

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

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**T.J., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Garland, TX, Employer**

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**Docket No. 11-2095  
Issued: May 3, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 23, 2011 appellant filed an appeal from a June 15, 2011 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met her burden of proof to establish that she was entitled to disability compensation for the period March 12 to April 28, 2011.

On appeal, appellant asserts that the medical evidence established that she was disabled due to functional deficits.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On August 7, 2008 appellant, then a 44-year-old city letter carrier, filed a traumatic injury claim, alleging that she injured her right elbow and left knee when she tripped and fell while delivering mail. On August 20, 2008 OWCP accepted that she sustained a sprain of the right arm and elbow. A May 25, 2010 modified position description indicated that appellant was casing and delivering mail with physical requirements of standing to case and deliver mail for one to four hours, driving to deliver mail for one to six hours, walking to prepare and deliver mail for one to six hours and lifting to prepare and deliver mail for one to eight hours. On December 7, 2010 OWCP expanded the accepted conditions to include patellofemoral dysfunction, left.<sup>2</sup> On March 10, 2011 the employment establishment confirmed that appellant was working limited duty and that limited duty was available. On May 5, 2011 appellant filed a Form CA-7, claims for compensation, for periods beginning on March 12, 2011.

A January 26, 2011 left knee magnetic resonance imaging (MRI) scan demonstrated mild patellar tendinosis, very small joint effusion, moderate patellar subluxation, a possible partial or remote injury to the anterior cruciate ligament and mild prolapse of the body of the medial meniscus without visible meniscal tear. In a February 8, 2011 report, Dr. Tom Mayer, an attending Board-certified orthopedic surgeon, noted appellant's complaint of left knee pain. He performed physical examination, reviewed the MRI scan findings, and recommended a disability assessment. On a duty status report also dated February 8, 2011, Dr. Mayer advised that appellant was temporarily totally disabled. Dr. Gregory Powell, Board-certified in physiatry and pain medicine, saw her on February 16, 2011 for an injection consultation regarding her left knee. He provided examination findings, diagnosed osteoarthritis with meniscal injury and recommended viscosupplementation injections. A functional capacity evaluation dated February 24, 2011 indicated that the consistency of effort was variable with severe pain perception. The assessment noted that job demands were not met and it was recommended that appellant enter a pain management program. In a February 24, 2011 report, Dr. Mayer advised that appellant's battle to obtain acceptance of her left knee as compensable created a severe psychosocial overlay and she was therefore a candidate for an abbreviated functional restoration approach that would provide psychosocial education/counseling, medical management, combined with physical therapy and occupational therapy. On March 16, 2011 Dr. Powell injected her left knee. On March 17, 2011 Dr. Mayer noted appellant's continued complaints. He advised that she was disabled due to a progressive increase in disability over an extended period with a gait disturbance, inability to squat walk with an antalgic gait on the left, patellofemoral joint pain and tenderness with a positive patellar compression test, posterolateral corner pain producing lateral hamstring findings, mild instability of the medial collateral ligament, positive meniscal compression tests suggesting a possible medial meniscus tear and the MRI scan findings of patellar tendinopathy with joint effusion and patellar subluxation and changes consistent with a previous partial anterior cruciate ligament tear and mild prolapse of the medial meniscus. On April 13, 2011 Dr. Powell noted left knee findings of full range of motion, severe crepitus, no ligamentous instability and no effusion. He repeated his diagnosis and

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<sup>2</sup> The instant claim was adjudicated by OWCP under File No. xxxxxx771. Appellant has two additional claims. Under OWCP File No. xxxxxx663, she has accepted conditions of bilateral plantar fibromatosis and cervical, thoracic and lumbar sprains. Under File No. xxxxxx841, it also accepted cervical, thoracic and lumbar sprains and a right wrist sprain. OWCP combined the claims, with the File No. xxxxxx663 claim becoming the master file.

advised that appellant was about 70 percent improved from the injection and would not need another for six months. On April 13, 2011 Dr. Mayer noted Dr. Powell's recommendation and advised that a treatment plan had been submitted. He stated that examination demonstrated severe atrophy and a markedly positive patellar compression test of the left knee with some mild early evidence of a per anserine bursa problem. Dr. Mayer advised that appellant continued to be disabled.

By letter dated May 13, 2011, OWCP informed appellant that the medical evidence was insufficient to establish that she was totally disabled because it did not address why she could not perform the duties of her employment. Appellant was given 30 days to submit the requested information.

