

arthritis of the right knee. Appellant received compensation for temporary total disability on the periodic rolls.²

On November 16, 2006 Dr. William M. Craven, an attending Board-certified orthopedic surgeon, performed arthroscopic medial and lateral meniscectomies of the right knee with anterior cruciate ligament reconstruction and tricompartmental chondroplasty.³ Appellant returned to full-time modified duty as a rural carrier associate on May 30, 2007. He continued working in the position through July 31, 2007 and continuing.⁴

OWCP accepted that appellant sustained a recurrence of disability from August 7 to 27, 2010.⁵ Appellant returned to full-time modified duty on September 14, 2010. He stopped work on March 27, 2011. OWCP issued total disability compensation.

Dr. W. Joseph Absi, an attending Board-certified orthopedic surgeon, performed a total right knee arthroplasty on March 29, 2011, authorized by OWCP. On June 24, 2011 he performed closed manipulation of the right knee under anesthesia. In an October 4, 2011 report, Dr. Absi noted that appellant did “not appear to be in pain.” On examination, he observed nearly full extension, 85 degrees of flexion, and no gross ligamentous instability. X-rays showed good alignment of the right knee prosthesis with no sign of loosening. Dr. Absi released appellant to light duty.

Appellant returned to full-time work as a modified rural carrier on October 7, 2011. His duties required lifting, pulling, and pushing up to 20 pounds, limited standing, no kneeling, squatting, or climbing. Appellant could sit or stand as needed.

In a November 7, 2011 report, Dr. Absi related appellant’s complaints of increased right knee pain while at work. He opined that appellant could continue to perform light duty.

Dr. Absi found that appellant had reached maximum medical improvement as of March 2, 2012. He noted permanent work restrictions minimizing walking, and limiting standing to one hour a day. Dr. Absi noted that appellant needed to alternate sitting and standing. In periodic reports through April 19, 2013, he related that appellant complained of right knee pain while at work. Dr. Absi opined that appellant could continue working within his prior restrictions.

² On November 13, 2007 OWCP issued a schedule award for 24 percent permanent impairment of the right leg. Following a hearing, it affirmed the schedule award by decision dated July 10, 2008. On March 28, 2012 OWCP issued a schedule award for an additional 13 percent impairment of the right leg. On February 3, 2014, an OWCP medical adviser opined that appellant’s right knee condition was stable, with no worsening of the accepted injury.

³ Appellant participated in postoperative physical therapy through April 2007. Dr. Craven released appellant to full duty as of April 18, 2007.

⁴ By decision dated June 2, 2008, OWCP issued a formal wage-earning capacity determination, finding that appellant’s actual earnings as a modified rural carrier associate effective June 22, 2008 properly represented his wage-earning capacity and that he had no loss of wage-earning capacity.

⁵ OWCP initially denied the recurrence of disability by decision dated November 1, 2010. By decision dated January 28, 2011, OWCP vacated its November 1, 2010 decision and accepted the recurrence of disability.

Appellant stopped work on August 20, 2013. He claimed wage-loss compensation for the period August 20, 2013 and continuing.

Dr. Harvey B. Leslie, an attending physician Board-certified in pain management, submitted slips holding appellant off work as of August 20, 2013 and from September 13 to October 21, 2013. On September 30, 2013 he noted weakness and restricted motion in the right knee. Appellant related that standing and walking aggravated his symptoms. Dr. Leslie opined that appellant was permanently disabled due to right knee arthroplasty with pain, swelling, and weakness. He performed closed manipulation of the right knee under anesthesia.

By decision dated October 31, 2013, OWCP denied appellant's claim for recurrence of disability from August 20 to September 13, 2013. By decision dated November 12, 2013, it denied his claim for compensation beginning September 14, 2013. OWCP found that Dr. Leslie did not provide objective findings establishing that appellant was no longer able to perform his light-duty position as of August 20, 2013.

In a November 12, 2013 letter, appellant requested reconsideration of OWCP's October 31 and November 12, 2013 decisions. He submitted additional evidence.

An October 25, 2013 right knee arthrogram showed the right knee prosthesis was grossly intact, without significant mass or fluid collection.

In reports from November 4, 2013 to January 6, 2014, Dr. Leslie found tenderness and restricted motion of the right knee. He prescribed medication and physical therapy.

By decision dated February 6, 2014, OWCP denied modification of its October 31 and November 12, 2013 decisions on the grounds that the additional evidence did not establish a causal relationship between the accepted August 23, 2006 injury and the claimed recurrence of disability. It noted that appellant filed a new occupational disease claim for a right knee injury under File No. xxxxxx776,⁶ asserting that walking on concrete floors at work following total knee arthroplasty worsened his condition. OWCP denied his claim under File No. xxxxxx776.

