

FACTUAL HISTORY

OWCP accepted that on August 14, 2009 appellant, then a 47-year-old mail handler, sustained a right medial meniscus tear and chondromalacia of the right patella when she pulled a postal container with a broken wheel.² She underwent previous right knee surgery on April 24, 2009 for a nonoccupational injury. Appellant accepted a modified-duty position on August 27, 2009. She was off work from September 14, 2009 to November 15, 2010. Appellant received wage-loss compensation for total disability from September 21, 2009 to November 12, 2010 and returned to work on November 15, 2010.³

Appellant was followed by Dr. Jason W. Folk, an attending physician Board-certified in sports medicine. In an August 26, 2009 report, Dr. Folk diagnosed internal derangement of the right knee due to the August 14, 2009 work incident. In a September 9, 2009 report, he noted that a magnetic resonance imaging (MRI) scan of appellant's right knee demonstrated a degenerative tear of the right medial meniscus with cartilaginous loose bodies. On December 4, 2009 Dr. Folk performed right knee arthroscopy, partial medial meniscectomy, chondroplasty of the lateral femoral condyle, medial compartment and patella and excision of multiple loose bodies. He aspirated two postoperative cysts in the right knee on February 22, 2010. As a February 25, 2010 MRI scan showed a re-tear of the medial meniscus, Dr. Folk performed repeat right knee arthroscopy on April 16, 2010. In an April 28, 2010 letter, he opined that the August 14, 2009 work incident was competent to cause the meniscal tear.

On March 11, 2011 appellant filed a notice of recurrence of disability (Form CA-2a) commencing January 5, 2011. She asserted that she experienced right knee pain and swelling due to work factors after her right knee surgeries. The employing establishment noted that, as of January 5, 2011, appellant was performing modified-duty work. Appellant stopped work on January 5, 2011 and did not return.

In support of her claim, appellant submitted January 5, 2011 reports from Dr. Folk limiting standing and walking to 30 minutes a day, bending, stooping, pulling and pushing to two hours a day and no climbing or kneeling. She related increased pain symptoms, treated with a right knee injection. Dr. Folk diagnosed internal derangement of the right knee, pes bursitis of the right lower leg and prescribed a topical cream. He submitted progress reports through March 2, 2011 noting continued right knee symptoms.

In a March 28, 2011 letter, OWCP advised appellant of the additional evidence needed to establish her claim for recurrence of disability, including a report from her attending physician supporting a spontaneous worsening of the accepted right knee injuries on January 5, 2011 explaining whether newly diagnosed internal derangement of the right knee was causally related to the accepted right knee injury. Appellant was afforded 30 days in which to submit such

² OWCP initially denied the claim by decision dated September 29, 2009 on the grounds that appellant did not establish the August 14, 2009 incident as factual. Following a September 27, 2010 request for reconsideration, it accepted the claim, finding that the August 14, 2009 incident occurred as alleged.

³ In a November 3, 2010 form report, Dr. Folk indicated that appellant could return to work without restrictions as of that day. The record does not otherwise indicate if she returned to full duty.

evidence. In response, she submitted an April 3, 2011 report from Dr. Folk diagnosing internal derangement of the right knee with a saphenous neuroma. Dr. Folk noted work restrictions.

By decision dated May 4, 2011, OWCP denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. It found that there was no medical evidence that she was disabled for work on or after January 5, 2011 due to the accepted torn right medial meniscus and chondromalacia of the patella. OWCP noted that internal derangement of the right knee was not an accepted condition.

In a May 4, 2011 letter, appellant requested a telephonic hearing, held August 5, 2011. At the hearing, she stated that she had not returned to work after January 5, 2011 as the employing establishment would not allow her to work because of her light-duty restrictions. Appellant asserted that Dr. Folk supported that internal derangement of the right knee was directly related to the accepted torn right medial meniscus and chondromalacia. She submitted additional medical evidence.

Dr. Folk stated on June 2, 2011 that the internal derangement of the right knee was a "direct extension of [appellant's] previous problems in the right knee including the medial meniscus tear and chondromalacia," permanently aggravating her condition. He explained that problems with the articular cartilage and meniscus limited her ability to work. Dr. Folk provided work restrictions in a June 2, 2011 form report. On August 17, 2011 he diagnosed osteoarthritis and internal derangement of the right knee and administered an injection. In an August 24, 2011 report, Dr. Folk noted that, since the August 14, 2009 injury, appellant had a "right knee problem and worsening of her condition from January, 2011." He opined that her current "chondromalacia and meniscal pathology, [were] a continued progression of the problems associated with her initial injury." Dr. Folk stated that "within a degree of reasonable medical certainty ... the current problems are due to the progression of the pathology that she sustained with the initial injury." Appellant remained off work and claimed total disability compensation through July 15, 2011.

