

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

M.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Staten Island, NY, Employer**

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**Docket No. 15-1561
Issued: November 13, 2015**

Appearances:
Robert D. Campbell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 13, 2015 appellant, through counsel, filed a timely appeal from a February 6, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established a recurrence of total disability on November 6, 2013 causally related to a December 9, 2011 employment injury.²

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal counsel stated that a statement of factual and legal arguments challenging and disagreeing with OWCP's decision would be forthcoming. These items have not been received by the Board.

FACTUAL HISTORY

On February 22, 2012 OWCP accepted that appellant, then a 50-year-old letter carrier, sustained lateral meniscus derangement of the right knee and contusion of the left knee on December 9, 2011 when she slipped and fell on wet grass while delivering mail. She stopped work that day. Appellant received continuation of pay and wage-loss compensation.

Appellant returned to modified duty on July 29, 2013. The job description indicated that she cased mail while sitting for one to two hours daily, did office work such as answering the telephone for one to four hours daily, and delivered Express Mail within restrictions for up to two hours daily. The physical restrictions were that standing, walking, bending, stooping, and driving were limited to two hours intermittently, and lifting, pulling, and pushing were not to exceed 10 pounds, and were also limited to two hours intermittently. Appellant continued to receive wage-loss compensation for the hours she did not work.

In an August 20, 2013 report, Dr. Charles DeMarco, Board-certified in orthopedic surgery, noted the history of injury and appellant's complaints of persistent knee pain. He found tenderness on examination of both knees and diagnosed bilateral knee degenerative arthritis, ruled-out meniscus pathology.

Bilateral knee x-rays on November 8, 2013 revealed mild joint space narrowing at the patellofemoral and lateral femorotibial compartments bilaterally, right greater than left with moderate bilateral knee joint effusion. No fracture or focal lytic lesion was seen.

On November 13, 2013 appellant alleged a recurrence of total disability (Form CA-2a) on November 6, 2013. She related that she was working four hours a day, had a lot of knee pain that had increased, and she stopped work. The employing establishment confirmed that appellant had been working modified duty for four hours a day.

A right knee magnetic resonance imaging (MRI) scan on November 8, 2013 demonstrated an extensive tear of the entire lateral meniscus with diminished meniscal height, and a tear of the anterior cruciate ligament (ACL), with mild-to-moderate knee joint effusion, and no fracture or focal lytic lesion. A November 13, 2013 MRI scan of the right tibia and fibula revealed diffuse soft tissue swelling and no fracture or tendon tear. Left tibia and fibula MRI scans that day revealed no fracture or tendon tear and no focal lytic lesion.

In November 19, 2013 reports, Dr. DeMarco reiterated his findings and conclusions and noted that he had not yet reviewed the MRI scan studies. He diagnosed arthritis of both knees and instability, and checked a form box "yes," indicating that the conditions were employment related. Dr. DeMarco advised that appellant had been totally disabled since November 6, 2011 and that it was undetermined when she could return to work. On January 7, 2014 he diagnosed meniscus pathology, ligamentous pathology, degenerative arthritis, and ACL injury to both knees. Dr. DeMarco advised that appellant continued to have tenderness over the medial and lateral facets and remained totally disabled.

By letter dated January 28, 2014, OWCP noted the accepted conditions and informed appellant of the evidence needed to support her recurrence claim.

In reports dated February 18, 2014, Dr. DeMarco provided physical examination findings and noted his review of the MRI scan studies. He advised that on November 4, 2013 appellant sustained a recurrence of a prior injury and noted that she did not want additional surgery. Dr. DeMarco continued to advise that appellant was totally disabled.

On March 19, 2014 Dr. Anne Marie Stilwell, Board-certified in anesthesiology and pain medicine, noted the history of injury and appellant's medical and surgical history, including test results. Physical examination demonstrated very swollen knees. Dr. Stilwell diagnosed knee pain and chronic pain not otherwise classified. She advised that appellant could not return to full duty and recommended physical therapy and knee injections.

In an April 3, 2014 decision, OWCP denied appellant's claim that she sustained a recurrence of total disability on November 6, 2013 because the medical evidence did not contain sufficient evidence explaining how the claimed disability was caused by the accepted conditions due to the December 9, 2011 employment injury. Appellant remained entitled to medical benefits.

On November 26, 2014 appellant, through counsel, requested reconsideration and submitted additional medical evidence. In support of the request, she submitted an undated statement in which she indicated that, after she returned to work in July 2013, she delivered mail which required a lot of in and out, up and down, and this increased her knee pain and swelling. Appellant stated that when she woke up on November 6, 2013 she could not bend her knees, had extreme pain and swelling, and that the pain continued.

In reports dated March 24 to April 29, 2014, Dr. DeMarco reiterated the history of injury, appellant's medical and surgical history, his treatment, and her complaints of bilateral knee pain and dysfunction. He noted that after she returned to work her knee problems increased such that on November 4, 2013, when she was casing mail, her knees blew up. Dr. DeMarco diagnosed medial meniscus and ACL tears. He recommended physical therapy, injections, and surgical treatment, including possible total knee replacements. Dr. DeMarco advised that, with a reasonable degree of medical certainty, appellant's knee injuries were due to the December 9, 2011 employment injury with an acute exacerbation on November 4, 2013. He continued to advise that she was totally disabled. On May 1, 2014 Dr. DeMarco noted that appellant could work six hours a day casing mail and preparing a route for delivery, and that she could deliver Express Mail, not to exceed 15 pounds. Squatting, kneeling, and climbing were prohibited, and she was to be allowed a 15-minute break every 2 hours. On June 9, 2014 Dr. DeMarco reiterated his findings and opinions. At that time he advised that appellant was unable to work.

