

FACTUAL HISTORY

On May 17, 2006 appellant, then a 49-year-old city carrier, filed a traumatic injury claim alleging that he injured his right knee in the performance of duty. He stopped work that day. The claim, adjudicated by OWCP under file number xxxxxx921, was accepted for right knee sprain, internal derangement of the right knee, and medial meniscus tear on the right. Appellant returned to modified duty on May 22, 2006. On August 31, 2006 he underwent authorized arthroscopic repair of the medial meniscal tear. After a brief return to full duty in May 2009, appellant returned to restricted duty on July 25, 2009. On December 5, 2011 OWCP accepted that he sustained a consequential aggravation of localized osteoarthritis of the left leg.²

On January 2, 2012 appellant filed a traumatic injury claim, alleging that on December 31, 2011 he injured his right shoulder while lifting tubs of mail. He did not stop work. OWCP adjudicated the claim under file number xxxxxx104. A January 9, 2012 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated moderate osteoarthritis, indicative of a partial tear of the supraspinatus and subscapularis tendons with a lesion from the superior labrum extending from anterior to posterior (SLAP).

On January 10, 2012 Dr. Terry Madsen, a Board-certified orthopedic surgeon, performed OWCP-authorized bilateral total knee replacement arthroplasties.

On April 3, 2012 OWCP accepted a sprain of the shoulder and upper arm and a SLAP lesion on the right. On April 24, 2012 Dr. Kevin Williams, an orthopedic surgeon, performed a right shoulder arthroscopic surgery with subacromial decompression, repair of SLAP tear and rotator cuff repair. On May 7, 2012 he reported that sutures were removed, that appellant should undergo physical therapy, and that appellant could return to work in six weeks. File numbers xxxxxx921 and xxxxxx104 were doubled on May 11, 2012.

In a May 21, 2012 duty status report, Dr. Tuan Trinh, Board-certified in internal medicine, advised that appellant could not work due to a right shoulder injury. In a May 25, 2012 work capacity evaluation, he provided diagnoses of sprain of right knee, internal derangement of right knee, tear of right medial meniscus, and left osteoarthritis. Dr. Trinh indicated that maximum medical improvement had not been reached and checked a form box "yes," indicating that appellant could perform his usual job. A June 29, 2012 functional capacity evaluation that assessed appellant's right shoulder indicated that he was unable to perform regular job duties. On July 31, 2012 Dr. Trinh assessed appellant's right shoulder. He advised that appellant continued to have pain and weakness and could not perform regular duties. Dr. Trinh provided restrictions, which would apply for four weeks, indicating that reaching was limited to less than one hour with a lifting restriction of 25 to 50 pounds. On August 16, 2012 he advised that appellant could work full time with standing restrictions for six hours, sitting for two hours, no climbing, kneeling, or reaching above the shoulder, and a 25- to 50-pound weight restriction.

Appellant returned to a modified-duty assignment on August 27, 2012 for eight hours a day sitting, doing computer work and data input for one to two hours; walking and standing for

² The record contains a number of decisions in which the left knee claim was denied.

two to six hours; and checking letter carrier performance while delivering mail for two to six hours. The physical requirements indicated that he should lift up to 25 pounds, with intermittent driving from one to eight hours and simple data entry for one to two hours. Appellant received wage-loss compensation until his return to work.

Effective October 9, 2012 appellant was off work. On November 9, 2012 he filed a CA-7 claim for compensation for the period September 5, 2012 to “present.” Rodney Malone, postmaster, indicated on the claim form that appellant was placed off work on September 5, 2012 because the street supervisor position was eliminated. On December 10, 2012 Angela R. Frazier, the employing establishment human resource officer, informed OWCP that the position to which appellant had returned was an acting supervisory position and the supervisor had returned to the position. She stated that appellant’s regular position was a city carrier. Ms. Frazier telephoned OWCP on December 12, 2012 and indicated that appellant had not been provided a modified position by the employing establishment because he had been released to full duty on May 21, 2012. There was no modified position provided to appellant after the supervisor returned to his position. Ms. Frazier maintained that at that time appellant should have been returned to his letter carrier position.³

By decision dated January 16, 2013, OWCP denied appellant’s claim for wage loss for the period September 5 to November 9, 2012 as the medical evidence of record established that he could return to full duty. Appellant timely requested a hearing.

