

FACTUAL HISTORY

On January 28, 2008 appellant, then a 56-year-old temporary medical technician, injured her right knee when she fell as she stepped off an elevator at work. She began modified duty. Appellant's temporary appointment was terminated effective February 15, 2008, based on unacceptable performance.² She also works a second job as a part-time laboratory assistant at St. Joseph Medical Center (SJMC) a private-sector employer. On March 11, 2008 OWCP accepted that appellant sustained a right knee contusion on January 28, 2008. The claim was later expanded to include tear of the right medial meniscus, right chondromalacia patella, and right localized primary osteoarthritis of the lower leg.

On September 23, 2010 appellant filed a recurrence claim, alleging a recurrence of her work injury beginning September 16, 2010. On September 28, 2010 she filed a Form CA-7, claim for compensation for the period September 27 through November 6, 2010. Appellant stated that at the time of the claimed recurrence she was working at SJMC and her condition had worsened due to too much walking and standing. The employing establishment controverted the claim noting that appellant sustained a new injury at her current employment in the private-sector at SJMC. Appellant also filed a CA-7 claim for compensation for the period September 27 to November 6, 2010.

On January 7, 2009 Dr. Andrew K. Lee, a Board-certified orthopedic surgeon, performed authorized arthroscopic partial medial meniscectomy on the right knee. He submitted reports describing appellant's follow-up care, also noting that she had a prior history of reflex sympathetic dystrophy (RSD). On August 24, 2010 Dr. Lee noted appellant's complaint of right knee pain of one month's duration and her feeling of a loose body in the knee. He advised that on physical examination of the knee there was no edema or effusion and some stiffness and grinding with tenderness over the medial and lateral joint line. Right knee x-ray findings included a possible calcified loose body. Dr. Lee diagnosed medial meniscus tear, osteoarthritis, and loose body in the right knee, status post arthroscopic surgery. He indicated that a magnetic resonance imaging (MRI) scan study was warranted due to mechanical symptoms, but appellant could not have one because she had a spinal implant. Dr. Lee recommended right knee arthroscopic surgery to remove the loose body.

In an August 30, 2010 report, Dr. Melvyn Harrington, a Board-certified orthopedist, noted the history of injury, appellant's medical and surgical history, and her complaint of progressively worsening right knee pain. Appellant walked with a moderate limp. The right knee was ligamentously stable with negative Steinmann, spring and McMurray's tests. Patellar grind and shrug were mildly positive. X-rays showed severe degenerative changes. Dr. Harrington diagnosed osteoarthritis and pes anserine bursitis of the right knee. He recommended physical therapy and noted that appellant would likely require a total knee replacement. Dr. Harrington advised that appellant could perform light duty with no excessive walking or standing and should avoid squatting, stooping, kneeling, bending, twisting, or heavy lifting.

² The termination letter indicated that she demonstrated difficulties in performing the full range of duties required for a phlebotomist in the areas of timeliness and productivity of blood draws.

In a September 16, 2010 treatment note, Dr. Harrington noted appellant's report that her present employer SJMC would not comply with her restrictions and, as a result, her pain was increasing. He indicated that her examination was unchanged, diagnosed symptomatic knee arthritis with possible loose body, and indicated that her restrictions remained the same. Dr. Harrington advised that appellant remain off work until November 6, 2010 while attending physical therapy.

The employing establishment noted that appellant was removed from federal service for unacceptable performance in carrying out her job duties and that prior to her removal she had returned to full duty with no restrictions. It maintained that since she stated in her recurrence claim that she walked too much in her job at SJMC she should file a claim under state workers' compensation rules. Appellant had been employed by SJMC since March 7, 2005.

On an attending physician's report dated September 27, 2010, Dr. Harrington noted that appellant fell at work on January 28, 2008 and advised that she had severe degenerative joint disease in her right knee. He diagnosed post-traumatic osteoarthritis of the right knee, permanently worsened by a work-related fall on January 28, 2008, and indicated that appellant would like to proceed with total knee replacement surgery.

By decision dated January 14, 2011, OWCP denied a recurrence of disability on September 16, 2010 as the medical evidence failed to establish that her current condition was causally related to the January 28, 2008 employment injury.