In a May 12, 2014 letter, appellant requested reconsideration. He submitted a March 3, 2014 report from Dr. Leslie opining that appellant was permanently disabled for work as of August 20, 2013. Dr. Leslie asserted that appellant was unable to sit for more than 10 minutes, drive, or walk due to involuntary muscle spasms and chronic pain. He explained that prescribed narcotic medication impaired appellant's cognitive and motor skills such that he could not drive. Dr. Leslie provided progress notes from March 6 to August 15, 2014 finding continued swelling and pain in the right knee.

By decision dated October 2, 2014, OWCP denied modification, finding that Dr. Leslie did not provide sufficient medical rationale supporting that the August 23, 2006 right knee injury disabled appellant for work on and after August 20, 2013.

⁶ Claim number xxxxxx776 is not presently before the Board.

In an October 20, 2014 letter, appellant requested reconsideration. He submitted September 16 and October 10, 2014 chart notes and prescription slips from Dr. Leslie, noting continued right knee pain. In an October 13, 2014 letter, Dr. Leslie opined that the right knee arthroplasty rendered appellant “permanently disabled due to [r]ight [k]nee instability, popping on range of motion, swelling, chronic intractable knee pain,” and narcotic medication impairing his cognitive and motor skills.

By decision dated December 5, 2014, OWCP denied modification on the grounds that the additional evidence submitted was insufficient to establish the claimed recurrence of disability. It found that Dr. Leslie’s October 13, 2014 report was not based on a complete, accurate history, and did not contain sufficient rationale supporting a spontaneous worsening of the accepted condition as of August 20, 2013. OWCP noted that appellant implicated new work factors as the cause of the claimed recurrence of disability.

LEGAL PRECEDENT

OWCP’s implementing regulations define a recurrence of disability as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁷

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 establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the employee 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 job requirements.⁸ This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁹ An award of compensation may not be made on the basis of surmise, conjecture, speculation,¹⁰ or on appellant’s unsupported belief of causal relation.

ANALYSIS

OWCP accepted that appellant sustained a right knee injury on August 23, 2006 necessitating a total right knee arthroplasty on March 29, 2011. Appellant performed full-time

⁷ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.b (June 2013). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

⁸ *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁹ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹⁰ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

light duty from October 7, 2011 through August 20, 2013, when he stopped work and did not return. OWCP developed his claims for wage loss as a claim for recurrence of disability.

Dr. Leslie, an attending physician Board-certified in pain management, held appellant off work from August 20, 2013 onward. He explained on September 30, 2013 that appellant was permanently disabled for all work due to sequelae of the right knee arthroplasty, including pain, swelling, and weakness. Dr. Leslie performed closed manipulation of the right knee under anesthesia, but did not specify a period of disability related to the procedure. He opined on March 3 and October 13, 2014 that appellant could not perform his light-duty job as right knee pain, spasm, instability, and the side effects of narcotic medication rendered him unable to drive or deliver mail. However, Dr. Leslie did not observe an objective worsening of appellant's right knee as of August 20, 2013. His opinion is therefore insufficient to meet appellant's burden of proof in establishing the claimed recurrence of disability.¹¹

Appellant also alleged that new work factors after October 2011 caused his right knee to worsen. He filed a new occupational disease claim under File No. xxxxxx776, asserting that walking on concrete floors at work aggravated his right knee. Appellant thus implicated an intervening cause, breaking the chain of causation from the accepted right knee injury.¹² This effectively negates his claim for a recurrence of disability. The Board finds that OWCP's December 5, 2014 decision denying the claim was proper under the law and facts of the case.

On appeal, appellant contends that residuals of the accepted right knee injury continue to disable him for work. He described chronic pain, stiffness, swelling, and difficulty walking. As stated above, appellant filed a new occupational disease claim asserting that exposure to work factors after his right knee arthroplasty worsened his condition. These exposures broke the chain of causation from the original injury. Also, Dr. Leslie did not provide his reasons for finding that the accepted right knee injury spontaneously worsened as of August 20, 2013.

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 established a recurrence of disability effective August 20, 2013.

¹¹ *Philip L. Barnes, supra* note 7.

¹² See *Carlos A. Marrero*, 50 ECAB 117 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of appellant's disability and thus OWCP properly denied appellant's claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 5, 2014 is affirmed.

Issued: June 1, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board