had a prior left knee injury which was accepted for aggravation of osteoarthritis of the left knee.² Appellant underwent left knee surgery on July 23, 2002 including debridement chondroplasty and medial meniscectomy of the left knee. She returned to work on September 9, 2002. On November 5, 2003 OWCP granted appellant a schedule award for 15 percent impairment of her left leg.

Appellant broke her right knee on April 10, 2006 in an employment-related automobile accident.³ She was required to overcompensate with her left lower extremity due to the injury of her right leg. After this injury, appellant did not return to work as a canine enforcement officer but accepted a sedentary position as a sector enforcement specialist.

In a note dated January 26, 2011, Dr. Steven Tradonsky, a Board-certified orthopedic surgeon, noted that in 2002 appellant underwent an arthroscopy with meniscectomy and chondroplasty due to a work-related injury. Appellant reported increasing left knee pain on October 15, 2010 and was diagnosed with degenerative joint disease of the left knee and chronic pain. Dr. Tradonsky recommended a total knee replacement. On January 26, 2011 he performed a left total knee arthroplasty.

Appellant filed a notice of recurrence of disability on March 31, 2011 alleging on October 12, 2010 she hyperextended her left leg as she walked down a ramp at the employing establishment. She stopped work on January 24, 2011. In a report dated March 17, 2011, Dr. Tradonsky noted appellant's history of injury including her 2002 left knee injury. He opined that her left knee arthritis arose as a result of her February 2, 2002 employment injury resulting in the progressive degeneration of her knee and the need for knee replacement surgery. On June 28, 2011 OWCP accepted that appellant sustained traumatic arthrosis of the left knee and left knee medial meniscus tear as a result of the June 8, 2002 employment injury. On July 13, 2011 it revised acceptance of her June 8, 2002 claim to include temporary aggravation of left knee degenerative osteoarthritis and left knee medial meniscus tear.

On July 25, 2011 Dr. Tradonsky stated that appellant sustained a permanent aggravation of her underlying medical condition as a result of her June 8, 2002 employment injury which required a total left knee replacement. On July 29, 2011 he indicated that she had been working full duty and could return to full duty without limitation or restriction. On July 29, 2011 Dr. Tradonsky stated that appellant described tightness and spasms in her hamstring and iliotibial band. He found no effusion in the left knee and vague tenderness. Dr. Tradonsky diagnosed stiffness of the left knee and unexplained hamstring and iliotibial band spasm. He advised that appellant could return to full duty without restriction.

² This claim was accepted under File No. xxxxxx861.

³ This claim was accepted under File No. xxxxxx363.

On August 3, 2011 Dr. William Adsit, a Board-certified orthopedic surgeon and physician practicing with Dr. Tradonsky, stated that appellant was walking through her house on August 3, 2011 and tripped on the carpet, falling on her left knee resulting in aggravation of her chronic pain and new pain anteriorly. He found a mild effusion and no evidence of loosening of the components on x-ray. Dr. Adsit stated that appellant was totally disabled through August 12, 2011. In a letter dated August 17, 2011, OWCP requested additional information regarding her August 3, 2011 fall and whether it was attributable to her left knee collapsing.

Appellant filed a claim for compensation on August 12, 2011 requesting leave without pay compensation from August 13 through 19, 2011. On August 19, 2011 she requested compensation from August 20 through September 2, 2011. On August 12, 2011 Dr. Tradonsky examined appellant and noted the fall of August 3, 2011. He opined that she was totally disabled.

In a form report dated August 19, 2011, Dr. Tradonsky examined appellant and reported pain in her left knee. He stated that she had not been able to go back to work due to her narcotic medication. On August 25, 2011 Dr. Tradonsky stated that appellant's left knee was very tight. He opined that she was totally disabled until September 3, 2011.

In a letter dated September 6, 2011, OWCP requested additional medical evidence regarding appellant's disability from August 3, 2011. It stated that she was released to full-duty prior to her August 3, 2011 fall and that Dr. Tradonsky should provide a narrative report explaining how her trip was causally related to her June 8, 2002 employment injury. OWCP allowed 30 days for a response.

In a report dated August 23, 2011, Dr. Tradonsky noted that appellant's fall at home on August 3, 2011 resulted in an acute flare-up of her knee pain. He stated that she tripped over a carpet and that her left knee did not "give out" or buckle before tripping. On September 2, 2011 Dr. Tradonsky stated that appellant had increased stiffness, pain and limited range of motion with increased swelling. He found that she was totally disabled.

