United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 15-1389**
	)	**Issued: October 16, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Indianapolis, IN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2015 appellant filed a timely appeal of a May 26, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she was partially disabled for the period April 14 to August 11, 2014 causally related to her accepted employment condition.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 31, 2014 appellant then a 61-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on January 30, 2014 she twisted her left knee while performing her work duties. She worked full time in a compressed schedule of 10-hour shifts. OWCP accepted appellant's claim for a left knee strain. Appellant stopped work on January 31, 2014.

OWCP received employing establishment medical records from January 31, 2014 noting appellant's treatment by a nurse for a left knee injury. Appellant reported attempting to plug in a piece of equipment in the operating room when she twisted her left knee. She was diagnosed with a left knee strain. In a report of emergency treatment dated January 31, 2014, the nurse indicated that appellant could return to work with restrictions through February 14, 2014.

Appellant came under the treatment of Dr. Janos Ertl, a Board-certified orthopedic surgeon. In a report dated February 6, 2014, Dr. Ertl treated appellant for a left knee injury. Appellant reported that on January 30, 2014 while in the operating room she leaned over to put a plug into the anesthesia machine and twisted her left knee. She reported significant pain and was unable to perform the duties of her position. X-rays showed mild degenerative joint changes with tibial spiking. Examination showed complete left knee range of motion, exquisite tenderness along the medial joint line, and effusion. Dr. Ertl diagnosed medial meniscus tear of the left knee and possible intra-articular damage. He recommended a magnetic resonance imaging (MRI) scan and knee brace. Dr. Ertl took appellant off work.

In a work capacity status report dated February 6, 2014, Dr. Ertl noted that appellant was injured on January 30, 2014 and was unable to return to her usual job or a full-time job with restrictions for four weeks due to difficulty walking, standing, or sitting. On March 3, 2014 he treated her for persistent left knee pain. Dr. Ertl noted a February 12, 2014 MRI scan of the left knee revealed grade III to IV chondromalacia over the medial patellar facet and posteromedial femoral condyle consistent with chondral defect with a questionable meniscus tear. He noted the examination was essentially unchanged and diagnosed chondral defects of the left knee and multiple medical comorbidities. In a March 3, 2014 work capacity status report, Dr. Ertl noted persistent pain and swelling of the left knee and noted that appellant could perform her usual work duties with restrictions. In an April 9, 2014 work capacity report, he noted her left knee pain was improving and she could work five hours a day for four weeks subject to a 15-pound weight restriction and no cart pumping.

On April 15, 2014 the employing establishment offered appellant a limited-duty position effective immediately as a nurse. The position conformed with the medical restrictions set forth by Dr. Ertl on April 9, 2014 which provided a 15-pound weight restriction, no cart pumping, and work restricted to five hours a day. The employing establishment noted the tour of duty was a full time, compressed schedule. Appellant accepted the position and returned to work April 14, 2014 on modified duty for five hours a day.

Appellant submitted an MRI scan of the left knee dated February 12, 2014 which revealed grade III to IV moderate surface area chondromalacia medial facet of the patella and a grade III to IV chondromalacia posteromedial femoral condyle centrally with no medial meniscal tear. An April 9, 2014 report from Dr. Ertl noted reevaluating appellant for left knee symptoms.

Appellant reported marked improvement after a steroid injection on March 3, 2014. Dr. Ertl noted that she was undergoing physical therapy and her symptoms progressively increased. He noted findings of full range of motion, crepitation, with slight antalgic gait. Dr. Ertl diagnosed status post left knee strain and multiple intra-articular chondral lesions of the left knee. He returned appellant to work for five hours a day for four weeks with a progression to full duty. On May 7, 2014 Dr. Ertl noted that she underwent a steroid injection of her left knee on March 3, 2014 which provided approximately five weeks of pain relief. Appellant currently complained of pain and popping in her left knee that was aggravated by walking and prolonged standing. X-rays and an MRI scan revealed chondral defects within the medial compartment, medial femoral condyle, and medial facet of the patella. Dr. Ertl noted that physical examination was unchanged. He diagnosed left knee injury on January 30, 2014 while at work and symptomatic left knee with multiple intra-articular injuries. Dr. Ertl recommended surgery.

Appellant filed several CA-7 forms, claims for compensation for partial disability five hours per day, from April 14 to May 9, 2014, from May 12 to 16, 2014, from May 19 to 22, 2014 and June 3 to 10, 2014. She indicated that her physician restricted her work hours. In Form CA-7a, time analysis forms, the employing establishment confirmed the hours of leave without pay.

