

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

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**C.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Milwaukee, WI, Employer**

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**Docket No. 15-0677  
Issued: June 24, 2015**

*Appearances:*  
*Alan J. Shapiro, Esq., 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 9, 2015 appellant, through counsel, filed a timely appeal from a January 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 established disability for the period September 1 to December 23, 2013 causally related to her November 5, 2012 employment injury.

**FACTUAL HISTORY**

On March 2, 2013 appellant, then a 52-year-old part-time temporary sales and service distribution associate, filed a traumatic injury claim alleging that on November 5, 2012 she

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

sustained a left lower leg sprain when she slipped and fell at work. She did not stop work. OWCP accepted appellant's claim for left knee and leg sprains.

The record reveals that appellant's temporary assignment ended in December 2012. In January 2013 appellant's contract was reapproved and she returned to work. She worked regular duty until September 1, 2013 and thereafter alleged that she was no longer able to perform the duties of her employment.

Appellant filed Form CA-7 claims for wage-loss compensation for the period September 1, 2013 through January 24, 2014. OWCP paid compensation beginning December 24, 2013 until February 22, 2014, based upon the reports of Dr. H. Richard Weiner, a Board-certified internist. It noted that Dr. Weiner's December 5 and 30, 2013 reports supported a period of disability beginning December 24, 2013.

Appellant was initially was treated by Dr. Weiner. In reports dated September 9 to October 31, 2013, Dr. Weiner noted that he had examined appellant for left calf and thigh strain. Appellant had stated that her leg never fully recovered from the November 2012 injury and that her right leg was starting to feel sore because she was compensating for her left leg. Dr. Weiner noted that she had not been working because no light duty was available. Upon examination, he observed no deformity or erythema of the left knee. Dr. Weiner also found mild upper and lower leg soreness with mild extension to the left buttocks. Homans' test was negative. Dr. Weiner reported full range of motion of the knee and ankle without pain. He diagnosed hip/thigh and knee/leg sprain. Dr. Weiner provided several work status reports finding that appellant could work beginning September 3, 2013 with restrictions of no lifting, pushing, or pulling over 20 pounds, no squatting or bending, and no climbing stairs or ladders.

In a November 13, 2013 report, Dr. Weiner stated that on November 5, 2012 appellant experienced acute onset of left calf soreness when she slipped on gravel and fell in the parking lot of the employing establishment. He related that appellant was first seen in the clinic on January 30, 2013 with complaints of left calf soreness and swelling and returned to the clinic on February 4, 2013 stating that her pain had completely abated. Appellant noted that she had been working without difficulty. Dr. Weiner related that appellant returned to the clinic on September 3, 2013 with complaints of left calf pain. Appellant reported that she had been well until two weeks prior, when her work had become more strenuous, which she believed aggravated the residual effects of her employment injury. She stated that she had not worked since then because no light duty was available. Dr. Weiner concluded that appellant's "initial injury in early November 2012 may have predisposed her to the difficulties beginning in September 2013."

Dr. James D. Lincer, Board-certified in physical medicine and rehabilitation, related in November 25 and 27, 2013 reports that appellant sustained a work-related injury in November 2012 when she slipped and fell at work, but continued to work even though she experienced pain and discomfort. He related that appellant stopped working on Labor Day and had not returned. Upon examination, Dr. Lincer observed some mild tenderness along the left posterior thigh along the medial hamstring. Range of motion was normal. Dr. Lincer diagnosed left medial posterior thigh pain, although likely medial hamstring. In a work status note, he

authorized appellant to return to work with restrictions of no prolonged standing or walking longer than 55 minutes every hour and to only work two-hour shifts.

In a November 27, 2013 handwritten statement, appellant noted that she immediately reported the November 5, 2012 employment injury to her supervisor and did not know why a traumatic injury claim was not submitted until March 7, 2013. She explained that she continued to work all her duties because she hoped to become a regular employee. Appellant stated that her contract was approved to return to work in January 2013. She reported that she thought the break in service would be good for her, but about a month after returning to work she continued to experience pain in her left leg. Appellant explained that she continued to work while she waited for physical therapy to be approved. While working on Labor Day, she mentioned several times to the postmaster that her leg was in pain. Appellant was sent home and told not to return until she was 100 percent. The postmaster informed her that she could not pick and choose what work she would do and that the employing establishment had no light-duty work. Appellant explained that she had not returned to work since that day and that her condition had not improved.