In a report dated September 13, 2011 and signed September 20, 2011, Dr. Tradonsky stated that on September 12, 2011 appellant underwent manipulation under anesthesia to improve the range of motion of her left knee. He stated that this surgery was a direct result of her knee arthroplasty of January 26, 2011. Dr. Tradonsky opined, "Although [appellant] did have a fall on August 3, 2011, which resulted in an increase in her pain, there is no indication that that fall altered or substantially changed the progress of her knee as a result of her surgery." He noted that her September 12, 2011 surgery was as result of her January 26, 2011 surgery rather than her August 3, 2011 fall at home. Dr. Tradonsky stated, "[appellant's] pain which has occurred as a result of that stiffness and the need for further manipulation are a result of her knee replacement surgery and not a result of her fall on August 3, 2011, which simply aggravated a preexisting condition for which the patient was undergoing treatment at that time."

By decision dated October 14, 2011, OWCP denied appellant's claim for compensation for the period August 13 through September 9, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁶

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.⁷ 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.⁸ 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.⁹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ 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 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.¹¹ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁷ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Larson in his treatise on workers' compensation, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.¹³

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁴

ANALYSIS

Appellant filed claims for compensation alleging that she was disabled for work from August 13 through September 9, 2011 due to a condition related to her employment injury. OWCP found that the medical evidence did not establish that her disability was due to her accepted employment injury.

Appellant underwent a total knee replacement on January 26, 2011. On July 29, 2011 Dr. Tradonsky advised that she could return to regular duty. Appellant sought medical treatment on August 3, 2011 and was examined by an associate of Dr. Tradonsky, Dr. Adsit, who obtained a history that appellant was walking through her house on August 3, 2011 and tripped on a carpet. Dr. Adsit stated that she fell on her left knee and aggravated her chronic left knee pain. He found a mild effusion and no evidence of loosening of the components on x-ray. Dr. Adsit stated that appellant was totally disabled through August 12, 2011. This report is not sufficient to establish that her disability on or after August 12, 2011 was due to her accepted employment injury rather than to the nonemployment related fall on August 3, 2011. There is no evidence of record to support that appellant's fall at home on August 3, 2011 was due to or as a consequence of her accepted employment injury. Furthermore, Dr. Adsit did not offer any explanation of

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

¹⁴ *Charles W. Downey*, 54 ECAB 421 (2003).

what caused the change in appellant's disability status other than the nonemployment-related fall while at home.

Dr. Tradonsky completed reports beginning August 12, 2011 stating that appellant was totally disabled. On August 19, 2011 he indicated that she could not work due to her pain and narcotic medication. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.¹⁵ Dr. Tradonsky did not explain the basis for appellant's pain or relate her symptoms to the accepted condition. His report is not sufficient to meet her burden of proof. Dr. Tradonsky did not state whether this pain was due to her underlying employment-related condition or to residuals of the August 3, 2011 fall at her home.

In a report dated August 23, 2011, Dr. Tradonsky described appellant's fall at home on August 3, 2011 and stated that it resulted in an acute flare-up of her knee pain. Since this injury appellant had experienced ongoing pain in her left knee and failed to have substantial improvement in her motion or strength in her left knee. This report attributed her disability after August 3, 2011 to her fall on a carpet at home. Dr. Tradonsky stated that appellant's fall was not related to her knee condition, but was due to tripping over a carpet in her home. There is no evidence that appellant's fall was a consequence of her June 8, 2002 employment injury and therefore compensable. Dr. Tradonsky specifically stated that her left knee condition did not contribute to her fall by buckling or giving out. As appellant's fall was not as a result of her employment or employment injury, any disability due to this condition would not be compensable.

In a report dated September 13, 2011, Dr. Tradonsky stated that appellant's September 12, 2011 manipulation under anesthesia was a direct result of her knee arthroplasty of January 26, 2011. He opined, "Although [she] did have a fall on August 3, 2011, which resulted in an increase in her pain, there is no indication that that fall altered or substantially changed the progress of her knee as a result of her surgery." Dr. Tradonsky indicated that appellant's September 12, 2011 surgery was as result of her January 26, 2011 surgery rather than her August 3, 2011 fall at home. He stated, "[her] pain which has occurred as a result of that stiffness and the need for further manipulation are a result of her knee replacement surgery and not a result of her fall on August 3, 2011, which simply aggravated a preexisting condition for which the patient was undergoing treatment at that time."

The Board finds that Dr. Tradonsky's reports do not specifically address the period of disability claimed by appellant. Dr. Tradonsky does not explain why appellant was disabled from August 13 through September 9, 2011 due to her accepted employment injury. While he indicated that her surgical procedure on September 12, 2011 was due to her accepted left knee condition, he did not provide a period of disability due to stiffness and need for further manipulation predating the procedure. Dr. Tradonsky also failed to provide the medical reasoning which led him to attribute appellant's disability after September 12, 2011 to her accepted condition.

As appellant has not submitted rationalized medical opinion evidence establishing that she was totally disabled from August 13 through September 9, 2011 due to her accepted

¹⁵ *Robert Broome*, 55 ECAB 339 (2004).

employment injury, the Board finds that she failed to meet her burden of proof in establishing entitlement to compensation benefits for that period.

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 meet her burden of proof in establishing that she was totally disabled from August 13 through September 9, 2011 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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