On December 16, 2010 Dr. Harrington noted appellant's medical history and worsening symptoms. He again recommended a total knee replacement. In a March 4, 2011 report, Dr. Ronald Blum, an OWCP medical adviser Board-certified in orthopedic surgery, noted reviewing the medical record. He indicated that the diagnosis of aggravation of localized osteoarthritis of the right lower leg was work related. Dr. Blum advised that the recommended surgical procedure was within the realm of accepted medical practice and the necessity for the procedure was related to the accepted employment injury.

In a March 10, 2011 decision, OWCP again denied appellant's claim for a recurrence of total disability beginning September 16, 2010. On April 8, 2011 appellant requested a hearing. She submitted Texas workers' compensation forms dated August 30 and September 16, 2010 in which Dr. Harrington advised that appellant could not work. Appellant also resubmitted Dr. Lee's August 24, 2010 report.

On June 7, 2011 an OWCP hearing representative vacated the March 10, 2011 decision and remanded the case for further development of the record.

Appellant thereafter submitted treatment notes from Dr. Harrington in which he reiterated his diagnoses and continued to recommend total knee replacement surgery. The employing establishment provided a position description for medical technician in hematology. The physical requirements included standing and walking for four to six hours, bending, twisting, and pushing and pulling for one to two hours.

In November 2011 appellant was referred to Dr. James E. Butler, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a December 5, 2011 report, Dr. Butler

noted the history of injury, appellant's treatment history, her complaint of right knee, leg and foot pain and weakness, and her report that she was working regular duty. Physical examination findings included mild knee effusion on the right with negative right knee valgus, varus, Lachman stress tests, negative McMurray's and posterior drawer tests, and a mild crepitation test. Right knee range of motion was decreased with full effort. Sensation testing was normal bilaterally, and strength testing was 5/5 except that leg flexors and extensors were 4/5 on the right. Dr. Butler noted that appellant used no assistive devices. He diagnosed osteoarthritis of the right knee in time line from January 28, 2008, noting that it was found at surgery in 2009 and had progressed. Dr. Butler advised that appellant had been disabled since 2008 and recommended total knee replacement.

OWCP requested that Dr. Butler explain why, when appellant was released to full duty on February 5, 2008, the arthritis found in the 2009 surgery was causally related to the January 28, 2008 employment injury. It referred to the statement of accepted facts, and informed Dr. Butler that appellant had been working in private employment continuously since the January 28, 2008 employment injury. Dr. Butler was asked whether her current condition was related to that job and whether she was disabled beginning September 2010 due to the January 2008 employment injury.

In a January 9, 2012 response, Dr. Butler indicated that appellant's knee arthritis preexisted the January 2008 employment injury, and that it was noted by Dr. Lee at the time of the 2009 surgery. He stated that the arthritis was not caused by the employment injury, noting that in the Texas workers' compensation system, arthritis was not covered, just the meniscus tear, and therefore his position was that the workers' compensation issue was resolved after the 2009 surgery.

In a February 24, 2012 decision, OWCP denied appellant's claim that she sustained a recurrence of disability on September 16, 2010. Appellant, through her attorney, timely requested a hearing and submitted a March 8, 2012 treatment note in which Dr. Harrington reiterated his findings and recommendations. Appellant was not present at the hearing, held on June 12, 2012. The hearing representative instructed her attorney to provide a list of jobs appellant had held since the January 28, 2008 employment injury, including any periods of unemployment, an explanation of the diagnosed RSD noted by Dr. Lee, all medical records regarding her right knee prior to the January 28, 2008 employment injury, and a list of any additional workers' compensation claims and accidents.

