

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

S.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
HUNTINGTON MEDICAL CENTER,
Huntington, WV, Employer**

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**Docket No. 14-1643
Issued: April 9, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2014 appellant filed a timely appeal of a May 1, 2014 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 over the merits of the case.

ISSUE

The issue is whether appellant established that she was entitled to disability compensation for intermittent hours from July 5 to December 18, 2012 when she attended aquatic therapy.

FACTUAL HISTORY

On June 12, 2005 appellant, then a 47-year-old nurse, tripped on a floor mounted door stop and twisted her knee while in the performance of duty. OWCP accepted her claim for a left knee medial meniscus tear and medial collateral ligament sprain. Appellant underwent

¹ 5 U.S.C. §§ 8101-8193.

arthroscopic surgery on October 19, 2005. She returned to light-duty work and received intermittent wage-loss compensation for periods that she did not work.

Dr. Allen Young, a Board-certified orthopedist, treated appellant beginning July 8, 2005. He noted the work injury and diagnosed sprain of the knee and leg, dislocation of the patella, and left knee medial meniscus tear. A left knee magnetic resonance imaging (MRI) scan revealed grade 2 medial collateral ligament sprain and possible small peripheral tear of the medial meniscus, and low grade chondromalacia patella. On October 19, 2005 Dr. Charles E. Giangarra, a Board-certified orthopedist, performed a partial medial meniscectomy and chondroplasty of the left knee. He diagnosed torn medial meniscus of the left knee and degenerative joint disease of the left knee.

On September 19, 2005 Dr. Giangarra requested authorization for aquatic therapy from September 26 to October 26, 2005 and February 10 to March 25, 2006, twice a week. OWCP authorized the treatment. In requests dated March 28 and October 29, 2008 and September 2, 2009, Dr. Young requested aquatic therapy twice a week from January 8, 2008 to April 29, 2009. On January 28, 2010 OWCP authorized 21 units of aquatic therapy from January 8 to March 27, 2008.

Appellant submitted a (Form CA-7), claim for compensation, for leave without pay for the time that she attended water therapy for the period April 3, 2009 to January 21, 2010 and January 26 to October 21, 2010. These claims were partially paid.²

Appellant submitted reports from Dr. Young from June 8, 2010 to February 14, 2011, who diagnosed sprain of other sites of the left knee and leg, and tear of the left knee medial cartilage or meniscus. Dr. Young noted that she was overweight with mild-to-moderate tenderness of the left knee medially. He continued appellant's aqua therapy as it helped her stay active and continued modified work duties. Dr. Young continued submitting orders for aquatic therapy twice a week.

Appellant submitted CA-7 forms claiming compensation for intermittent leave without pay for the periods June 30, 2011 to June 30, 2012 and October 18, 2011 to April 12, 2012. These claims were partially paid.³

Appellant submitted reports from Dr. Young dated August 14 and November 26, 2012, who noted findings on physical examination of obesity, and a limp with mild-to-moderate

² In a March 4, 2011 decision, OWCP granted appellant's claim for wage-loss compensation incidental to medical treatment for 2.25 hours on February 9, 2010, 2.5 hours on June 8, 2010, and 2.5 hours on October 4, 2010. It denied compensation multiple other dates. On September 7, 2011 an OWCP hearing representative affirmed the March 4, 2011 decision with regard to denying compensation for the dates of February 23 and June 10, 2010, and reversed the decision and granted compensation for other claimed dates from January 22 to October 21, 2010.

³ On December 4, 2012 OWCP denied appellant's claim for intermittent wage-loss compensation from June 30, 2011 to June 30, 2012. It noted that it had previously granted compensation for 2.5 hours on September 14, 2011. On April 2, 2013 an OWCP hearing representative affirmed the December 4, 2012 decision with regard to August 9, October 11 and 25, November 17, and December 14, 15 and 22, 2011, January 5, May 10 and 17, 2012. The hearing representative set aside the decision with regard to the other dates and instructed OWCP to request that Dr. Young submit a report that addressed appellant's need for aqua therapy for the period June 30, 2011 to June 30, 2012.

tenderness medially. She reported stopping aqua therapy and having increased pain in both knees. Appellant noted that she changed jobs at the employing establishment and was on her feet. Dr. Young diagnosed left knee and leg sprain and tear of the medial meniscus of the left knee. He ordered that appellant return to aqua therapy twice a week for six months. Appellant submitted orders from Dr. Young dated December 14, 2011 and April 27, 2012 requesting authorization for aquatic therapy twice a week for six months.

