

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

C.R., Appellant)

and)

**U.S. POSTAL SERVICE, POST OFFICE,
Osage Beach, MO, Employer**)

**Docket No. 12-823
Issued: November 6, 2012**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2012 appellant filed a timely appeal of the January 19 and February 23, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his recurrence of disability claim. 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 sustained a recurrence of disability commencing November 21, 2011 causally related to his June 18, 2009 employment-related injury.

On appeal, appellant contends that he has residuals requiring medical treatment and total disability due to his accepted work injury.

FACTUAL HISTORY

OWCP accepted that on June 18, 2009 appellant, then a 30-year-old part-time flexible clerk, sustained a right knee ligament strain while squatting to put mail in post office boxes.

¹ 5 U.S.C. § 8101 *et seq.*

In a June 18, 2009 duty status report and a June 23, 2009 prescription, Dr. Brenda A. Hettinger, an attending general practitioner, advised that on June 23, 2009 appellant could return to full-time regular work with restrictions.

On January 5, 2010 the employing establishment informed OWCP that appellant was performing full-duty work.

By letter dated May 25, 2010, OWCP accepted that appellant sustained a recurrence of total disability on March 30, 2010 causally related to his accepted June 18, 2009 employment injury. Subsequently, it authorized arthroscopic right knee surgery which was performed on June 8, 2010 by Dr. William G. Quinn, a Board-certified orthopedic surgeon.

On December 2, 2011 appellant filed a claim for a recurrence of disability (Form CA-2a) beginning November 21, 2011. While at work on September 10, 2011, he experienced pain in the right knee. Appellant's pain worsened over time without medical treatment. Following the accepted right knee condition, he was limited to an eight-hour workday. On December 2, 2011 appellant filed a claim for compensation (Form CA-7) requesting leave without pay beginning December 3, 2011 due to knee pain and emotional stress. On the Form CA-7 the employing establishment stated that he had been performing full-duty work since June 23, 2009.

By letter dated December 6, 2011, OWCP requested that appellant submit additional factual and medical evidence. It requested a rationalized medical opinion from an attending physician explaining the causal relationship between his current condition and the accepted employment injury.

In a November 28, 2011 treatment note, Dr. Hettinger noted appellant's complaints of right knee pain, problems with his job and stress at home. Appellant's boss recommended that appellant take a leave of absence from work to sort out his medical and personal issues. Dr. Hettinger stated that this was an appropriate recommendation. Appellant had chronic right knee pain and she referred him to Dr. Jeffrey M. Jones, an orthopedic surgeon, for evaluation since he had reexperienced pain in his knee.

In a December 14, 2011 progress note, Dr. Jones obtained a history of the June 18, 2009 employment injury and appellant's medical treatment. He noted appellant's complaints of upper right knee pain with activity. Dr. Jones provided findings on physical examination and reviewed diagnostic test results. He diagnosed a sprain and strain of the right knee and leg. On December 14, 2011 and January 4, 2012 Dr. Jones ordered physical therapy to treat appellant's iliotibial (IT) band syndrome and right knee sprain.

On December 29, 2011 appellant stated that, following his accepted injury, he returned to full-duty work and was limited to an eight-hour workday. On January 19, 2012 he stated that following his June 2010 right knee surgery he returned to regular-duty work. Two months later, appellant had problems. On November 28, 2011 a postmaster advised him that no work was available within the restrictions established by a physician on that date.²

² In a light-duty disapproval form that appears to be inadvertently dated January 23, 2011 rather than January 23, 2012, the employing establishment stated that no light-duty work was available beginning November 28, 2011. In the same form dated January 11, 2012, it again advised appellant that there were no available light-duty assignments that met his physical limitations.

On January 12, 2012 appellant filed a Form CA-7 for leave without pay and wage-loss compensation commencing November 28, 2011.

In a January 11, 2012 work/school status report, Dr. Jones advised that appellant could return to light-duty work with restrictions.

In a January 19, 2012 decision, OWCP denied appellant's recurrence of disability claim. The medical evidence of record was found insufficient to establish that he became totally disabled commencing November 21, 2011 or partially disabled commencing January 11, 2012 due to his accepted employment-related injury. OWCP noted that the employing establishment confirmed that at the time of the alleged recurrence appellant was performing his full-time regular-duty work.