In a June 18, 2012 statement, appellant described her employment history. She indicated that she had RSD in both arms for which she had a workers' compensation claim against Continental Airlines where she worked as a customer service representative from 1997 to 1998. She indicated that the Texas Rehabilitation Commission paid for her to be trained as a phlebotomist, and that she did not work from 1998 to 2002 and then began working at both SJMC and the employing establishment as a phlebotomist and also received social security disability compensation. Appellant stated that she continued working at SJMC, as a phlebotomist and doing sedentary computer work. She indicated that she had additional right knee claims including a workers' compensation claim against Park and Fly, where she was employed in the 1980s, when she fell down steps and had right knee surgery. Appellant stated that she could not obtain medical records regarding this injury because the hospital had gone out

of business. She indicated that she was also in a motor vehicle accident in 2000 in which she injured her right knee and had arthroscopic surgery on October 14, 2002, and that in 2010 she fell at SJMC and bruised her left knee. Appellant described her work at the employing establishment, stating that she stood and walked all day working both in the laboratory and on the hospital floor where she drew blood from patients and pushed a heavy cart.

On an operative report dated October 14, 2002, Dr. Mark W. Maffet, Board-certified in orthopedic surgery, provided a preoperative diagnosis of right knee medial meniscus tear; right knee grade II-III chondromalacia, medial femoral condyle; and grade II-III chondromalacia, trochlea and patella, 20 percent. Examination under anesthesia and diagnostic arthroscopy with partial medial meniscectomy and chondroplasties of the right knee were performed. Surgical inspection demonstrated the listed preoperative diagnoses. In an undated statement received by OWCP on July 26, 2012, SJMC indicated that appellant had been working there from March 7, 2005 to the present, part time, as a laboratory assistant.

By decision dated August 3, 2012, an OWCP hearing representative remanded the case to OWCP to obtain a supplemental report from Dr. Butler. He noted that right knee osteoarthritis had been accepted. The hearing representative found Dr. Butler's opinion insufficient and remanded the case to provide Dr. Butler with copies of the 2002 and 2009 surgical reports and to ask him to clarify whether appellant's right knee osteoarthritis was causally related to one or both surgeries, and to give medical rationale for his opinion.

In reports dated March 8 and June 4, 2012, Dr. Harrington noted that appellant's physical examination was unchanged. He injected her right knee on both visits and continued to recommend total knee replacement surgery.

On September 27, 2012 OWCP forwarded copies of the 2002 and 2009 surgical procedures to Dr. Butler and asked him to clarify whether appellant's right knee osteoarthritis was causally related to one or both surgeries and provide rationale for his opinion. In an October 16, 2012 response, Dr. Butler indicated that appellant's right knee osteoarthritis was not causally related to either of the surgeries and was not causally related to the employment injury, because Dr. Maffet, who performed the 2002 surgery, indicated that the osteoarthritis was present under his inspection.

By decision dated April 2, 2013, OWCP denied appellant's claim for total disability for the period September 27 to November 6, 2010. It found that the weight of the medical evidence rested with Dr. Butler who opined that appellant's right knee arthritis was already present at the time of the 2002 surgery. Appellant's attorney timely requested a hearing and submitted a June 20, 2013 note in which Dr. Harrington indicated that appellant had reached maximum medical improvement and could need additional future treatment.

At the hearing, held on August 19, 2013, appellant's attorney argued that the 2008 injury and 2009 surgery made her osteoarthritis worse and that Dr. Butler's report was not reliable. He maintained that Dr. Harrington's opinion supported appellant's claim. Appellant testified that Dr. Harrington took her off work for the claimed period because he wanted her to have physical therapy, injections, and to stay off her knee. She stated that she currently worked a desk job at SJMC.

In a November 29, 2013 decision, an OWCP hearing representative affirmed OWCP's denial of appellant's claim for total disability compensation for the period September 27 to November 6, 2010 as there was no rationalized medical evidence to establish that the claimed period of disability was related to her federal employment.

On April 14, 2014 appellant requested reconsideration and submitted evidence previously of record. In a merit decision dated August 13, 2014, OWCP denied modification of its November 29, 2013 decision, finding the medical evidence submitted insufficient to establish that she was totally disabled for the claimed period.

LEGAL PRECEDENT

Under FECA, the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.⁴ The test of "disability" under FECA is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.⁵ 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.⁶

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.⁷ Causal relationship is a medical issue. 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.⁸

³ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁵ *Corlisa Sims*, 46 ECAB 963 (1995).

⁶ *Tammy L. Medley*, 55 ECAB 182 (2003).

