

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

S.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Madera, CA, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 11-1909
Issued: March 23, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 19, 2011 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated July 12, 2011. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he is entitled to wage-loss compensation due to disability for the period April 23 to May 11, 2011.

On appeal appellant contends that OWCP erred in denying his claim for compensation for the period April 23 to May 11, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 2, 2011 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that on that day he had right knee pain when he fell after his right knee buckled under him. OWCP accepted the claim for right knee sprain. Appellant was scheduled for nonemployment-related right knee surgery on March 8, 2011.

In an April 8, 2011 progress report, Dr. Michael J. Reynolds, a treating physician, noted a March 2, 2011 injury date, diagnosed knee and leg sprain and that appellant was to remain off work until April 26, 2011. In an April 8, 2011 progress note, he provided physical findings and noted that appellant was recovering from surgery repairing a meniscus tear. Dr. Reynolds noted that appellant has not been working as no activity had been recommended in the prior visit. Diagnoses included knee pain, meniscus tear and meniscus tear surgical repair.

On April 22, 2010 Dr. Reynolds noted an injury date of April 21, 2010 and diagnosed right lower leg peroneal muscle rupture. He opined that the condition was caused by appellant's employment. Dr. Reynolds noted that the injury occurred when appellant's leg buckled when he stepped in a hole while delivering mail.

In an April 26, 2011 progress report, Dr. Reynolds noted an injury date of March 2, 2011, diagnosed knee and leg sprain and indicated that appellant was to remain off work until May 10, 2011. In an April 26, 2011 progress note, he provided physical findings and noted that appellant was recovering from surgery repairing a meniscus tear. Diagnoses included knee pain, meniscus tear and meniscus tear surgical repair.

On May 12, 2011 appellant filed a claim for wage-loss compensation for the period April 23 to May 11, 2011.

On May 18, 2011 OWCP received a progress report and progress note from Dr. Reynolds, who diagnosed sprain of the leg and knee in the progress report and resolving right knee sprain in the progress note. Appellant was released to return to modified work on May 11, 2011.

In a letter dated May 24, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim for wage-loss compensation for the period in question. Appellant was advised as to the type of medical evidence to submit and given 30 days to provide the requested information.

On June 8, 2011 Dr. Reynolds stated that it was impossible to separate symptoms from appellant's March 2, 2011 employment injury and the nonemployment-related postoperative pain. He indicated that appellant was disabled for the period April 23 to May 7, 2001 based on the surgeon's recommendations and that appellant was released to work with restrictions on May 10, 2011.

In a June 14, 2011 form, Dr. Peter T. Simonian, a treating Board-certified orthopedic surgeon, released appellant to full-duty work without restrictions effective April 19, 2011.

By decision dated July 12, 2011, OWCP denied appellant's claim for wage-loss compensation for the period April 23 to May 11, 2011.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under the FECA the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).¹⁰ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must

² The Board notes that, following the July 12, 2011 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson*, *supra* note 4; see also *David H. Goss*, 32 ECAB 24 (1980).

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

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

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 their disability and entitlement to compensation.¹²

ANALYSIS

OWCP accepted appellant's claim for right knee sprain as a result of the March 2, 2011 employment injury. Appellant filed a claim for wage-loss compensation for the period April 23 to May 11, 2011. It is his burden of proof to establish the claimed period of employment-related disability. On May 24, 2011 OWCP advised appellant of the evidence needed to establish his claim. However, appellant did not submit sufficient reasoned medical evidence to establish that his disability for the period April 23 to May 11, 2011 was causally related to his right knee sprain. He did not submit a narrative medical report in which a treating physician explained how his disability was related to the accepted March 2, 2011 employment injury.

In a series of progress notes and progress reports, Dr. Reynolds reported diagnoses including right lower leg peroneal muscle rupture, knee pain, meniscus tear and meniscus tear surgical repair. Although he provided a firm diagnosis and opined that appellant was disabled, he failed to provide a rationalized medical explanation as to why appellant had employment-related residuals and how the residuals of the March 2, 2010 employment injury prevented him from performing his employment duties. Dr. Reynolds merely noted that appellant was to be off work for the period in question. The Board has held that medical conclusions unsupported by rationale are of little probative value.¹³ As none of Dr. Reynolds' reports contain any supporting rationale for his opinions that the disability was related to the accepted March 2, 2011 employment injury, the Board finds that these reports are insufficient to establish appellant's claim for disability. The April 22, 2010 progress note from Dr. Reynolds indicating a right lower leg peroneal muscle rupture is of no probative value as it predates the accepted employment injury of March 2, 2011. Thus, appellant has not met his burden of proof to establish that he was disabled for work due to the employment injury for the period April 23 to May 11, 2011.

The record also contains a report from Dr. Simonian, releasing appellant to full-duty work without restrictions effective April 19, 2011. This report predates appellant's claimed period of disability. Without reasoned medical evidence supporting that he had employment-related disability during the period in question, appellant has not met his burden of proof to establish his claim for wage-loss compensation for the period April 23 to May 11, 2011.

¹¹ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹² *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ *Willa M. Frazier*, 55 ECAB 379 (2004).

An award of compensation may not be based on surmise, conjecture or speculation.¹⁴ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁵ Causal relationship must be established by rationalized medical opinion evidence.¹⁶ As appellant failed to submit such evidence, appellant has not met his burden of proof to establish an employment-related disability for the period April 23 to May 11, 2011.

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 not established entitlement to wage-loss compensation for the period April 23 to May 11, 2011 causally related to his accepted knee strain.

¹⁴ *D.I.*, 59 ECAB 158 (2007); *D.E.*, 58 ECAB 448 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁵ *G.T.*, 59 ECAB 447 (2008); *V.W.*, 58 ECAB 425 (2007); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

¹⁶ *Roy L. Humphrey*, 57 ECAB 238 (2005); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 12, 2011 is affirmed.

Issued: March 23, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board