

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

G.V., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Shreveport, LA, Employer

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**Docket No. 15-1850
Issued: December 17, 2015**

Appearances:
William Hackney, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 8, 2015 appellant, through his representative, filed a timely appeal from an August 28, 2015 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 this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an employment-related disability from June 30, 2011 to February 18, 2012.

FACTUAL HISTORY

On October 29, 2010 appellant, then a 52-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that carrying mail during his federal employment contributed to back and hip conditions. In a November 3, 2010 statement, he

¹ 5 U.S.C. § 8101 *et seq.*

indicated that he had worked at the employing establishment since 1983, with 16 years of carrying mail on a walking route, and an additional 11 years on a vehicle route. The reverse side of the claim form indicated that appellant had not stopped working.

Appellant submitted an October 26, 2010 report from Dr. Austin Gleason, a Board-certified orthopedic surgeon. Dr. Gleason indicated that appellant had radiating back pain and was not able to return to his regular job. He reported that a return to light duty was discussed as appellant was not able to stand and case mail for more than 45 minutes.

OWCP denied the claim by decision dated December 15, 2010, finding that the medical evidence was insufficient to establish the claim. Appellant requested a hearing before an OWCP hearing representative, which was held on April 15, 2011. At the hearing, appellant asserted that, in late October or early November, 2010, he had begun working five to five and a half hours per day.

By decision dated June 23, 2011, an OWCP hearing representative remanded the case for further development. The hearing representative found that the medical evidence was sufficient to warrant further development.

In a July 25, 2011 report, Dr. Gleason indicated that appellant continued to have lumbosacral pain. He noted that a magnetic resonance imaging (MRI) scan from November 2010 showed spondylolisthesis and lumbar degenerative disc disease. Dr. Gleason reported that appellant had to carry mail for 28 years and there seemed to be some progressive increase in pain and loss of back motion that was aggravated by walking and carrying mail. He reported that appellant can “continue to work on a light[-]duty basis.” According to Dr. Gleason, appellant could continue to case his route, load parcels up to 25 pounds, and drive a vehicle.

Following the remand by the hearing representative, OWCP referred appellant for a second opinion examination by Dr. Robert Holladay, a Board-certified orthopedic surgeon. In a report dated August 22, 2011, Dr. Holladay provided a history and results on examination. He diagnosed low back pain, bilateral hip osteoarthritis, and early bilateral knee osteoarthritis. Dr. Holladay opined that it appeared that genetic, nonwork-related factors were the more prevalent causation of current findings.

By decision dated September 8, 2011, OWCP denied the claim for compensation, finding the medical evidence insufficient to establish the claim. Following appellant’s request for a telephonic hearing an OWCP hearing representative set aside the September 8, 2011 decision on December 1, 2011. The hearing representative found that the statement of accepted facts (SOAF) should provide a more detailed description of appellant’s regular job duties, and Dr. Holladay should be asked to provide clarification regarding his opinion.

On remand, OWCP provided Dr. Holladay with an amended SOAF and a list of questions. Dr. Holladay submitted a February 15, 2012 report based on a February 13, 2012 examination. He opined that appellant had a temporary aggravation of his degenerative back and hip conditions. Dr. Holladay noted that appellant’s work had been modified.

On March 8, 2012 OWCP accepted the claim for aggravation of bilateral leg osteoarthritis, aggravation of pelvic and thigh region osteoarthritis, and spondylolisthesis.

On July 9, 2012 appellant submitted a (Form CA-7) claim for compensation for the period June 30, 2011 to February 18, 2012. The time analysis forms for the period show that he worked 4.79 hours on June 30, 2011, and 2.58 hours on July 1, 2011. From July 26 to August 19, 2011, appellant did not work. On August 29, 2011 he worked approximately five hours, and he continued to work generally from four to six hours through February 18, 2012 with intermittent periods of total disability (September 20 and 21 and September 28 to October 1, 2011). The record indicates that appellant stopped working on April 12, 2012 and has received compensation for total disability since that date.

In support of his claim appellant submitted a form report dated September 6, 2012 from Dr. Gleason. Dr. Gleason diagnosed “back, both hips injury” and wrote that appellant was unable to work more than five hours from June 30, 2011 to February 18, 2012.

By decision dated September 20, 2012, OWCP denied the claim for compensation from June 30, 2011 to February 18, 2012. It found that the medical evidence was insufficient to establish the claim.

Appellant requested a hearing before an OWCP hearing representative on October 1, 2012. A hearing was held on January 8, 2013. Appellant submitted an October 31, 2012 report from Dr. Gleason, noting that appellant was no longer working and was scheduled for left hip replacement surgery.² Dr. Gleason opined that appellant would not be able to return to his previous occupation. In a report dated January 15, 2013, he reported that appellant continued to have problems in numerous areas, including the low back, left hip, and knees. Dr. Gleason opined, “From June 30, 2011 to February 28 [sic], 2012 [appellant] was only able to work [five] hours a day per my recommendation. This was due to degeneration of his hips and knee joints.”

