

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

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**W.B., Appellant**

**and**

**DEPARTMENT OF LABOR, MINE, SAFETY &  
HEALTH ADMINISTRATION, Dallas, TX,  
Employer**

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**Docket No. 15-1516  
Issued: December 4, 2015**

*Appearances:*  
*Lenin Perez, 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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On July 2, 2015 appellant filed a timely appeal of a March 31, 2015 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)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a recurrence of disability on May 16, 2014 causally related to his February 25, 2013 employment injury.

On appeal, appellant's representative argues that the medical evidence from appellant's attending physician established his claim for a recurrence of disability.

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

## **FACTUAL HISTORY**

On February 27, 2013 appellant, then a 63-year-old mine inspector, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 2013 due to rainy and slippery conditions he stepped off a curb on the employing establishment premises and twisted his right knee. On April 25, 2013 OWCP accepted his claim for sprain of the right lateral ligament of the right knee, sprain of the right medial collateral ligament of the right knee, ligament laxity, internal derangement of the right knee, and right knee effusion. On May 2, 2013 OWCP accepted the additional condition of right tear of the medial meniscus in the right knee.

Dr. Paul Maitino, an osteopath, performed surgical arthroscopy of the right knee with partial medial and lateral meniscectomies on September 23, 2013. Appellant returned to work on November 25, 2013 in a light-duty position. Dr. Maitino provided work restrictions on November 18, 2013, included no kneeling, no climbing, and no walking for more than two hours a day. Appellant accepted a light-duty position with these restrictions which entailed reviewing inspection reports, shredding documents, telephone calls regarding accident reports, issuing citations with reports, online training, and reviewing information and reports as they became available.

Dr. Maitino examined appellant on January 7, 2014 and opined that appellant had continued arthritic type pain in his right knee. He noted that appellant could walk up to three hours in an eight-hour day. On February 13, 2014 Dr. Maitino found that appellant had reached maximum medical improvement and could work eight hours a day. Appellant's work restrictions included no squatting and no climbing stairs or ladders.

In a note dated March 20, 2014, Dr. John W. Ellis, a Board-certified family practitioner, provided work restrictions of no kneeling, bending, stooping, or climbing stairs, as well as walking only 10 to 15 minutes at a time (or a day). In a separate note dated March 20, 2014, he noted that appellant's right knee pain was worsening, that he struggled with everyday activities and that his knee had continued to deteriorate. Dr. Ellis found appellant totally disabled.

Appellant sought medical treatment from Dr. Vytautas M. Ringus, a Board-certified orthopedic surgeon on March 27, 2014. Dr. Ringus reviewed appellant's prior medical treatment, including x-rays, demonstrating degenerative changes in the medial compartment with bone on bone. He noted that appellant was in obvious pain, with an antalgic gait, moderate effusion, patellofemoral crepitus, and tenderness. Dr. Ringus found pseudo-valgus laxity with negative drawer signs. He opined that appellant's initial injury was caused from his employment incident and that his current pain was from that injury as well as an aggravation of his underlying arthritis. Dr. Ringus agreed with appellant's current work restrictions.

Dr. Ellis had indicated on April 17, 2014 that appellant could work within his restrictions, but on May 15, 2014 he found that appellant's symptoms had continued to worsen since his return to work. Appellant's right knee demonstrated swelling, instability, and laxity. Dr. Ellis found that appellant's conditions had worsened since his return to work and that he was totally disabled requiring further medical treatment. He noted, "[Appellant] would be a danger to himself and his coworkers if he tried to work with the worsening of the symptoms and conditions."

In a letter dated May 20, 2014, OWCP noted that appellant stopped work on May 16, 2014 and informed him of his burden to establish a recurrence of disability due to his accepted employment injuries. It requested additional factual and medical evidence and allowed him 30 days for a response.

