

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

L.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baton Rouge, LA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-1266
Issued: December 23, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 29, 2013 appellant filed a timely appeal of a March 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met her burden of proof to establish that she was totally disabled beginning December 1, 2000 due to her accepted employment injuries.

FACTUAL HISTORY

This case has previously been before the Board on appeal. On July 22, 2003 appellant, then a 41-year-old city carrier, filed an occupational disease claim alleging that she developed chondromalacia and synovitis of the right knee, lateral epicondylitis of the right elbow and

¹ 5 U.S.C. § 8101 *et seq.*

tendinitis of the right shoulder in the performance of duty. On the reverse of the form, appellant's supervisor indicated that appellant had opted for disability retirement on November 30, 2000.² By decision dated June 2, 2004, OWCP accepted appellant's claim for aggravation of chondromalacia and right shoulder tendinitis.³

On July 19, 2004 appellant requested wage-loss compensation from December 1, 2000 due to her accepted conditions. By decision dated September 29, 2004, OWCP denied her claim for compensation.

Appellant requested reconsideration in support of her claim for disability. She submitted a series of reports from Dr. Gerard L. Murtagh, a Board-certified orthopedic surgeon, who indicated that he first examined her in January 2000 and that he did not limit her work activities at that time. In his December 2009 report, Dr. Murtagh reviewed appellant's date-of-injury position and concluded, "By December 2000, I advised [appellant] that she needed to go on disability. In my opinion, [she] has not been able to work as a U.S. Postal Service City Carrier since December 1, 2000." Dr. Murtagh stated that by the time appellant stopped working her knee and arm conditions were permanent and that she was totally disabled.

OWCP denied appellant's request for reconsideration by decision dated July 2, 2010. Appellant appealed this decision to the Board. In its April 9, 2012 decision,⁴ based on Dr. Murtagh's reports, the Board found that the case was not in posture for a decision and remanded the case for OWCP to refer her for a second opinion evaluation to determine the causal relationship between her accepted work injury and the resultant conditions and any disability since December 1, 2000.

Following the Board's directive, OWCP referred appellant for a second opinion evaluation on June 19, 2012. In a report dated July 16, 2012, Dr. Jon F. Loupe, a Board-certified orthopedic surgeon, noted her employment duties and her medical treatment since 2000. He found that appellant's shoulders had equal active range of motion, but that the motion in the right shoulder was jerky. Appellant also demonstrated glove hypoesthesia in the right hand. Dr. Loupe found no effusion of the right knee, no ligamentous instability and no patellofemoral crepitation with flexion and extension. He examined x-rays of appellant's right shoulder, right elbow and knee and found no arthritic changes. Dr. Loupe diagnosed postoperative status knee arthroscopy with impingement of the lateral femoral condyle from chondromalacia of the patella, mild chondromalacia of the right patella, chronic right shoulder sprain and elbow sprain. He opined that appellant had residuals in the form of mild chondromalacia of the lateral femoral condyle with no significant physical impairment as she had full range of motion. Dr. Loupe stated that appellant was capable of work with restrictions after December 1, 2000 and was currently capable of performing her usual job.

² The record indicates that appellant opted for disability retirement.

³ On August 25, 2005 OWCP granted appellant a schedule award for 11 percent impairment of her right lower extremity.

⁴ Docket No. 11-489 (issued April 9, 2012).

By decision dated August 22, 2012, OWCP denied modification of its prior decisions. It found that Dr. Loupe's report established that appellant was capable of work on and after December 1, 2000. OWCP further stated that she was not entitled to any periods of disability because she was now receiving retirement benefits from the Office of Personnel Management.

Appellant requested reconsideration on October 31, 2012. Counsel argued that Dr. Loupe was required to provide appropriate work restrictions for her return to work in December 2000. He further alleged that there was a conflict of medical opinion evidence between Drs. Loupe and Murtagh and that she was entitled to compensation benefits during the period of time that she was totally disabled due to employment-related surgery beginning on February 21, 2002 and on March 25, 2011.

OWCP requested a supplemental report from Dr. Loupe on November 28, 2012 asking him to provide appellant's work restrictions after December 1, 2000, to provide a period of time these restrictions would be necessary and to opine whether her aggravation of chondromalacia was temporary or permanent.

In a supplemental report dated February 6, 2013, Dr. Loupe noted that appellant underwent a functional capacity evaluation on January 14, 2013. He provided her work restrictions including standing and walking for up to 5½ hours a day, bending and reaching for 30 minutes at a time for up to 2½ hours a day. Appellant was allowed to lift up to 10 pounds for 2 hours a day. Dr. Loupe opined that her aggravation of chondromalacia was permanent.

By decision dated March 4, 2013, OWCP denied modification of its prior decisions. It found that appellant had not submitted the necessary medical evidence to establish a period of total disability following her right knee surgeries. OWCP further found that she had not established any period of total disability on or after December 1, 2000.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.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

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

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

physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or 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 disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

The Board previously remanded the case to OWCP for evaluation by a second opinion physician. On remand, OWCP referred appellant to Dr. Loupe, who reviewed the statement of accepted facts and her medical records, performed a physical examination and concluded that she had continued medical residuals due to her accepted condition of aggravation of chondromalacia of her right knee. However, Dr. Loupe concluded that appellant was capable of performing light-duty work with restrictions on and after December 1, 2000. In his supplemental report, he reviewed a functional capacity evaluation and provided her work restrictions.

The Board finds that appellant has failed to meet her burden of proof to establish a period of total disability due to her accepted right shoulder and knee conditions. Appellant has not submitted any new medical evidence addressing and supporting her periods of disability beginning December 1, 2000. Dr. Loupe did not support her total disability for work for any specific period on or after December 1, 2000. Rather, he opined that appellant was capable of performing light-duty work and provided work restrictions. Due to the lack of supportive medical opinion evidence appellant has not met her burden of proof in establishing a period of disability.

⁸ *Id.*

⁹ *Id.*

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

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

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

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 a period of disability due to her accepted employment injuries on or after December 1, 2000.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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