On April 18, 2013 appellant submitted a CA-7 form, claiming 88.5 hours of compensation for the period July 5 to December 18, 2012. She requested compensation for leave without pay for two hours per day on July 5, August 14, 28 and 30, October 16, November 27 and December 11, 2012; 2.5 hours for November 26, 2012; and three hours for August 7, 9, 16 and 23, September 4, 6, 11, 20 and 27, October 2, 9, 11, 18, 23, 25 and 30, November 1, 6, 15 and 20, and December 4, 6, 13 and 18, 2012.

In an April 19, 2013 letter, OWCP requested that Dr. Young provide medical rationale as to why appellant continued to need aqua therapy in relation to her work injury. It requested that he address whether aqua treatment was medically necessary for her work injury of June 12, 2005 and, if so, asked that he provide rational supporting that opinion with objective findings.

In a letter dated April 23, 2013, OWCP requested that appellant submit medical evidence establishing partial disability from July 5 to December 18, 2012. It authorized payment for August 14, 2012 for two hours and November 26, 2012 for 2.5 hours.⁴

Appellant submitted a March 25, 2013 report from Dr. Young who continued to treat her for pain and stiffness in the left knee and noted that she was doing poorly. She reported continuing aqua therapy twice a week which kept her knee loose. Dr. Young noted findings of obesity, a limp, and mild to moderate tenderness medially. He diagnosed left knee and leg sprain, and a left medial meniscus tear. Dr. Young continued aqua therapy twice a week for six months so appellant could remain active and have less pain.

In a May 31, 2013 decision, OWCP denied appellant's claim for compensation for the period June 30, 2011 to June 30, 2012. On August 1, 2013 an OWCP hearing representative set aside the May 31, 2013 decision and remanded the matter for further medical development. The hearing representative instructed OWCP to refer appellant to a second opinion physician for a determination of the relationship between her current symptoms and the 2005 work injury, the need for aqua therapy, the need for surgery, and work restrictions due to the 2005 work injury.

Appellant submitted June 21 and July 22, 2013 reports from Dr. Young, who noted that appellant reported pain and stiffness in both knees. Dr. Young recommended aqua therapy twice a week because it kept appellant more functional and active. He noted that findings were unchanged and he restated his previous diagnoses. Dr. Young noted that, with regard to aqua therapy, appellant's knee was bad from the injury and she could not get around well. Weekly, aqua therapy kept appellant's knee from stiffening and thus allowed her to continue to function with her knee condition at work and home. Dr. Young noted that, as the need for therapy was

⁴ The time allowed on August 14 and November 26, 2012 correspond with dates on which Dr. Young treated appellant.

due to the work injury and this modality kept her functional and able to work, her employing establishment should pay for the time she was off work to attend the aqua therapy.

In a decision dated August 23, 2013, OWCP denied appellant's claim for compensation for the period July 5 to December 18, 2012, but noted that two hours would be paid for November 27, 2012.⁵ Appellant requested an oral hearing.⁶