In a May 6, 2011 report, received on May 17, 2011, Dr. Mayer advised:

“Apparently, there is some misunderstanding over the *reason for temporary total disability at this time*. This patient's reason for her current work disability is the pain and dysfunction in performing activities dependent on her ‘weak link’ knee problem. [Appellant's] [temporary total disability] has nothing to do with the availability (or not) of a light-duty option.” (Emphasis in the original.)

On May 24, 2011 Dr. Mayer noted appellant was recently in a motor vehicle accident that primarily affected her cervical spine and could not participate in knee rehabilitation. He advised that, following rehabilitation, she could hopefully return to full duty.

By decision dated June 15, 2011, OWCP denied appellant's claim for compensation for the period March 12 to April 28, 2011. It advised that pain and dysfunction were symptoms, not diagnoses, noted the reported motor vehicle accident and found that the medical evidence did not support that she could not perform her limited-duty position.<sup>3</sup>

### **LEGAL PRECEDENT**

Under FECA, the term “disability” is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA,<sup>5</sup> and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>6</sup> Whether a particular injury causes an employee to be disabled

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<sup>3</sup> OWCP paid compensation for medical treatment on March 16, 17 and April 13, 2011.

<sup>4</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>5</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>6</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>7</sup>

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.<sup>8</sup> Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>10</sup> 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.<sup>11</sup> Neither the mere 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.<sup>12</sup>

### ANALYSIS

The Board finds this case is not in posture for decision. The accepted conditions in this case are sprain of the right arm and elbow and patellofemoral dysfunction. Appellant is claiming disability compensation for the period March 12 to April 28, 2011.<sup>13</sup>

The medical evidence relevant to the period of claimed compensation includes a January 26, 2011 left knee MRI scan study that demonstrated mild patellar tendinosis, very small joint effusion, moderate patellar subluxation, a possible partial or remote injury to the anterior cruciate ligament and mild prolapse of the body of the medial meniscus without visible meniscal tear. In a February 8, 2011 duty status report, Dr. Mayer advised that appellant was totally disabled. On March 17, 2011 he advised that she was disabled due to a progressive increase in

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<sup>7</sup> *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

<sup>8</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>10</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>12</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>13</sup> The Board notes that on appellant's AB-1 form submitted with her appeal to the Board, she listed additional dates when she did not work. The Board's jurisdiction is limited to a review of final decisions of OWCP. In the instant case, OWCP's June 15, 2011 decision is limited to the issue of appellant's entitlement to disability compensation solely for the period March 12 to April 28, 2011. 20 C.F.R. § 501.2(c); *E.L.*, 59 ECAB 405 (2008).

disability over an extended period of time with a gait disturbance, inability to squat walk with an antalgic gait on the left, patellofemoral joint pain and tenderness with a positive patellar compression test, posterolateral corner pain producing lateral hamstring findings, mild instability of the medial collateral ligament, positive meniscal compression tests suggesting a possible medial meniscus tear and the MRI scan findings of patellar tendinopathy with joint effusion and patellar subluxation and changes consistent with a previous partial anterior cruciate ligament tear and mild prolapse of the medial meniscus. Dr. Mayer explained on May 6, 2011 that appellant was disabled due to her “weak link” knee problem. While he reported on May 24, 2011 that she had recently been in a motor vehicle accident, this was after the period of claimed disability in this case.

The Board finds that, while these reports lack detailed medical rationale sufficient to discharge appellant’s burden of proof that she was disabled beginning on March 12, 2011, this does not mean that they may be completely disregarded by OWCP. It merely means that their probative value is diminished.<sup>14</sup> Dr. Mayer described physical findings, supported by the MRI scan study, which could preclude appellant from her modified letter carrier position.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>15</sup> The case shall therefore be remanded to OWCP. On remand, OWCP shall refer appellant, an updated statement of accepted facts and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether she was disabled from work for the period March 12 to April 28, 2011 due to the accepted conditions. After this and such further development deemed necessary, OWCP shall issue an appropriate decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision regarding whether appellant established that she was totally disabled for the period March 12 to April 28, 2011 due to the accepted conditions.

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<sup>14</sup> *Shirley A. Temple*, 48 ECAB 404 (1997). The Board notes that the reports of Dr. Powell are of no probative value as he did not discuss appellant’s ability to work.

<sup>15</sup> See *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 15, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: May 3, 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