

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

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**T.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Masillion, OH, Employer**

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**Docket No. 15-266  
Issued: April 24, 2015**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 17, 2014 appellant, through counsel, filed a timely application for review from a July 24, 2014 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 OWCP properly denied appellant's claim for wage-loss compensation for intermittent disability for the period July 13 through August 23, 2013.

**FACTUAL HISTORY**

On June 4, 2013 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 3, 2013, he reinjured his right knee while stepping down into a ditch to approach a mailbox. A supervisor checked a box indicating that appellant's injury was

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

caused by willful misconduct or intent to injury oneself, noting that he failed to report an ongoing hazard that eventually led to this injury. Appellant's regular schedule was noted as Monday through Saturday, from 7:30 a.m. until 4:00 p.m., with a rotating Sunday shift. On September 13, 2013 OWCP accepted his claim for a tear of the medial meniscus of his right knee and sprain of the right knee and leg.<sup>2</sup>

In a work status note dated June 4, 2013, Dr. Karl Wodrich, Board-certified in emergency medicine, stated that appellant had a "restricted work start date" of June 4, 2013 and a "return to work start date" of June 6, 2013. He stated that appellant was injured at work. On the same date, Dr. Wodrich reported that appellant was walking the previous day, stepped into a ditch, and twisted his knee. He noted that appellant had prior arthroscopic surgeries on his knee. Dr. Wodrich diagnosed appellant with a right knee sprain and a possible ligamentous versus cartilaginous injury.

On June 17, 2013 Dr. Carly Day, Board-certified in physical medicine and rehabilitation, stated that appellant was able to return to work as of that day.

In a note dated July 9, 2013, Dr. David H. Krahe, a Board-certified orthopedic surgeon, stated that appellant was able to return to work on July 15, 2013 to case mail, with restrictions of standing for only 1 hour at a time with 15-minute breaks.

On July 30, 2013 appellant filed a claim for compensation for leave without pay from July 13 through 26, 2013. In a time analysis form, he noted that he was claiming 5.92 hours of leave without pay on July 20, 6.5 hours on July 22, 6.63 hours on July 23, 8 hours on July 24, 2013, and 6.26 hours on July 26, 2013.

On August 12, 2013 appellant filed a claim for compensation for leave without pay from July 24 through August 9, 2013. In a time analysis form, he noted that he was claiming 5.73 hours of leave without pay on July 27, 6.07 hours on July 29, 5.84 hours on July 30, 6.79 hours on July 31, 6.07 hours on August 1, 5.66 hours on August 5, 5.83 hours on August 6, 6.61 hours on August 7, 6.46 hours on August 8, and 6.33 hours on August 9, 2013.

In a note dated August 9, 2013, Dr. Krahe stated that appellant was scheduled for a total knee arthroplasty on August 12, 2013. He stated that, after that time, appellant would be incapacitated from work for at least 8 to 12 weeks.

Appellant submitted the results of an ultrasound of his bilateral lower extremities dated August 15, 2013 and the results of an x-ray of his right knee dated August 12, 2013. He submitted a report from Dr. Krahe dated July 24, 2013, in which Dr. Krahe stated that appellant was being seen for right knee arthritis and was scheduled for a right total knee arthroplasty.

On August 27, 2013 appellant filed a claim for compensation for leave without pay from August 10 through 23, 2013. In a time analysis form, he noted that he was claiming six hours of leave without pay on August 10, 2013 and eight hours of leave without pay on the days August 13 through 17, August 19, and 21 through 23, 2013.

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<sup>2</sup> OWCP had previously accepted loose bodies in the right knee under claim File No. xxxxxx089.

In a note dated August 28, 2013, Dr. Day stated that appellant was unable to return to work for two weeks due to a knee injury and clinical procedure.

In a report dated August 23, 2013, Dr. Krahe summarized the course of a right knee arthroplasty. He noted that appellant had been admitted on August 12, 2013 and discharged on August 16, 2013, and that his condition on discharge was stable. Dr. Krahe also authored an operative report dated August 12, 2013, noting that the preoperative and postoperative diagnoses were degenerative arthritis of the right knee, and that appellant tolerated the procedure well. This surgery was not approved by OWCP.

By letter dated September 13, 2013, OWCP requested from Dr. Krahe a well-reasoned medical opinion explaining how appellant's arthritis was a direct result of the incident of June 3, 2013 or medical conditions previously accepted as work related.

By letter dated October 10, 2013, counsel requested an update on the status of appellant's claims for compensation for wage loss.

On November 15, 2013 OWCP denied appellant's claim for compensation for leave without pay from July 13 through August 23, 2013. It stated that he had not provided sufficient medical evidence from a physician containing an opinion on the relationship between his arthritis and the surgery of August 12, 2013. OWCP further noted that the reports of Dr. Krahe prior to August 12, 2013 did not contain a well-reasoned medical opinion establishing that he was disabled due to his accepted work-related conditions.

On November 21, 2013 appellant, through counsel, requested a telephonic hearing before OWCP's Branch of Hearings and Review.