OWCP referred appellant to Dr. E. Gregory Fisher, a Board-certified orthopedist, for a second opinion. In a December 4, 2013 report, Dr. Fisher, reviewed her history and examined her. On examination, appellant was morbidly obese and had a waddled bilateral altered gait. Left knee examination revealed nontender healed puncture wounds, tenderness on palpation over the medial and anterior medial side, no pain on the lateral side, and no joint effusion. The knee was stable with negative anterior and posterior drawer signs. The Lachman's test was negative, and no medial or lateral instability on varus or valgus stresses. Range of motion was limited. Dr. Fisher noted the medial collateral ligament sprain was a soft tissue injury and healed and resolved within two months of the injury and was not clinically present on examination. He noted that the tear of the left medial meniscus was treated appropriately by the partial medial meniscectomy in October 2005 and that there were no clinical findings on examination of a medial meniscus tear. Dr. Fisher opined that the accepted conditions were no longer present and resolved. The only residuals of the June 12, 2005 work injury were the healed left knee puncture wounds. Dr. Fisher opined that appellant was able to perform her full duties based on examination findings and a review of the statement of accepted facts, job requirements and obtaining a functional history. He stated that she did not have medical restrictions from the June 12, 2005 work injury. Dr. Fisher noted that appellant reached maximum medical improvement in early 2006 after returning to work. There were no treatment recommendations for the work-related medial meniscus tear and medial collateral ligament sprain of the left knee since these injuries were no longer clinically present. Dr. Fisher noted that aqua therapy was prescribed after a meniscectomy for no more than 12 visits in a 12-week period and indicated that appellant had aqua therapy twice a week for over seven years which was excessive and patient dependent. He reiterated that no further treatment was necessary for the accepted conditions as they were no longer present and any treatment for the left knee was due to nonwork-related conditions. In a work capacity evaluation Dr. Fisher noted that appellant could work full time subject to restrictions that were not work related.

On February 20, 2014 OWCP issued a notice of proposed termination of compensation benefits on the grounds that Dr. Fisher's report dated December 4, 2013 established no residuals of the work-related employment conditions.⁷

⁵ Dr. Young treated appellant on November 27, 2012.

⁶ On October 31, 2013 appellant claimed intermittent wage-loss compensation from January 2 to September 26, 2013. On November 12, 2013 OWCP authorized payment for 2.5 hours on March 25 and July 22, 2013 for medical appointments with Dr. Young. In a January 31, 2014 decision, it denied the claim for compensation for the period January 2 to September 26, 2013. On February 10, 2014 appellant requested an oral hearing. OWCP issued no decision with respect to the hearing request prior to the filing of the instant appeal.

⁷ OWCP issued no final decision with respect to this proposal prior to the filing of the instant appeal.

In a letter dated March 14, 2014, appellant requested reimbursement for leave without pay for the time that she attended water therapy. She asserted that the water therapy classes and pain medications allowed her to work. Appellant also asked that her right knee be included in her claim as a consequential injury. She submitted reports from Dr. Young dated August 14 and November 26, 2012 and June 21 and July 22, 2013, all previously of record. Appellant submitted orders from Dr. Young dated August 14 and November 26, 2012, March 25, July 22 and October 10, 2013 and February 26, 2014, which prescribed aquatic therapy.

Appellant also provided reports from Dr. Young. An April 27, 2012 report from Dr. Young noted no changes on examination and diagnosed left knee sprain and tear of the medial meniscus. He continued aqua therapy and regular modified duty. An October 10, 2013 report from Dr. Young restated appellant's diagnoses and related that she reported continuing aqua therapy kept her knee loose and avoided more aggressive treatment. He continued aqua therapy twice a week. On February 26, 2014 Dr. Young noted appellant's continued issues with her left knee. Appellant reported being seen by Dr. Fisher who found that her condition had resolved and that aquatic therapy was not necessary. Dr. Young restated his diagnoses and advised that, after her left knee surgery, arthritic inflammation set in and was persisting. Dr. Young did not believe appellant's weight was the issue and noted that her weight decreased and she still had pain.

In a March 17, 2014 telephone hearing, appellant indicated that she was not currently claiming reimbursement for aquatic therapy sessions, rather she was claiming the resulting wage loss for attending aquatic therapy due to her accepted work-related condition.

In a decision dated May 1, 2014, the hearing representative affirmed OWCP's decision dated August 23, 2013.

LEGAL PRECEDENT

Section 8103(a) of FECA states that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. The Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.⁸

With respect to claimed disability for medical treatment, section 8103 provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries. However, OWCP's obligation to pay for medical expenses and other expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. A claimant has the burden of proof, which includes the submission of supporting rationalized medical evidence.⁹

⁸ *Joseph P. Hofmann*, 57 ECAB 456 (2006); see 5 U.S.C. § 8103.

⁹ *Carol A. Lyles*, 57 ECAB 265 (2005).