By decision dated March 26, 2013, a hearing representative affirmed the September 20, 2012 OWCP decision. He found that the medical evidence did not establish the claimed periods of disability from June 30, 2011 to February 18, 2012.

On April 25, 2013 appellant submitted an April 10, 2013 report from Dr. Gleason. Dr. Gleason reported that appellant continued to have chronic low back pain. He noted that in reviewing appellant’s past problems and the November 2010 MRI scan, which showed spondylolisthesis and a spontaneous fusion at L5-S1 without surgery, with degenerative disc changes at L4-5, he opined that “for this reason” he placed appellant on restrictions of five hours per day with lifting restrictions from June 30, 2011 to April 11, 2012.

On May 8, 2013 appellant, through his representative, requested reconsideration. The representative argued that the April 10, 2013 report from Dr. Gleason was sufficient to establish the claim for compensation commencing June 30, 2011. In a brief report dated August 8, 2013, Dr. Gleason opined that appellant would not be able to return to work as a letter carrier.

² Appellant underwent right hip surgery on June 4, 2012 and left hip surgery on February 11, 2013.

By decision dated November 6, 2013, OWCP reviewed the case on its merits and denied modification. It found that the medical evidence was insufficient to establish an employment-related disability from June 30, 2011 to February 18, 2012.

Appellant, through his representative, requested reconsideration by letter dated February 3, 2014. He argued that Dr. Gleason had provided a reasoned medical opinion. He submitted copies of diagnostic studies.

In a decision dated May 14, 2014, OWCP reviewed the merits of the claim and denied modification. It again found that the evidence did not establish an employment-related disability from June 30, 2011 to February 18, 2012.

By letter dated March 12, 2015, appellant, through his representative, requested reconsideration. Appellant submitted a December 11, 2014 report from Dr. Gleason, who reported that at the time he reduced appellant's work hours from eight to five hours a day, appellant had twisted his knee and had pain and swelling in the knee. Dr. Gleason reported that x-rays showed degenerative changes in the knee and that appellant was not capable of working eight hours. He noted in an addendum that appellant had both hip replacement and knee replacement surgeries.³

By decision dated August 28, 2015, OWCP reviewed the merits of the claim and denied modification. It found that the evidence failed to establish an employment-related disability from June 30, 2011 to February 18, 2012.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁵

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statement regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability

³ The record indicates that appellant underwent right total knee replacement surgery on May 19, 2014.

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.¹¹

ANALYSIS

In the present case, appellant claimed wage-loss compensation from June 30, 2011 to February 18, 2012. The Board notes that during this period appellant was working a modified-duty position, at approximately five hours per day. There were also periods of total disability, including July 26 to August 19, September 20 and 21, and September 28 to October 1, 2011. It is not clear why appellant's claim for disability began on June 30, 2011, as he indicated that he began working five hours a day sometime in late October or early November, 2010.

To meet his burden of proof, appellant must submit rationalized medical evidence that addresses the specific dates of claimed disability. The only contemporaneous report of record was a July 25, 2011 report from Dr. Gleason. As to disability, Dr. Gleason reported only that appellant could continue light duty. He does not limit appellant to five hours of modified duty or explain why appellant could not work full time as a result of an employment-related condition.

In a January 15, 2013 report, Dr. Gleason now stated that appellant was limited to five hours of work commencing June 30, 2011. He does not address the specific periods of total disability from June 30, 2011 to February 18, 2012, nor does he provide a complete factual and medical background or explain why he believed that appellant could work only five hours as of June 30, 2011. In his April 10, 2013 report, Dr. Gleason refers to the November 2010 lumbar MRI scan results and opines that this is the reason he placed appellant on restrictions of five hours of work per day. The diagnosis of spondylolisthesis is an accepted condition, but he does not explain why this limited appellant to five hours of work per day, and in his December 11, 2014 report, he now refers to the work restrictions as being based on a knee injury. Dr. Gleason

⁷ *Id.*

⁸ *Id.*

⁹ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

reported that appellant had twisted his knee, without providing further explanation. OWCP never accepted a traumatic knee injury in the current case.

The Board finds that the evidence of record is not sufficient to meet appellant's burden of proof. The medical evidence does not address the specific periods of total disability claimed from June 30, 2011 to February 18, 2012.

On appeal, appellant's representative argues that Dr. Gleason's reports are sufficient and OWCP had authorized the knee surgery. The knee surgery was on May 19, 2014 and the issue in this case was the claims for disability from June 30, 2011 to February 18, 2012. For the reasons discussed, the medical evidence is not sufficient to establish the claim.

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 an employment-related disability from June 30, 2011 to February 18, 2012.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 28, 2015 is affirmed.

Issued: December 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board