In a merit decision dated February 6, 2015, OWCP denied modification of the prior decision. It found that appellant had not met her burden of proof because the medical evidence did not sufficiently explain how the claimed November 6, 2013 recurrence of total disability was related to the December 9, 2011 employment injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a

previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴

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 light duty can be performed, the employee has the burden to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.⁵

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury and who supports that conclusion with sound medical reasoning.⁶

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability on November 6, 2013 causally related to the accepted lateral meniscus derangement of the right knee and contusion of the left knee. Appellant has failed to establish that the nature and extent of her injury-related conditions changed so as to prevent her from continuing to perform her modified part-time assignment.

Following the December 9, 2011 employment injury, appellant returned to four hours of modified duty on July 29, 2013. The job duties of the part-time position were that she cased mail while sitting for one to two hours daily, did office work such as answering the telephone for one to four hours daily, and delivered Express Mail within restrictions for up to two hours daily. The physical restrictions were that standing, walking, bending, stooping, and driving were limited to two hours intermittently, and lifting, pulling, and pushing were not to exceed 10 pounds, and were also limited to two-hour intermittently.

³ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁴ *Id.*

⁵ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *S.S.*, 59 ECAB 315 (2008).

When appellant filed the recurrence claim on November 13, 2013, she reported that she sustained a recurrence of total disability on November 6, 2013. She stated that she was working four hours a day and had a lot of knee pain that increased, and she stopped work. The employing establishment indicated that appellant had been working modified duty for four hours a day. In November 2014, appellant related that, when she woke up on November 6, 2013, she could not bend her knees and had extreme pain and swelling. She stated that the pain continued.

Dr. Stilwell advised on March 19, 2014 that physical examination demonstrated very swollen knees. She diagnosed knee pain and chronic pain not otherwise classified, advised that appellant could not return to full duty, and performed five knee injections from May 14 to June 11, 2014. Dr. Stilwell, however, did not provide any specific physical restrictions, and merely indicated that appellant could not return to full duty. Moreover, she exhibited no knowledge of appellant's part-time modified job duties.

Likewise, Dr. DeMarco's reports are insufficient to establish that appellant sustained a recurrence of total disability on November 6, 2013. He submitted reports beginning in August 2013. At that time Dr. DeMarco reported appellant's complaints of persistent knee pain and tenderness on examination of both knees and diagnosed degenerative arthritis of both knees, ruled-out meniscus pathology. On November 19, 2013 he diagnosed arthritis of both knees and instability. Dr. DeMarco checked a form box "yes," indicating that the conditions were employment related and advised that appellant had been totally disabled since November 6, 2011. He reported that it was undetermined when appellant could return to work. On January 7, 2014 Dr. DeMarco diagnosed meniscus pathology, ligamentous pathology, degenerative arthritis, and ACL injury to both knees. He advised that appellant continued to have tenderness over the medial and lateral facets and remained totally disabled. On February 18, 2014 Dr. DeMarco noted his review of the MRI scan studies. He advised that on November 4, 2013 appellant sustained a recurrence of a prior injury and indicated that she did not want additional surgery. Dr. DeMarco continued to advise that she was totally disabled. In reports dated March 24 to April 29, 2014, he reiterated the history of injury, appellant's medical and surgical history, his treatment, and her complaints of bilateral knee pain and dysfunction and noted that after she returned to work her knee problems increased such that on November 4, 2013, when she was casing mail, her knees blew up. Dr. DeMarco diagnosed medial meniscus and ACL tears. He advised that, with a reasonable degree of medical certainty, appellant's knee injuries were due to the December 9, 2011 injury with an acute exacerbation on November 4, 2013. Dr. DeMarco continued to advise that she was totally disabled. On May 1, 2014 he indicated that appellant could work six hours a day casing mail and preparing a route for delivery, and that she could deliver Express Mail, not to exceed 15 pounds. Squatting, kneeling, and climbing were prohibited, and she was to be allowed a 15-minute break every 2 hours. On June 9, 2014 Dr. DeMarco reiterated his findings and opinions. At that time he advised that appellant was unable to work.

Dr. DeMarco's opinion is insufficient to meet appellant's burden to establish a recurrence of total disability on November 6, 2013 for two reasons. Initially, the history of the recurrence provided by him does not comport with appellant's description. Appellant indicated that when she woke up on November 6, 2013 she could not bend her knees and had extreme knee pain and swelling. Dr. DeMarco described an injury that occurred on November 4, 2013 when she was at work, stating that when she was casing mail that day her knees blew up. Secondly, he exhibited

no knowledge of the part-time modified duties appellant was performing when she stopped work on November 6, 2013. Appellant's job duties at that time indicated that she would sit while casing mail. He did not explain why appellant could no longer perform the modified part-time duties.

Medical opinion evidence submitted by appellant to support her claim for compensation benefits should reflect a correct history and should offer a medically sound explanation by the physician of how the modified duties she was performing on November 6, 2013 physiologically caused or aggravated the accepted bilateral knee conditions.⁷ Appellant submitted no such evidence in this case.

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 failed to establish that she sustained a recurrence of total disability on or after November 6, 2013, causally related to a December 9, 2011 employment injury.

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board