By letter dated January 24, 2012, appellant requested reconsideration.

In a February 7, 2011 treatment note, Dr. Quinn stated that he discussed re-arthroscopy of his knee and treated appellant's symptomatic right knee with an injection.

In progress notes dated January 11 and February 8, 2012, Dr. Jones noted no improvement in appellant's persistent pain with increased activity. He had numbness in the lower extremity and swelling about the knee. Dr. Jones listed physical examination findings related to the right knee and advised that appellant had pain in the knee and lower leg joint. He provided appellant's work restrictions and stated that after three weeks appellant could return to full-duty work. Also, on February 8, 2012 Dr. Jones ordered physical therapy to treat appellant's right knee sprain.

In a January 4, 2011 report, Dr. Baron S. Adkins, a Board-certified radiologist, advised that an x-ray of the right knee was negative. On January 30, 2012 he reported a negative right knee MRI scan.

In a hospital report dated January 4, 2011, Dr. Robert Douglas King, a Board-certified family practitioner, stated that appellant had chronic right knee pain.

In a February 23, 2012 decision, OWCP denied modification of the January 19, 2012 decision. The medical evidence was found insufficient to establish that appellant was unable to work commencing November 28, 2011 due to a worsening of his accepted right knee injury.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ If the disability results from new

³ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also Phillip L. Barnes, 55 ECAB 426 (2004).

exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁴

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.⁵ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁷ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁸

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁹ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.¹⁰ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹¹

ANALYSIS

OWCP accepted that appellant sustained a right knee ligament strain on June 18, 2009. Appellant claimed a recurrence of total disability commencing November 21, 2011 after returning to regular-duty work. The Board finds that he failed to submit sufficient medical evidence to establish that his claimed recurrence was caused or aggravated by his accepted injury.

Dr. Hettinger's November 28, 2011 treatment note found that appellant had chronic right knee pain. She agreed that he should take a leave of absence from work to sort out his medical and personal issues; but she did not explain how his disability commencing November 23, 2011 related to his accepted condition. A medical opinion not fortified with medical rationale is of

⁴ Federal (FECA) Procedure Manual, *supra* note 3 at Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁵ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁶ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104 (a)-(b).

⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁹ *See Ricky S. Storms*, *supra* note 7; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹⁰ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748, 753 (1986).

¹¹ *See Ricky S. Storms*, *supra* note 7; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

diminished probative value.¹² Dr. Hettinger did not provide any rationale explaining how appellant's right knee disability was causally related to the accepted condition. Other than noting pain, she did not provide a firm medical diagnosis. The Board finds that Dr. Hettinger's treatment note is insufficient to establish appellant's claim.

Dr. Jones found that appellant could return to light-duty work with restrictions. His progress notes stated that appellant had a right knee and leg sprain, strain and pain. On February 8, 2012 Dr. Jones listed appellant's physical restrictions and advised that he could return to full duty in three weeks. His other reports ordered physical therapy to treat appellant's IT band syndrome and right knee sprain; but he did not provide a narrative opinion on causal relation. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹³ The Board finds that Dr. Jones did not adequately explain the causal relationship of the claimed period of disability to the accepted right knee condition.

Similarly, Dr. Adkins' negative diagnostic test results and Dr. King's report regarding appellant's right knee are insufficient to establish his claim for a recurrence of disability. Dr. Quinn performed a knee injection and discussed the possibility of further surgery on the knee. He gave no medical rationale for such treatment. This evidence does not contain any opinion addressing appellant's disability commencing November 21, 2011 or how any disability was causally related to the accepted injury.¹⁴ In addition, Dr. King's diagnosis of chronic right knee pain is not a compensable medical diagnosis.¹⁵

Appellant failed to submit rationalized medical evidence establishing that his disability commencing November 21, 2011 resulted from the residuals of his accepted right knee condition.¹⁶ He has not met his burden of proof.¹⁷

On appeal, appellant contended that he had residuals requiring medical treatment and total disability due to his accepted work injury. For the reasons stated above, the Board finds that he did not submit rationalized medical evidence establishing his recurrence of disability claim.

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.

¹² See *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹³ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁴ *Id.*

¹⁵ See cases cited, *supra* note 13.

¹⁶ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁷ *Tammy L. Medley*, 55 ECAB 182 (2003).

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability commencing November 21, 2011 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 23 and January 19, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 6, 2012
Washington, DC

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

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

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