

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

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**J.B., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
FACILITIES ENGINEERING COMMAND  
CENTERS, San Diego, CA, Employer**

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**Docket No. 14-993  
Issued: January 27, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 25, 2014 appellant filed a timely appeal from the February 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he had disability due to his May 15, 1998 work injury from March 4, 2013 and continuing.

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<sup>1</sup> The record also contains a February 6, 2014 decision of OWCP concerning a schedule award claim, but appellant did not appeal this decision to the Board.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> Appellant submitted additional evidence after OWCP's February 6, 2014 decision. The Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). On appeal, appellant asserted that he submitted evidence to OWCP prior to the issuance of the February 6, 2014 decision which it improperly failed to consider. He suggested that OWCP misled him regarding where to submit his evidence, but he did not adequately explain or support this argument.

## **FACTUAL HISTORY**

OWCP accepted that on May 15, 1998 appellant, then a 48-year-old supervisor, sustained internal derangement of his right knee, lateral meniscus tear of his right knee and aggravation of preexisting degenerative joint disease of his right lower leg due to moving heavy drums of chemicals.<sup>4</sup>

On March 5, 2013 appellant underwent diagnostic testing, including blood work, to evaluate his cardiopulmonary condition. OWCP has not accepted that he has sustained a work-related cardiopulmonary condition.

On March 19, 2013 Dr. Arthur Wardell, an attending Board-certified orthopedic surgeon, performed a total right knee arthroplasty, which was authorized by OWCP. The record contains medical documents in which attending physicians, including Dr. Wardell, described appellant's in-hospital treatment between March 19 and 22, 2013 due to his March 19, 2013 right knee surgery. The record also contains periodic reports, dated from March 27, 2013, in which Dr. Wardell discussed appellant's recovery from right knee surgery and his participation in physical therapy.<sup>5</sup> In a June 6, 2013 note, Dr. Wardell indicated that appellant could return to full-duty work on June 10, 2013.<sup>6</sup> In a June 6, 2013 form report, however, he stated that appellant was totally disabled from March 19 to June 6, 2013 due to his May 15, 1998 work injury.

In a claim for compensation (Form CA-7) received on December 18, 2013, appellant alleged that he became totally disabled from March 4 to June 10, 2013 due to his May 15, 1998 work injury.

OWCP requested, in a December 19, 2013 letter, that appellant submit factual and medical evidence to support his claim of work-related disability from March 4 to June 10, 2013. The letter contained an address for OWCP in London, KY, and provided him 30 days from the date of the letter to submit the requested evidence to this address. OWCP stated, "If no such evidence is received in the time afforded, your claim for compensation may be denied." Appellant did not respond to OWCP's request.

In a February 6, 2014 decision, OWCP denied appellant's claim as he had not submitted sufficient medical evidence to establish disability due to his May 15, 1998 work injury from March 4 to June 10, 2013. Regarding the reason for the denial, it stated:

"By letter dated December 19, 2013, we advised [appellant] to submit factual and medical evidence supporting disability during the period claimed. [Appellant was] asked to furnish this evidence within 30 days of the date of the letter and [was] advised that failure to do so could result in the denial of the claim. As of

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<sup>4</sup> Appellant began performing limited-duty work for the employing establishment. OWCP authorized arthroscopic right knee surgery that was performed in August 1998.

<sup>5</sup> For example, in a May 6, 2013 note, Dr. Wardell indicated that appellant had continuing right knee pain, particularly over his lateral proximal tibia.

<sup>6</sup> On August 6, 2013 Dr. Wardell noted that appellant reported no problems with his right knee after his return to full-duty work.

this date, we have not received a response. The evidence of record at this time fails to support disability during the period you claimed.”<sup>7</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>8</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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>9</sup> It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>10</sup>

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.<sup>11</sup> Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.<sup>12</sup> However, OWCP’s obligation to pay for medical expenses and 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. Appellant has the burden of proof which includes the necessity of submitting supporting rationalized medical evidence.<sup>13</sup>

### **ANALYSIS**

OWCP accepted that on May 15, 1998 appellant sustained internal derangement of his right knee, lateral meniscus tear of his right knee and aggravation of preexisting degenerative joint disease of his right lower leg due to moving some heavy drums of chemicals. On March 19, 2013 Dr. Wardell, an attending Board-certified orthopedic surgeon, performed a total right knee arthroplasty, which was authorized by OWCP. Appellant alleged that he had

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<sup>7</sup> The record also contains a February 6, 2014 decision granting appellant a schedule award for a 21 percent permanent impairment of his right leg.