By decision dated and finalized October 27, 2011, an OWCP hearing representative affirmed the prior denial of appellant's claim for recurrence of disability. The hearing representative found that she did not submit medical evidence establishing a material change in the accepted right knee conditions or that her right knee condition continued to be related to the August 14, 2009 injury. He noted that Dr. Folk did not specify which objective clinical findings demonstrated a worsening of the accepted condition as of January 5, 2011.

In a November 15, 2011 letter, appellant requested reconsideration. She submitted November 1, December 9 and 14, 2011 and January 6, 2012 reports from Dr. Jyoti Math, an attending physiatrist, who provided a history of injury and treatment, with current findings of pain and swelling of the right knee. Appellant related that her knee locked occasionally and gave way, resulting in a fall in October 2011. Dr. Math diagnosed a right medial meniscus tear, osteoarthritis and internal derangement of the right knee, chondromalacia and chronic pain. She

prescribed medication that was effective in reducing appellant's pain symptoms. Dr. Math recommended a functional capacity evaluation.⁴

By decision dated February 29, 2012, OWCP denied appellant's claim for recurrence of disability on the grounds that the new medical evidence submitted was insufficient to establish a spontaneous worsening on January 5, 2011 of the accepted right medial meniscus tear and chondromalacia of the patella.

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."⁵

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁶ This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁷ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.⁸

ANALYSIS

OWCP accepted that appellant sustained a torn right medial meniscus with chondromalacia of the patella. Appellant returned to work in November 2010. She claimed a recurrence of disability commencing January 5, 2011, at which time she was performing modified duty. Appellant thus has the burden of providing sufficient evidence to establish either

⁴ Appellant also submitted an authorization request for physical therapy and duplicates of February 23, 2010 medical reports.

⁵ 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 Philip L. Barnes*, 55 ECAB 426 (2004).

⁶ *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

⁸ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

an objective worsening of the accepted conditions or in her work requirements, such that she was no longer able to perform her light-duty job.⁹

Appellant asserted that the accepted right knee injuries worsened on January 5, 2011 rendering her totally disabled for work. In support of her claim, she submitted reports from Dr. Folk, an attending physician Board-certified in sports medicine. In January 5, 2011 reports, Dr. Folk noted increased right knee pain, administered an injection and provided work restrictions. He diagnosed internal derangement of the right knee with pes bursitis. However, Dr. Folk did not identify specific clinical findings indicating a worsening of the accepted conditions. He diagnosed two conditions not accepted by OWCP, as well as a saphenous neuroma on April 3, 2011. Also, Dr. Folk did not find appellant totally disabled for work.

On June 2, 2011 Dr. Folk posited that the internal derangement of the right knee was a “direct extension” of the accepted conditions, but did not explain why. In an August 24, 2011 report, he opined that appellant’s current right knee condition was due to the progression of the accepted chondromalacia and meniscal pathology. However, Dr. Folk did not find that any of the accepted conditions disabled her for work on and after January 5, 2011. Therefore, his opinion is insufficient to meet appellant’s burden of proof.¹⁰

Appellant also submitted reports dated from November 1, 2011 to January 6, 2012 from Dr. Math, an attending physiatrist, who did not address whether appellant’s condition spontaneously worsened on January 5, 2011. Therefore, Dr. Math’s opinion is insufficient to establish the claimed recurrence of disability.

OWCP advised appellant by March 28, 2011 letter to submit rationalized medical evidence regarding whether the accepted conditions worsened on January 5, 2011 as claimed. Appellant did not submit such evidence. Therefore, OWCP properly denied her claim for recurrence of disability.

On appeal, counsel asserted that OWCP’s February 29, 2012 decision was “contrary to fact and law.” As stated, appellant did not submit sufficient medical evidence to establish that the accepted right knee injuries spontaneously worsened on January 5, 2011 as alleged. Therefore, OWCP properly found that she did not establish the claimed recurrence of disability.

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.

⁹ *Albert C. Brown supra* note 6.

¹⁰ *Id.*

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability commencing January 5, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 29, 2012 is affirmed.

Issued: March 19, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board