On December 4, 2013 Dr. Thomas Jeffrey Dietrich, Board-certified in emergency medicine, examined appellant in the hospital and related that she had sustained a left knee injury in November 2012 at work. He noted that appellant was taken off physical work duties for over six months and that her pain had improved. Dr. Dietrich reported that appellant returned to physical labor, but her left knee pain became progressively worse. Upon examination of appellant's left leg, he observed no tenderness to palpation over the bony structures, no effusion or edema, and no instability. Dr. Dietrich stated that there was no evidence of a new injury. He related that appellant requested a work excuse note for the day since she called out of work. Dr. Dietrich noted that he would give appellant a work note for today, but advised her to see her primary care physician for a prolonged work note.

In a December 5, 2013 work activity status note, Dr. Weiner noted appellant's diagnosis of knee strain. He recommended that appellant remain off work until physical therapy was approved.

Appellant's appointment as a part-time temporary sales and service distribution associate expired as of December 24, 2013.

In a December 30, 2013 report, Dr. Weiner noted appellant's diagnosis of knee/leg sprain. He related that her condition was stable and that she had not worked because no light duty was made available. Upon examination of her left leg, Dr. Weiner observed mild tenderness and thigh soreness, but no deformity, erythema, or swelling. Range of motion was full and gait was normal. Dr. Weiner recommended that appellant return to the clinic as needed. In a December 30, 2013 work status report, he stated that she could return to work on December 30, 2013. Dr. Weiner also noted that appellant would remain off work until she followed up with her primary doctor regarding her restrictions.

On January 27, 2014 OWCP contacted appellant's supervisor *via* telephone regarding appellant's pay rate. The supervisor also informed OWCP that work was available for appellant

beginning September 1, 2013, but they were given medical documentation that she could not work.

By letter dated January 31, 2014, OWCP advised appellant that the medical evidence failed to demonstrate that she was disabled from work from September 1 to December 23, 2013 as a result of her November 5, 2012 employment injury. It requested that appellant submit medical evidence to support total disability for the period September 1 to December 23, 2013. OWCP also noted that compensation would be paid as of December 24, 2013.

In a January 31, 2014 report, Dr. John G. Sanidas, a Board-certified internist, stated that appellant should be off work until she had further orthopedic evaluation secondary to her left knee injury and discomfort.

Appellant contended in a February 5, 2014 letter that work was not available for her after September 1, 2013. She related that her supervisor asked her to leave work and not to return until she was 100 percent and could perform the duties of a postal support employee (PSE). Appellant also alleged that Dr. Weiner's reports verified that she had not been working because no light duty was available.

Appellant submitted various reports by Dr. Weiner which were previously of record. She circled the sections where he reported that appellant had not been working since no light duty was available. Appellant also submitted an October 15, 2013 e-mail wherein she informed the recipient of the e-mail that the postmaster had sent her home because she was complaining about her leg and knee hurting her at work. She noted that the postmaster did not want her back to work until she could do all that was required of her job. Appellant related that he did not have light duty and could not offer another position based on her current restrictions.

On February 11, 2014 OWCP informed appellant that the last medical evidence on record was Dr. Weiner's report which kept her off work until she was seen by her primary physician. It requested objective medical evidence from appellant to support that she was totally disabled for the claimed period.

In a February 21, 2014 work capacity evaluation, Dr. Sanidas noted appellant's diagnosis of sprain of left knee and leg and found appellant unable to work. He had referred her to an orthopedist.

In a February 26, 2014 report, Dr. Rory R. Wright, a Board-certified orthopedic surgeon, described appellant's November 5, 2012 employment injury and noted that she had continued to work in a clerk-type position. Appellant related that she thought this type of light work would help improve her knee, but she continued to experience pain in the hip, lower back, and down the left knee. Dr. Wright reviewed appellant's history, provided findings on examination, and diagnosed patellofemoral chondromalacia of the left knee and residual pain. He reported that "causation [was] almost impossible ... to determine given that it [was] more than 14 months since her initial injury." Dr. Wright recommended that appellant not return to work.

In a decision dated March 24, 2013, OWCP denied appellant's disability compensation claim for the period September 1 to December 23, 2013 finding that there was insufficient medical evidence to establish that she was unable to work due to the accepted left leg condition.

By letter dated March 31, 2014, counsel requested a hearing, which was held on October 17, 2014. He alleged that appellant's postmaster sent her home because light-duty work was not available for her. Counsel related that appellant was told not to return to work until she was 100 percent. He disputed the employing establishment's statement that light-duty work was available and asserted that appellant's testimony and the medical records demonstrated that it was not true. Appellant stated that, prior to August 31, 2013, she worked regular duty on the docks doing physical labor. That week, she received updated light-duty restrictions. During appellant's shift on August 31, 2013, appellant complained about her leg and knee hurting and her postmaster told her that if she was in pain, or if she could not work, she should not report to work. She related that she was told that there was no light duty available. Appellant stated that when she reported back to work on September 1, 2013 her supervisor asked her to leave and not return back to work until she was 100 percent.