In January 2013, OWCP referred appellant to Dr. Donald M. Mauldin, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding appellant’s lower extremities. Dr. Mauldin was provided with a statement of accepted facts for file number xxxxxx921, and the questions asked the physician referred only to the accepted lower extremity conditions. Dr. Mauldin provided a February 12, 2013 report in which he discussed appellant’s medical history in regard to his knees and provided lower extremity physical examination findings. He indicated that appellant continued to have symptoms referable to his knee replacement surgery which would prevent him from returning to a letter carrier position that required walking for prolonged periods. Dr. Mauldin provided permanent restrictions of no repetitive stair climbing, bending, or squatting, no prolonged walking on uneven ground, no carrying in excess of 25 pounds. He opined that appellant could perform light-duty work for eight hours a day with some standing, sitting, and walking, within the restrictions he provided.

Appellant’s representative asserted that, as appellant’s light duty had been withdrawn, he was entitled to wage-loss compensation. He also maintained that, at the time appellant returned to work, he continued to have residuals of his right shoulder condition. At the hearing, held on May 16, 2013, the representative maintained that limitations for the accepted shoulder injuries remained. Appellant testified that his “street management” job was withdrawn on October 9, 2012. He related that he was told by the postmaster that he was going to get appellant a floor supervisor position but appellant believed that position would not meet his work restrictions. Rather than discussing the issue further with the postmaster, appellant called

³ On January 9, 2013 appellant was granted a schedule award for 31 percent impairment of the right lower extremity and 31 percent impairment on the left.

OWCP. Appellant asserted that OWCP told him that if his job was eliminated he could just leave work that day and he would receive compensation.

In an August 5, 2013 decision, an OWCP hearing representative affirmed the January 16, 2013 decision as the medical evidence of record was insufficient to establish entitlement to total disability for the period claimed.

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.⁴ 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.⁵ 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.⁶ 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.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 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.⁹

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he had any employment-related disability from September 5 to November 9, 2012 due to the accepted right shoulder and bilateral knee injuries. The accepted conditions for the 2006 employment injury, adjudicated under file number xxxxxx921, are right knee sprain, internal derangement of the right knee, medial meniscus tear on the right and consequential aggravation of localized osteoarthritis on the left. Under that claim, appellant had bilateral total knee replacements on

⁴ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁶ *Corlisa Sims*, 46 ECAB 963 (1995).

⁷ *Tammy L. Medley*, 55 ECAB 182 (2003).

⁸ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

January 10, 2012. The 2012 injury, adjudicated under file number xxxxxx104, is accepted for a sprain of the shoulder and upper arm and a SLAP lesion on the right. On April 24, 2012 appellant had surgical repair of his right shoulder injury, under this claim.

The record contains information regarding the position to which appellant returned in August 2012 as an acting supervisor. Appellant held that position until the supervisor he was replacing returned in October 2012. The record supports that, at that time, the postmaster informed him that he would find another position for appellant and suggested the floor supervisor position. Appellant determined on his own that the suggested position would be outside his restrictions. While he maintained that he telephoned OWCP and was informed that he could stop work if his position were eliminated and be paid compensation, there is no record evidence to support this contention. Appellant left work that day. He therefore has not established a change in his light-duty position.¹⁰

Moreover, the medical evidence does not support appellant's contention that he was disabled from work for the period claimed. On a May 25, 2012 work capacity evaluation, Dr. Trinh advised that appellant could perform his usual job, and on August 16, 2012 stated that he could work full time with restrictions of standing for six hours, sitting for two hours, no climbing, kneeling, or reaching above the shoulder, and with a 25- to 50-pound weight restriction. None of the other physicians, including Dr. Mauldin, discussed the period of claimed disability from September 5 to November 9, 2012.

The Board finds that appellant has failed to submit sufficient rationalized medical opinion evidence to establish that he was unable to work from September 5 to November 9, 2012 due to the accepted conditions and thus he is not entitled to wage-loss compensation for the period claimed.¹¹

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 his burden of proof to establish employment-related disability from September 5 to November 9, 2012 due to the accepted right shoulder and bilateral knee injuries

¹⁰ See *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *N.R.*, Docket No. 14-114 (issued April 28, 2014).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.¹²

Issued: July 23, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹² Michael E. Groom, Alternate Judge, participated in the preparation of this decision but was no longer a member of the Board effective December 27, 2014.