

returned to limited duty on March 23, 1997. OWCP accepted appellant's claim for contusion to the right forearm and left knee, avulsion of the left hand, torn left medial meniscus and osteoarthritis of the left leg.

Appellant underwent a partial medial meniscectomy and in March 1998 resumed regular full-time employment with the United States. She retired in 2004.

On November 10, 2008 appellant underwent an authorized total left knee arthroplasty. On January 25, 2010 she received a schedule award for a 21 percent impairment of her left lower extremity. OWCP calculated appellant's compensation using her pay rate from March 15, 1997, which was the date of injury.

Appellant, through her representative requested reconsideration. While he was not contesting the percentage of impairment, as it was consistent with the medical evidence submitted, the representative asked that OWCP review the pay rate. The representative's file reflected two recurrences: one on January 28, 2001 and another on November 10, 2008, when appellant underwent her knee replacement. He urged that OWCP should use her November 10, 2008 recurrent pay rate.

In a May 31, 2011 decision, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that appellant was not entitled to a recurrent pay rate as she was not working on a full-time basis prior to November 10, 2008.

In a February 24, 2012 decision, OWCP once again reviewed the merits of appellant's case and denied modification of its prior decision. It explained that appellant had filed two claims of recurrence of disability in 2001, both of which it denied. Although it authorized the November 10, 2008 knee replacement surgery, there was no evidence that she was working prior to that date. The evidence established instead that appellant had stopped working in 2004. As she was not working when she had the surgery, that date could not be considered the date of a compensable recurrence of disability.

Appellant's representative argues that, although appellant had the right to request compensation for wage loss as it related to her authorized procedure, she decided to remain in a retirement status. He argues that OWCP should not penalize her because she elected not to file a recurrence claim.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.³

² 5 U.S.C. § 8102(a).

³ 20 C.F.R. § 10.5(f).

Monetary compensation for total or partial disability due to an employment injury is paid as a percentage of monthly pay.⁴ Section 8101(4) of FECA provides that “monthly pay” means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.⁵

A “recurrence of disability” means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶

A “recurrence of medical condition” means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there has been no accompanying work stoppage.⁷

ANALYSIS

Appellant agrees with the percentage impairment reflected in her schedule award. The only issue presented to the Board is whether she is entitled to a recurrent pay rate from her November 10, 2008 knee replacement surgery, which she underwent during retirement.

To establish her entitlement to a recurrent pay rate, appellant must first establish a recurrence of disability. The record shows that OWCP has accepted no recurrence of disability. It denied two recurrence claims made in 2001 and appellant has not filed a recurrence of disability claim relating to her 2008 knee replacement surgery. As a simple matter of record, then, appellant’s argument for a recurrent pay rate lacks foundation.

The November 10, 2008 surgery did not cause appellant to stop work. She had already stopped work in 2004 because she retired. It appears that the surgery instead caused a recurrence of medical condition, which involves the documented need for further medical treatment when there is no accompanying work stoppage. But a recurrence of medical condition is not sufficient to establish entitlement to a recurrent pay rate. Appellant must establish a compensable recurrence of disability. As OWCP has accepted no recurrence of disability and as she has not so much as claimed a recurrence of disability relating to her 2008 surgery, the Board will affirm OWCP’s February 24, 2012 decision denying a recurrent pay rate for her schedule award.

Appellant’s representative correctly observes that appellant has the right to request compensation for wage loss as it relates to her authorized procedure. But requesting compensation for a recurrence of disability and establishing entitlement are not one in the same.

⁴ See 5 U.S.C. §§ 8105, 8106.

⁵ *Id.* at § 8101(4); *John D. Williamson*, 40 ECAB 1179 (1989).

⁶ 20 C.F.R. § 10.5(x).

⁷ *Id.* at § 10.5(y).

Appellant's representative argues that OWCP penalized his client because appellant decided to remain in a retirement status and elected not to file a recurrence claim. OWCP correctly denied a recurrent pay rate for a recurrence of disability that appellant has not claimed, much less established. In the Board's view, appellant's representative is requesting a benefit without having to discharge the usual burden of proof to establish entitlement.

CONCLUSION

The Board finds that appellant is not entitled to a recurrent pay rate from her November 10, 2008 knee replacement surgery.

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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