

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

---

**W.K., Appellant**

**and**

**DEPARTMENT OF COMMERCE, NATIONAL  
OCEANIC & ATMOSPHERIC  
ADMINISTRATION, Woods Hole, MA,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 13-1452  
Issued: November 26, 2013**

*Appearances:*  
*Brian Keane, Esq., for the appellant*  
*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 June 3, 2013 appellant, through his attorney, filed a timely appeal from the February 25, 2013 merit 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 his burden of proof to establish disability on or after December 1, 2011.

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On December 6, 2011 appellant then a 51-year-old able-bodied seaman filed a traumatic injury claim, Form CA-1, alleging that on December 1, 2011 he slipped and fell multiple times on an agency ship, the Delaware II. He asserted that he injured his left knee, left elbow, right shoulder and right foot/ankle.<sup>2</sup> A witness indicated on the form that he saw appellant fall on the ship at least three times on December 1, 2011. Appellant stopped work on December 3, 2011.

Appellant was initially seen on December 6, 2011 by Dr. James Burke, an attending Board-certified emergency physician, who reported that he was out to sea and fell onto his left side three days prior and he complained of left knee, left ankle, left wrist and lower back pain. Physical examination of both knees, ankles, elbows wrists and hands showed no deformity, ecchymosis, swelling, lacerations, hematoma, erythema or loss of range of motion. Dr. Burke stated that the only finding of tenderness to palpation was in the anterior and lateral areas of appellant's left knee and noted that there were no sensory deficits in his extremities. He stated that December 6, 2011 x-rays of appellant's left knee showed mild degenerative changes and trace effusion but indicated that there was no fracture or subluxation. Dr. Burke diagnosed contusions of appellant's left knee, ankle and elbow and lumbar strain. It was noted that appellant was discharged to his home and was able to ambulate without assistance.

In a December 9, 2011 report, Dr. Arun Ramappa, an attending Board-certified orthopedic surgeon, stated that appellant provided a history of falling on a ship on December 1, 2011. He had been wearing a left knee immobilizer since that time and reported that his left knee was "mostly improved" and that he was eager to return to work. Examination of the left knee revealed only trace effusion and noted that range of motion was to 135 degrees. With respect to both legs, appellant could perform straight leg raising and extension without difficulty, the medial and lateral joint lines were nontender to palpation, patellofemoral compression did not elicit pain, ligamentous laxity was normal and the neurovascular condition was intact. Dr. Ramappa noted that x-rays of appellant's left knee showed no fractures, dislocations or other abnormalities and stated, "[Appellant] sprained his knee in a fall." He further noted, "We advised ice and [nonsteroidal anti-inflammatory drugs] and gradual return to work. We have filled out paperwork for [appellant] to return to work on December 19<sup>th</sup>. Dr. Ramappa may discontinue use of the knee immobilizer. He will follow up with us if the need arises."

OWCP accepted appellant's claim for a left knee sprain, left ankle contusion and left elbow contusion. Appellant filed a claim for compensation, Form CA-7, alleging entitlement to wage-loss compensation for the period January 16 to 28, 2012 due to these injuries and later filed a Form CA-7 claiming entitlement to wage-loss compensation from December 1, 2011 "to continuing." He was paid continuation of pay from December 3 to 18, 2011, but he did not return to work on December 19, 2011 as instructed by Dr. Ramappa. The employing establishment terminated appellant on January 11, 2012.<sup>3</sup>

---

<sup>2</sup> Appellant checked a box to claim entitlement to continuation of pay.

<sup>3</sup> Appellant started working for the employing establishment early in 2011 and was still in a probationary status when he was terminated.

In a report cosigned on January 27, 2012 by Kristen Ayers, a physician's assistant, and Dr. Ramappa,<sup>4</sup> it was noted that appellant reported that he was playing golf a few weeks after his December 1, 2011 injury and that when he took a swing he felt his left knee cap slip and dislocate. Appellant indicated that he saw a medical provider at the course who was able to relocate the knee. He had been in a left knee immobilizer since that time. Dr. Ramappa and Ms. Ayers indicated that physical examination of appellant's left knee revealed range of motion of 130 degrees, normal neurovascular findings, stable ligamentous laxity and some apprehension of the patella on palpation.<sup>5</sup> It was noted, "[Appellant] injured his knee. His initial injury while at work. Appellant exacerbated this while golfing." A recommendation was made to obtain magnetic resonance imaging (MRI) scan testing of appellant's left knee to assess medial meniscus and cartilage defects. In a January 27, 2012 note, Ms. Ayers stated that he was excused from work until further notice "secondary to Dec[ember] 2011 knee injury (primary injury)."