Dr. Ringus examined appellant on May 28, 2014 and noted that appellant's knee was giving out and giving way, particularly when going up and down stairs. Appellant stated that his knee was more painful with more weakness, locking, catching, and popping. He feared that if he returned to mine duty he had the potential to fall, hurt himself, or hurt others. Appellant reported pain when he sat which was unbearable. Dr. Ringus found severe crepitus and tenderness, but no laxity. Appellant demonstrated a positive McMurray's sign. Dr. Ringus noted, "At this point, with the amount of instability that he has in his knee from the degenerative changes and from the ligamentous injury, as well as a meniscal injury, I am not sure he is able to work without restrictions in any real functional capacity because of both the pain, because of risk to himself and others, or he might fall or fall on top of someone else and he is quite a big gentleman." In regard to light-duty work, appellant informed Dr. Ringus that appellant could not perform office tasks for longer than two or three hours without his knee becoming exceedingly painful. Dr. Ringus conceded this, based on the amount of damage that appellant had in his knee, and concluded, "I am really not sure he could return to any sort of work duty with the amount of pain that he is having right now, either limited or full..." He noted that the only treatment available for appellant was a total knee replacement.

On June 12, July 10, August 7, September 4, October 7, and November 4, 2014 Dr. Ellis found that appellant was totally disabled and in need of further treatment.

In a letter dated June 20, 2014, the employing establishment proposed to remove appellant from his federal employment because he could no longer perform the duties of his date-of-injury position and was not fit for duty.

Appellant noted that following his accepted employment injury and surgery he was experiencing throbbing pain and weakness in the right knee.

In response to questions from OWCP, the employing establishment stated on September 4, 2014, that appellant's limited-duty job was no longer available to him.

In his August 7, 2014 report, Dr. Ellis described appellant's history of injury. He noted that following appellant's surgery and return to work his condition had worsened. Dr. Ellis noted that extended walking, standing, and sitting increased appellant's symptoms. He opined that appellant was temporarily totally disabled. Dr. Ellis diagnosed partial medial and lateral meniscectomy and degenerative arthritis of the right knee. He opined that it was more probable than not that appellant's conditions arose in the course of his employment. Dr. Ellis concluded that appellant, with his worsening symptoms and conditions, would be a danger to himself and his coworkers if he tried to work.

By decision dated November 17, 2014, OWCP denied appellant's claim for recurrence finding that he had failed to submit the necessary medical opinion evidence sufficient to establish

a change in the nature and extent of his injury-related condition such that he could no longer perform the duties of his light-duty position.

Dr. Ellis submitted a work capacity evaluation dated December 4, 2014 finding that appellant was totally disabled. In a note dated December 29, 2014, he noted that appellant had problems with extended walking and standing, including increased symptoms and pain. On January 17, 2015 Dr. Ellis again opined that appellant was totally disabled.

In a report dated January 27, 2015, Dr. Ellis described appellant's history of injury and medical treatment. He opined that the injection performed by Dr. Ringus on April 16, 2014 did not improve appellant's condition or symptom. Dr. Ellis noted that appellant's symptoms and pain in the right knee had continued to worsen. He found that extended walking, standing, and sitting increased his symptoms. Dr. Ellis diagnosed partial medial and lateral meniscectomy and degenerative arthritis of the right knee. He opined that appellant's condition was due to his employment. Dr. Ellis found that having to sit for an entire day caused an increase in his stiffness, swelling, pain, and decreased range of motion of the right knee.

Appellant requested reconsideration on March 11, 2014. He alleged that, following surgery, he developed arthritis in his right knee which was not there prior to the injury. Appellant stated that he sought to return to work in a light-duty capacity and was being punished for returning to work. He stated that the employing establishment did not have a permanent light-duty position.

By decision dated March 31, 2015, OWCP denied modification of its November 17, 2014 decision as the medical evidence did not establish a change in the nature and extent of appellant's injury-related condition such that he could no longer perform the duties of his light-duty position.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>2</sup>

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 of record establish that he or she 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 show that he cannot perform such light duty. As part of this burden, the employee

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<sup>2</sup> 20 C.F.R. § 10.5(x).