<sup>8</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>9</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>10</sup> *Dorothy L. Sidwell*, 36 ECAB 707 (1985); *William J. Cantrell*, 34 ECAB 1237 (1983).

<sup>11</sup> 5 U.S.C. § 8103(a).

<sup>12</sup> *Vincent E. Washington*, 40 ECAB 1242 (1989).

<sup>13</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

disability from March 4 to June 10, 2013 due to his May 15, 1998 work injury. On February 6, 2014 OWCP denied his claim as he failed to submit sufficient medical evidence in support thereof.

Appellant submitted medical reports in which Dr. Wardell described the total right knee arthroplasty he performed on March 19, 2013. The record contains documents in which attending physicians, including Dr. Wardell, described appellant's in-hospital treatment between March 19 and 22, 2013 due to his March 19, 2013 right knee surgery. In reports dated between March 27 and June 6, 2013, Dr. Wardell discussed appellant's recovery from right knee surgery and his participation in physical therapy.

The Board finds that appellant did not submit sufficient medical evidence to establish that he had disability from March 4 to 18, 2013 due to his May 15, 1998 work injury. There is no medical evidence in the record of appellant's right knee treatment which contains a detailed discussion of disability for this period. Appellant underwent diagnostic testing on March 5, 2013, but this was a cardiopulmonary study unrelated to the accepted right knee condition.

As noted, appellant was hospitalized on March 19, 2013 and discharged from the hospital as of March 22, 2013. He underwent surgery for a right knee arthroplasty on March 19, 2013 which was authorized by OWCP. The Board has reviewed the medical reports from this period produced by attending physicians, including Dr. Wardell, and finds that the reports establish that appellant had disability from work during the period March 19 to 22, 2013 due to his March 19, 2013 surgery which was necessitated by his May 15, 1998 work injury.<sup>14</sup>

The question remains whether appellant has established that he had work-related disability beginning March 23, 2013 and continuing. The record contains periodic reports, dated between March 27 and June 6, 2013, in which Dr. Wardell discussed appellant's recovery from right knee surgery and his participation in physical therapy.

The Board notes that while none of these reports of Dr. Wardell are completely rationalized regarding appellant's claim for disability for the period beginning March 23, 2013, they do strongly suggest that a period of recovery from surgery would have been appropriate and related to his OWCP-authorized March 19, 2013 right knee surgery. The reports do not specifically establish the length of disability but are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish his claim for disability beginning March 23, 2013 and continuing, the overall position of the medical treatment following surgery raises strong evidence of a period of disability following the March 19, 2013 authorized right knee surgery and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>15</sup>

Accordingly, the case will be remanded to OWCP for further evidentiary development regarding the issue of whether appellant had a period of disability beginning March 23, 2013. After carrying out this development, OWCP shall issue an appropriate merit decision regarding appellant's claim for disability beginning March 23, 2013.

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<sup>14</sup> In a June 6, 2013 form report, Dr. Wardell stated, without elaboration, that appellant was totally disabled from March 19 to June 6, 2013 due to his May 15, 1998 work injury. *See supra* note 9.

<sup>15</sup> *See Robert A. Redmond*, 40 ECAB 801 (1989).

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he had disability due to his May 15, 1998 work injury from March 4 to 18, 2013. However, he did meet his burden of proof to establish disability due to his May 15, 1998 work injury from March 19 to 22, 2013. The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish disability due to his May 15, 1998 work injury beginning March 23, 2013. The case is remanded to OWCP for further development.

### ORDER

**IT IS HEREBY ORDERED THAT** the February 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed with respect to OWCP's finding that appellant did not establish work-related disability from March 4 to 18, 2013. The February 6, 2014 decision is reversed with respect to OWCP's finding that appellant did not establish work-related disability from March 19 to 22, 2013. Regarding appellant's claim of work-related disability after March 22, 2013, the February 6, 2014 decision of OWCP is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.<sup>16</sup>

Issued: January 27, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> Michael E. Groom, Alternate Judge, participated in the original decision but was no longer a member of the Board effective December 27, 2014.