⁷ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS

The accepted conditions in this case are a contusion of the right knee, tear of the right medial meniscus, right chondromalacia patella, and right localized primary osteoarthritis of the lower leg, caused by a January 28, 2008 fall at work.

The Board finds that appellant did not meet her burden of proof to establish entitlement to disability compensation for the period September 27 through November 6, 2010 because she did not submit sufficient medical evidence explaining that the claimed disability was due to the accepted injury. Appellant's employment at employing establishment was terminated for cause on February 15, 2008. After that time she worked part time at SJMC until she stopped work and claimed compensation beginning on September 27, 2010.

In his August 24, 2010 report, Dr. Lee did not discuss appellant's ability to work. His report is, therefore, insufficient to establish that she was totally disabled for the period claimed.

The Board also finds the reports of Dr. Harrington, who submitted a number of reports beginning on August 30, 2010, insufficient to establish entitlement to disability compensation. Although Dr. Harrington related appellant's diagnosed right knee osteoarthritis to the January 28, 2008 employment injury, he also indicated that her right knee pain had recently worsened and indicated that she reported that SJMC would not comply with his physical restrictions. He recommended that she remain off work for the period September 27 to November 6, 2010 and undergo physical therapy. 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.⁹ Dr. Harrington merely indicated that appellant's right knee hurt while performing her job duties at SJMC and she should be off work to attend physical therapy. He did not express specific knowledge of her federal service job duties or explain the mechanics as to how the January 28, 2008 fall caused her current right knee condition other than to note that she had right knee degenerative joint disease and osteoarthritis that had worsened over time. Moreover, the facts in this case indicate that appellant has a significant nonemployment-related preexisting history concerning her right knee, including a fall in the 1980s for which she had right knee surgery, a motor vehicle accident in 2000 for which she had right knee surgery, and a 2010 fall at SJMC. Dr. Harrington did not discuss these additional injuries in his report. The issue of whether a claimant'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.¹⁰ The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal

⁹ *G.T.*, 59 ECAB 447 (2008).

¹⁰ *Sandra Pruitt*, 57 ECAB 126 (2005).

relationship.¹¹ Dr. Harrington's reports are therefore insufficient to establish that appellant was totally disabled for the claimed period.

Dr. Butler, an OWCP referral physician, submitted reports dated December 5, 2011, January 9, and October 16, 2012. While he initially indicated that appellant's current right knee condition was a continuation of the arthritis found in the 2009 surgery and indicated that she was disabled from 2008, upon being asked to further explain his opinion, he advised on January 9, 2012 that appellant's arthritis was not caused by the January 28, 2010 employment injury. Upon Dr. Butler's review of the 2002 and 2009 surgical report, he opined on October 16, 2012 that appellant's right knee osteoarthritis was not causally related to either surgery. He noted that in the 2002 surgery Dr. Maffet described the arthritis as preexisting at that time. The Board, however, notes that primary osteoarthritis of the right leg has been accepted in this case, but by her own admission appellant admitted that her condition had worsened due to walking too much at her job at SJMC.

Without a detailed medical report describing how and why appellant was disabled from September 27 to November 6, 2010 due to the January 28, 2008 employment injury, she has not met her burden of proof to establish entitlement to disability compensation for that period.¹²

As there is no rationalized medical evidence establishing total disability for the period September 27 through November 6, 2010 related to her accepted work conditions, appellant failed to establish entitlement to wage-loss compensation for that period.

Regarding appellant's argument on appeal that she wants her case reopened so that she can get appropriate medical treatment, the Board does not have jurisdiction over that issue. The merit issue in this case is whether appellant established entitlement to disability compensation for the period September 27 through November 6, 2010. The Board's jurisdiction is limited to reviewing final decisions of OWCP.¹³

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 her burden of proof to establish that she was entitled to disability compensation for the period September 27 through November 6, 2010.

¹¹ See *Albert C. Brown*, 52 ECAB 152 (2000).

¹² See *W.S.*, Docket No. 14-1022 (issued July 1, 2014).

¹³ 20 C.F.R. § 501.2(c); see *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2015
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