An MRI scan test of February 15, 2012 of appellant's left knee showed laxity of the anterior cruciate ligament denoting a sprain with no tear identified. The posterior, medial and lateral cruciate ligaments were intact and there were no meniscal tears. There were full-thickness articular cartilage defects within the femoral trochlea and along the medial facet of the patella.

In a February 24, 2012 letter, Dr. Kristian F. McCoy, an attending chiropractor, stated that appellant was seen for injuries "sustained during a work-related incident on a ship at sea on or about December 1, 2011." She noted, "On February 24, 2011 at the time of his initial evaluation he [was] temporarily totally disabled."

In a February 28, 2012 letter, OWCP requested that appellant provide additional factual and medical evidence in support of his disability claim, including additional information about his golfing injury and his failure to return to work on December 19, 2011.

In a brief note dated March 5, 2012, Dr. Ramappa stated that appellant "was unable to return to work due to his left knee injury [in] December 2011. This injury was not caused by his golf warm up swing." In a March 7, 2012 note, Dr. Ramappa noted that appellant "will be unable to return to work due to his left knee injury on December 1, 2011." He indicated that appellant could not commence with his physical therapy until 10 to 15 days from March 2, 2012. Appellant's physical therapist wanted to continue therapy after the swelling in appellant's left knee went down.<sup>6</sup>

In a May 17, 2012 report, Dr. Ayesha Abdeen, an attending Board-certified orthopedic surgeon, provided a history of appellant falling onto his left knee while on a boat on

---

<sup>4</sup> In a February 29, 2012 addendum, Dr. Ramappa stated that he evaluated appellant and was physically present with Ms. Ayers on January 27, 2012. He noted that he formulated the treatment plan as outlined in the report.

<sup>5</sup> The findings of January 27, 2012 x-rays of appellant's left knee showed mild degenerative changes of his left knee.

<sup>6</sup> In an April 9, 2012 note, Dr. Ramappa stated that appellant needed to stop physical therapy until May 1, 2012 in order for the swelling of his left knee to go down and to minimize the bruising.

September 1, 2011. He did not mention the golfing injury to the left knee previously reported by appellant. Physical examination of appellant's left knee revealed a small effusion with joint tenderness medially and laterally, pain with light touch and range of motion to 90 degrees. Dr. Abdeen indicated that January 27, 2011 x-rays of appellant's left knee showed mild degenerative joint disease. February 15, 2012 MRI scan testing showed laxity of the left anterior cruciate ligament with no tear and a full-thickness articular cartilage defect in the patella. Dr. Abdeen noted that appellant inquired about a total left knee arthroplasty. He stated that such surgery was not indicated, but that appellant might benefit from cartilage transplant surgery. Dr. Abdeen noted:

“[Appellant] presents with left knee pain, which is likely due to patellofemoral cartilage defect that occurred at the time of an injury in October of last year. It is possible that he sustained a transient dislocation or subluxation of the patellofemoral joint. There is no evidence of recurrent dislocation. [Appellant] does have early osteoarthritis.”

In an August 2, 2012 decision, OWCP denied appellant's claim for wage-loss compensation for the period January 16 to 28, 2012. It indicated that the medical evidence submitted by him failed to establish that his claimed disability for this period was due to his December 1, 2011 work injury. In a September 4, 2012 decision, OWCP denied appellant's claim for wage-loss compensation for the period December 1, 2011 and continuing. The medical evidence submitted by him failed to establish that his claimed disability for this period was due to his December 1, 2011 work injury.<sup>7</sup>

Appellant requested a telephonic hearing with an OWCP hearing representative. Prior to the hearing, he submitted an August 7, 2012 report describing follow-up treatment for left knee surgery he underwent on July 24, 2012. Appellant did not submit a surgery report at that time.