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 requirements.<sup>3</sup>

Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a 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.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>5</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed 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.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not submitted the necessary medical opinion evidence sufficient to establish a recurrence of total disability beginning May 16, 2014 causally related to his February 25, 2013 employment injury. Appellant has not alleged a change in the nature and extent of his light-duty job requirements. Rather, he alleges a change in his injury-related condition following his return to light-duty work.

OWCP accepted appellant's claim for sprain of the right lateral ligament of the right knee, sprain of the right medial collateral ligament of the right knee, ligament laxity, internal derangement of the right knee, right knee effusion, and right tear of the medial meniscus in the right knee. Dr. Maitino performed an arthroscopy with partial medial and lateral meniscectomies of the right knee on September 23, 2013. Appellant returned to work on November 25, 2013 with restrictions of no kneeling, no climbing, and no walking for more than two hours a day. Dr. Maitino found on February 13, 2014 that appellant could work eight hours a day with no squatting and no climbing stairs or ladders. Appellant continued to perform his light-duty

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<sup>3</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>4</sup> *Id.*

<sup>5</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

position for almost five months until March 20, 2014, when Dr. Ellis opined that appellant was totally disabled due to worsening right knee pain.

Contrary to appellant's representative's argument on appeal the Board finds that Dr. Ellis' reports are insufficient to meet appellant's burden of proof to establish total disability. On March 20, 2014 Dr. Ellis did not provide an explanation of any specific change in appellant's employment-related condition resulted in his disability for work. Instead, he merely repeated appellant's statements that he hurt too much to work.

On May 15, August 7, 2014, and January 27, 2015 Dr. Ellis noted that appellant's symptoms had continued to worsen. He found that appellant was totally disabled requiring further medical treatment. Dr. Ellis opined that it was more probable than not that appellant's conditions arose in the course of his employment. He noted that appellant would be a danger to himself and his coworkers if he tried to work with his worsening symptoms and conditions. Dr. Ellis further noted that having to sit for an entire day caused an increase in appellant's stiffness, swelling, pain, and decreased range of motion of the right knee. The Board finds that Dr. Ellis did not note any specific change in appellant's diagnosis or provide explanation of why and how his symptoms would worsen due to his accepted employment injury. As Dr. Ellis did not clearly describe a change in the nature and extent of appellant's employment-related condition resulting in total disability, his reports are insufficient to meet appellant's burden of proof in establishing a recurrence of total disability on or after May 16, 2014.

Dr. Ringus examined appellant on March 27, 2014 and noted fear-of-future injury, that appellant was in obvious pain, with an antalgic gait, moderate effusion, patellofemoral crepitus, and tenderness. He opined that appellant's current pain was from his employment injury as well as an aggravation of his underlying arthritis. Dr. Ringus agreed with appellant's current work restrictions, but did not provide a statement of what those restrictions were. This report is insufficient to establish that appellant was totally disabled on or after March 16, 2014 as Dr. Ringus did not specify appellant's work restrictions and did not provide medical reasoning explaining why he believed appellant was totally disabled due to the accepted conditions.

In his May 28, 2014 report, Dr. Ringus repeated appellant's statements that his knee was giving out, that his knee was more painful with more weakness, locking, catching, and popping and that appellant had unbearable pain when he sat. He relied on appellant's complaints of knee pain rather than providing objective findings or test results to support a change in the nature and extent of appellant's injury-related condition. Without clear findings supporting a change in the nature and extent of appellant's right knee condition, Dr. Ringus' report is insufficient to meet appellant's burden of proof to establish a recurrence of disability.

The Board thus finds that the medical evidence in the record is insufficient to establish a recurrence of disability on March 16, 2014 due to his accepted employment injury.

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 not met his burden of proof to establish a recurrence of total disability on or after May 16, 2014 causally related to his February 25, 2013 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2015  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board