By decision dated January 2, 2015, an OWCP hearing representative affirmed the March 24, 2013 decision. He determined that the evidence of record was insufficient to establish that appellant was disabled due to the accepted injury during the time period alleged, that the employing establishment withdrew appellant's light-duty work assignment beginning September 1, 2013 or that appellant was unable to work due to a worsening of the accepted left knee injury.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,<sup>3</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>4</sup>

Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>5</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee disability for her particular work.<sup>6</sup> For each period of disability claimed, the employee must establish that she was disabled for work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.

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<sup>2</sup> While the hearing representative stated that the period of disability was from September 1 to December 13, 2013, this appears to be a typographical error, as she affirmed the March 24, 2013 decision, which denied benefits through December 23, 2013. She did not discuss or make specific findings for the period December 13 to 23, 2013.

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>6</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for left leg sprain as a result of the November 5, 2012 employment injury. Appellant stopped work on September 1, 2013 and requested disability compensation. By decisions dated March 24, 2013 and January 2, 2015, OWCP denied her disability compensation claim finding insufficient medical evidence to establish that she was unable to work for the period September 1 to December 23, 2013 as a result of her November 5, 2012 employment injury.

Appellant was initially treated by Dr. Weiner. In reports dated September 9 to December 30, 2013, Dr. Weiner noted that on November 5, 2012 appellant slipped and fell in the parking lot of the employing establishment and sustained a left calf strain. He stated that appellant had not been working because no light duty was available. Upon examination, Dr. Weiner observed mild upper and lower leg soreness with mild extension to the left buttocks. He reported full range of motion of the knee and ankle without pain. Dr. Weiner diagnosed sprain of the hip/thigh and knee/leg sprain. He authorized appellant to work beginning September 3, 2013 with restrictions of no lifting, pushing, or pulling over 20 pounds, no squatting or bending, and no climbing stairs or ladders. In a November 13, 2013 report, Dr. Weiner related that appellant had been well until two weeks prior when her work became more strenuous. He concluded that appellant's "initial injury in early November 2012 may have predisposed her to the difficulties beginning in September 2013."

Although Dr. Weiner provided examination findings and an opinion on causal relationship, his conclusion that the November 5, 2012 injury "may have predisposed" appellant to her left leg symptoms in 2013 is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>8</sup> An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.<sup>9</sup> Dr. Weiner offered no medical rationale to explain why appellant became disabled or why she required work restrictions in September 2013 due to the accepted November 5, 2012 injury. Accordingly, his reports are insufficient to establish that appellant was unable to work from September 1 to December 23, 2013 as a result of her November 5, 2012 employment injury. Likewise, Dr. Wright's February 26, 2014 report is also vague and equivocal and of diminished probative value as he stated that he could not determine the cause of appellant's condition.

Appellant also submitted various reports by Dr. Lincer dated November 25 and 27, 2013. Dr. Lincer noted that appellant sustained a work-related injury in November 2012 and continued

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<sup>7</sup> *Amelia S. Jefferson, supra* note 5.

<sup>8</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>9</sup> *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

to experience pain and discomfort. He provided findings on examination and diagnosed left medial posterior thigh pain. Dr. Lincer reported that appellant stopped working on Labor Day and had not returned. He stated that appellant could return to work with restrictions of no prolonged standing or walking longer than 55 minutes every hour and to only work two-hour shifts. While Dr. Lincer noted that appellant stopped working on September 1, 2013, the Board notes that he did not provide any opinion on the cause of appellant's work stoppage. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Similarly, Drs. Dietrich and Sanidas provided no opinion on the cause of appellant's inability to work. As none of these reports provide any medical rationale for how the November 5, 2012 injury caused appellant's disability for this period, these reports are insufficient to establish appellant's disability compensation claim.

Although appellant alleged that she was disabled for the period September 1 to December 23, 2013 as a result of her accepted employment injury, the medical evidence of record does not establish that her claimed disability during the above timeframe was related to her accepted employment injury. The Board finds that appellant has failed to submit rationalized medical evidence establishing that her disability for the period September 1 to December 23, 2013 was causally related to her accepted employment injury. Accordingly, appellant has not met her burden of proof.

Appellant may submit 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 disabled from work for the period September 1 to December 23, 2013 causally related to her November 5, 2012 employment injury.

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<sup>10</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 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