During the telephonic hearing held on December 10, 2012, counsel stated that appellant initially injured his left knee on December 1, 2011 and later suffered reinjury from a golf swing. He noted that Dr. Ramappa had stated on February 17, 2012 that appellant was unable to return to work but that the golf swing did not cause his injury. Counsel indicated that appellant's left knee problems were caused by the three falls that he sustained on the ship on December 1, 2011. He argued that appellant was not able to return to work and noted that he spent most of his time in an immobilizer and walked with a cane. Counsel indicated that he was not sure about the date of appellant's golfing incident but believed that it occurred in early January 2012.

After the hearing, appellant submitted a June 14, 2012 report in which Dr. Jose A. Abrego, an attending Board-certified internist, diagnosed degenerative arthritis of his left knee and indicated that he might require a total knee replacement. He also submitted a July 24, 2012 report of his left knee surgery showing that Dr. Ramappa performed arthroscopic chondroplasty of his left trochlear groove and a partial left lateral meniscectomy. There is no indication in the record that this surgery was authorized by OWCP.

---

<sup>7</sup> In both decisions, OWCP indicated that appellant had not shown that his claimed disability was not due to his reported golfing incident.

In a December 11, 2012 note, Dr. Ramappa stated that appellant was “unable to return to work due to an injury which occurred on December 1, 2011. While working on a ship [appellant] slipped and fell and sustained an injury of his left knee.”

In a February 25, 2013 decision, OWCP’s hearing representative affirmed OWCP’s prior decisions denying disability compensation on and after December 1, 2011.<sup>8</sup> She indicated that appellant did not submit medical evidence establishing disability for the claimed period.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>9</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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>10</sup>

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>11</sup>

Under FECA, the report of a nonphysician, including a physician’s assistant, does not constitute probative medical evidence.<sup>12</sup> Under section 8101(2) of FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.<sup>13</sup> OWCP’s regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.<sup>14</sup>

---

<sup>8</sup> OWCP’s hearing representative stated that she was affirming the August 2, 2012 decision but the content of her decision shows that she also effectively affirmed the September 4, 2012 decision.

<sup>9</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>10</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>11</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009).

<sup>12</sup> *L.L.*, Docket No. 13-829 (issued August 20, 2013).

<sup>13</sup> 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

<sup>14</sup> 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121 (1990).

## ANALYSIS

OWCP accepted that appellant sustained a left knee sprain, left ankle contusion and left elbow contusion on December 1, 2011. Appellant claimed entitlement to wage-loss compensation for the period December 1, 2011 and continuing.

The Board finds that appellant did not submit sufficient medical evidence to establish entitlement to wage-loss compensation for work-related disability sustained on or after December 1, 2011, other than for periods for which he has already been compensated.<sup>15</sup>

In support of his claim, appellant submitted a January 27, 2012 note in which Ms. Ayers, an attending physician's assistant, stated that he was excused from work until further notice "secondary to Dec[ember] 2011 knee injury (primary injury)." The submission of this note would not support appellant's claim because under FECA the report of a nonphysician, including a physician's assistant, does not constitute probative medical evidence.<sup>16</sup> In a February 24, 2012 letter, Dr. McCoy, an attending chiropractor, stated that appellant was seen for injuries "sustained during a work-related incident on a ship at sea on or about December 1, 2011." He noted, "On February 24, 2011 at the time of [appellant's] initial evaluation he [was] temporarily totally disabled." However, Dr. McCoy's report does not constitute probative medical evidence because he did not indicate that spinal subluxations were demonstrated by x-rays to exist.<sup>17</sup>

In a brief note dated March 5, 2012, Dr. Ramappa stated that appellant "was unable to return to work due to his left knee injury on December 2011. This injury was not caused by his golf warm up swing." In a March 7, 2012 note, Dr. Ramappa noted that appellant "will be unable to return to work due to his left knee injury on December 1, 2011." He indicated that appellant could not commence with his physical therapy until 10 to 15 days from March 2, 2012 because his physical therapist wanted him to wait until the swelling in his left knee went down. In a December 11, 2012 note, Dr. Ramappa stated that appellant was "unable to return to work due to an injury which occurred on December 1, 2011. While working on a ship [appellant] slipped and fell and sustained an injury of his left knee."