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.¹⁰ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.¹¹ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.¹² To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition, and the accepted injury.¹³

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.¹⁴

ANALYSIS

OWCP accepted that appellant sustained employment-related medial meniscus tear of the left knee and left medial collateral ligament sprain from a June 12, 2005 work injury. Appellant had arthroscopic surgery on October 19, 2005. She claimed compensation for intermittent disability and time lost from work due to attending aquatic therapy from July 5 to December 18, 2012. OWCP did not authorize the underlying aqua therapy treatment. At her March 17, 2014 hearing, appellant indicated that she was not claiming reimbursement for the costs of the aquatic therapy. She has the burden to establish through probative medical evidence that she was disabled during this period or undergoing authorized medical treatment causally related to her accepted injury.

OWCP referred appellant to Dr. Fisher, who in a December 4, 2013 report, noted that his examination was essentially normal with tenderness on palpation over the medial side and anterior medial side of the left knee, and advised that appellant was morbidly obese. Dr. Fisher opined that the accepted medial collateral ligament sprain was a soft tissue injury that resolved within two months of the injury and was no longer clinically present. He advised that the left knee medial meniscus tear was surgically treated by the partial medial meniscectomy in 2005 and that there were no current clinical findings of a medial meniscus tear. Based on this, Dr. Fisher opined that the accepted conditions had resolved. He noted that the only residuals of the June 12, 2005 work injury were the healed puncture wounds over the left knee. Dr. Fisher opined that appellant was able to perform her full duties, did not have medical restrictions from the June 12, 2005 work injury, and needed no further treatment for the resolved injuries. He

¹⁰ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Id.*

¹² See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ C.S., Docket No. 08-2218 (issued August 7, 2009).

¹⁴ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

noted that aqua therapy was prescribed after a meniscectomy for no more than 12 visits in a 12-week period; however, the record revealed that appellant had aqua therapy twice a week for over seven years which he opined was excessive. Dr. Fisher noted that any treatment or restrictions for the left knee were due to nonwork-related conditions.

Appellant submitted reports from Dr. Young dated June 21 and July 22, 2013, who treated her for a work-related left knee injury. Dr. Young reported continuing aqua therapy twice a week, which kept her more functional, active, and reduced pain. He diagnosed left knee and leg sprain and tear of the medial meniscus. Dr. Young noted that appellant sustained a bad work-related knee injury, could not get around well, and that aqua therapy weekly helped reduce stiffening and allowed her to continue functioning at work and home. He opined that the need for aqua therapy was due to her work-related injury and kept her functional and able to work and that her employing establishment should pay for the time she is off work. Dr. Young did not, however, address specific dates for which appellant claimed compensation for the period July 5 to December 18, 2012 but generally opined that OWCP should pay for the time she was off to attend water therapy because it was related to her work injury. The issue of whether appellant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁵ Dr. Young did not explain the medical reasons why her disability to attend aqua therapy was attributable to her work injury and reasonably necessary.

On February 26, 2014 Dr. Young noted appellant's current status and her examination by Dr. Fisher. He advised that arthritic inflammation set in after her meniscal repair, was persisting, and that aqua therapy kept her knee loose. Dr. Young further indicated that appellant's weight was not an issue in her disability. He did not specifically address how the claimed work-related disability from July 5 to December 18, 2012 was causally related to her June 12, 2005 employment injury or address why she would continue to reasonably require aquatic therapy in view of Dr. Fisher's opinion that the work-related conditions had resolved and that aquatic therapy for over seven years was excessive. Therefore, this report is insufficient to meet appellant's burden of proof.

OWCP referred appellant to Dr. Fisher for a second opinion examination. Dr. Fisher directly addressed the aqua therapy indicating that the current aqua therapy was excessive and that no further treatment was necessary

Other reports from Dr. Young noted appellant's status and recommended aqua therapy. However, none of these reports clearly explain why she had any employment-related disability from July 5 to December 18, 2012 due to the need for a mode of treatment, which OWCP did not deem reasonably necessary for her condition. Therefore, these reports are insufficient to meet her burden of proof.

¹⁵ *Id.*

CONCLUSION

The Board finds that appellant has not established her claim for compensation for intermittent disability from July 5 to December 18, 2012 causally related to her accepted work injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 1, 2014 is affirmed.

Issued: April 9, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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