A hearing was held on May 12, 2014. Appellant testified that he had issues with his right knee before June 2013, noting that he had loose particles taken out in 1997 and residual pain from his letter carrier duties over the years afterward. He noted that, after the incident of June 3, 2013, he continued to work throughout the summer. Appellant stated that Dr. Krahe had told him that he had a tear in his knee but that he also had arthritis, and that fixing the tear alone would not be sufficient, requiring a total knee replacement. He missed time due to this surgery. Counsel noted that it appeared that appellant's claim for compensation was rejected because his claim was accepted for a tear of the meniscus, but notes from his physician indicated that the surgery was to repair arthritic changes. He argued that it was logical to anticipate that appellant might have some disability due to the meniscal tear in the days and weeks before his surgery. Counsel explained to appellant that he was going to attempt to secure a clarification from Dr. Krahe to explain how appellant's arthritis was related to the injury on June 3, 2013. OWCP's hearing representative stated that appellant needed to submit medical evidence establishing that time off taken after the date of injury and before surgery was due to the June 3, 2013 injury; and medical evidence establishing that the surgery and time off taken related to the surgery were also related to the June 3, 2013 incident.

In an impairment report dated May 27, 2014, Dr. Catherine W. Campbell, Board-certified in occupational and family medicine, provided an impairment rating for appellant's right knee. She did not address dates of disability.

By decision dated July 24, 2014, the hearing representative affirmed the decision dated November 15, 2013. It found that appellant had not submitted sufficient medical evidence to support his disability before August 12, 2013. The hearing representative noted that the surgery was performed for end-stage degenerative arthritis, which had not been established as related to the June 3, 2013 injury.

### **LEGAL PRECEDENT**

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>4</sup> Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>5</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>6</sup>

For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.<sup>7</sup> 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 her disability and entitlement to compensation.<sup>8</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.<sup>10</sup>

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<sup>3</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>4</sup> *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

<sup>5</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>6</sup> *Tammy L. Medley*, 55 ECAB 182 (2003); *see id.*

<sup>7</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005). *See also David H. Goss*, 32 ECAB 24, 27 (1980).

<sup>8</sup> *See William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>9</sup> *See Viola Stanko (Charles Stanko)*, 56 ECAB 436, 443 (2005); *see also Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (2005).

## ANALYSIS

OWCP accepted that appellant sustained a tear of the medial meniscus of his right knee and sprain of the right knee and leg by decision dated September 13, 2013. Appellant claimed that he was disabled intermittently from July 13 through August 12, 2013, at which time he had arthroscopic surgery that had not been approved by OWCP, and was totally disabled from August 12 through 23, 2013. OWCP initially denied his claim by decision dated November 15, 2013. A hearing representative affirmed this decision on July 24, 2014. Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence that he was disabled for work for the claimed period due to his accepted injuries.<sup>11</sup>

In a note dated July 9, 2013, Dr. Krahe stated that appellant was able to return to work on July 15, 2013 to case mail, with restrictions of standing for only 1 hour at a time with 15-minute breaks. In a note dated August 9, 2013, he stated that appellant was scheduled for a total knee arthroplasty on August 12, 2013. Dr. Krahe stated that, after that time, appellant would be incapacitated from work for at least 8 to 12 weeks. In a report from him dated July 24, 2013, he stated that appellant was being seen for right knee arthritis and was scheduled for a right total knee arthroplasty. In a report dated August 23, 2013, Dr. Krahe summarized the course of a right knee arthroplasty. He noted that appellant had been admitted on August 12, 2013 and discharged on August 16, 2013, and that his condition on discharge was stable. Dr. Krahe also authored an operative report dated August 12, 2013, noting that the preoperative and postoperative diagnoses were degenerative arthritis of the right knee, and that appellant tolerated the procedure well.

Dr. Krahe addressed specific dates of disability in his reports, but the diagnosis related to appellant's disability was arthritis rather than the accepted conditions of a tear of the medial meniscus of his right knee and sprain of the right knee and leg. At the hearing on May 12, 2014, both appellant's counsel and the hearing representative noted that a supplementary report from Dr. Krahe would explain how appellant's disability from July 13 through August 12, 2013 was related to his injury on June 3, 2013; and also how his surgery, or need for surgery due to arthritis, was related to the injury on June 3, 2013. However, no such report from Dr. Krahe was submitted. The only additional medical evidence submitted subsequent to the hearing was an impairment report from Dr. Campbell, which did not address specific dates of disability or the relation of appellant's arthritis to the injury of June 3, 2013. As appellant has not submitted medical reports containing medical rationale relating his dates of disability to his accepted conditions under claim File No. xxxxxx063, he has not met his burden of proof to establish disability for the period July 13 through August 23, 2013. Therefore, OWCP's July 24, 2014 decision denying appellant's claim for wage-loss compensation for these dates was proper under the facts and law of the case.

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.

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<sup>11</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for wage-loss compensation for the period July 13 through August 23, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 24, 2014 is affirmed.

Issued: April 24, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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