In these brief notes, Dr. Ramappa provided an opinion that appellant had disability for various periods due to his December 1, 2011 work injury. These reports, however, are of limited probative value on the relevant issue of the present case in that he did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>18</sup> Dr. Ramappa did not

---

<sup>15</sup> Appellant stopped work on December 3, 2011 and received continuation of pay for the period December 3 to 18, 2011. In a December 9, 2011 report, Dr. Ramappa, an attending Board-certified orthopedic surgeon, stated that appellant sprained his knee in a December 1, 2011 injury and recommended that he stay off work until December 19, 2011. OWCP regulations provide that wage-loss compensation is not payable while an injured employee is in a continuation of pay status. 20 C.F.R. § 10.401(a).

<sup>16</sup> See *supra* note 12. Ms. Ayers coauthored a January 27, 2012 examination report with Dr. Ramappa, but Dr. Ramappa did not provide any opinion on disability in that report.

<sup>17</sup> See *supra* notes 13 and 14.

<sup>18</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

describe appellant's December 1, 2011 left knee injury in any detail or explain how such a soft-tissue injury could have been competent to cause disability for the identified periods. In connection with his disability opinion, he did not provide any notable discussion of the findings on examination and diagnostic testing regarding appellant's left knee. Before OWCP and on appeal, counsel argued that appellant's claim was supported by the fact that Dr. Ramappa stated that appellant's reported golfing incident (occurring several weeks after December 1, 2011) was not the cause of his left knee injury. However, Dr. Ramappa did not provide any explanation of why he felt that the reported golfing incident was not responsible for appellant's left knee condition. The Board notes that the medical records from early December 2011 show relatively benign left knee findings, but the first relevant medical report of record (dated January 27, 2011) from the period after appellant's golfing incident shows increased left knee findings. The fact that Dr. Ramappa did not fully address the possible effects of the golfing incident means that his report is of limited probative value for the further reason that his causal relationship opinion is not based on a complete and accurate factual and medical history.<sup>19</sup>

In a May 17, 2012 report, Dr. Abdeen, an attending Board-certified orthopedic surgeon, provided a history of appellant falling onto his left knee while on a boat on September 1, 2011, rather than the correct date of December 1, 2011. He did not mention the golfing injury to the left knee previously reported by appellant. Dr. Abdeen noted that appellant presented with left knee pain, which was "likely due to patellofemoral cartilage defect that occurred at the time of an injury in October of last year." He stated, "It is possible that he sustained a transient dislocation or subluxation of the patellofemoral joint. There is no evidence of recurrent dislocation. Dr. Abdeen does have early osteoarthritis." The Board notes that this report has limited probative value on the relevant issue of the present case for several reasons. Dr. Abdeen did not provide a detailed, accurate account of appellant's December 1, 2011 work injury and did not mention his reported golfing incident. Moreover, he did not explain how the accepted work incident could have caused a left patellofemoral cartilage defect and he did not identify any specific periods of work-related disability. Appellant submitted other medical reports, but none of these reports contained an opinion on whether he had disability on or after December 1, 2011 due to his December 1, 2011 work injury.

For these reasons, appellant has not shown that he sustained disability on or after December 1, 2011 due to his December 1, 2011 work injury and OWCP properly denied his claim.<sup>20</sup>

---

<sup>19</sup> See *supra* note 10. On July 24, 2012 Dr. Ramappa performed arthroscopic chondroplasty of appellant's left trochlear groove and a partial left lateral meniscectomy. There is no indication in the record that this surgery was authorized by OWCP and there are no medical reports containing a rationalized medical opinion indicating that appellant's December 1, 2011 work injury contributed to the need for surgery.

<sup>20</sup> The record contains a Form CA-16 signed by the employing establishment official on December 6, 2011. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

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 did not meet his burden of proof to establish that he sustained disability on or after December 1, 2011 due to his December 1, 2011 work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 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