Appellant submitted a work capacity status report from Dr. Ertl dated May 12, 2014 noting she could return to her usual job for five hours a day and noted "left knee pain." Dr. Ertl stated that restrictions would apply until surgery was approved.

In a letter dated May 19, 2014, OWCP requested that appellant submit additional information to support her claim for compensation. It asked that she submit medical evidence establishing that partial disability was due to the accepted condition for the period claimed.

In a decision dated July 9, 2014, OWCP accepted the diagnosed condition of left knee strain, but denied appellant's claim for compensation for partial disability for five hours a day beginning April 14, 2014. It advised that the evidence of record fails to support work-related disability during the period claimed as appellant was capable of working 10 hours per day with restrictions, which the employing establishment accommodated. OWCP noted that appellant needed to submit medical reports from Dr. Ertl fully explaining why he proposed to modify work restrictions.

Appellant requested an oral hearing which was held telephonically on March 9, 2015. At the hearing, she testified that she returned to light-duty work for eight hours daily, five days a week, on August 12, 2014. Appellant noted that she had recently retired and that she had not undergone left knee surgery. An OWCP hearing representative requested that appellant submit medical evidence attributing her claimed disability to the work injury.

Appellant submitted reports from Dr. Ertl dated February 6 to May 7, 2014, all previously of record. She submitted a certificate of medical care from Dr. Terry J. Mandel, a Board-certified family practitioner, who noted that she was totally disabled from December 22, 2011 to January 8, 2012. Appellant submitted a January 31, 2014 prescription note from a health care provider with an illegible signature who noted that appellant had a knee injury and would be off work for three weeks. She submitted earnings and leave statements from February 14 to

July 26, 2014. Appellant submitted a return to work note dated August 12, 2014 from Dr. Ertl which noted that she could return to work eight-hour shifts with restrictions.

In a decision dated May 26, 2015, the hearing representative affirmed the July 9, 2014 decision.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[2] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[3] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[4] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[5]

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. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.[6]

ANALYSIS

OWCP accepted appellant's claim for a left knee strain. Appellant returned to modified work for five hours daily on April 14, 2014 and claimed wage-loss compensation for the five hours of work that she missed each day.[7] The Board finds that the medical evidence is insufficient to establish that the period of partial disability of April 14 to August 11, 2014 was caused or aggravated by the accepted conditions.

In an April 9, 2014 report, Dr. Ertl noted that appellant had a steroid injection on March 3, 2014 which improved her condition, but that physical therapy increased her left knee symptoms. He diagnosed status post left knee strain and multiple intra-articular chondral lesions of the left knee. Dr. Ertl returned appellant to work five hours a day for four weeks. Similarly, on May 7, 2014, he noted her complaints of pain and popping in the knee which was aggravated

[2] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[3] *Id.*

[4] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

[6] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[7] During the period at issue, April 14 to August 11, 2014, appellant's job called for working four 10-hour work shifts a week. On August 12, 2014 she returned to work for eight hours daily, five days a week.

by walking and prolonged standing. Dr. Ertl noted unchanged findings and diagnosed work-related left knee injury on January 30, 2014, symptomatic with multiple intra-articular injuries. He recommended surgery. In April 9 and May 12, 2014 work capacity reports, Dr. Ertl noted appellant's complaints of "left knee pain" and returned her to work for five hours per day with restrictions. While Dr. Ertl indicated that appellant was partially disabled from work, he did not explain how the accepted left knee strain caused or contributed to the partial disability beginning April 14, 2014. Part of appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the period of disability and the accepted injury.[8] Therefore these reports are insufficient to meet appellant's burden of proof.

Other medical evidence of record is of limited probative value as it does not address the period of disability at issue. Appellant also submitted evidence from an employing establishment nurse and provided a report from a healthcare provider with an illegible signature. The Board has held that treatment notes signed by a nurse are not considered medical evidence as a nurse is not a physician under FECA.[9] Furthermore, medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.[10]

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed. She indicated that she returned to full-time work when she was physically able and noted that her knee injury ended her nursing career. The Board notes that appellant failed to submit rationalized medical evidence which supports a causal relationship between the period of disability and the accepted injury.[11] While Dr. Ertl opined that appellant was partially disabled from work, he did not specifically address how any disability from April 14 to August 11, 2014 was caused or aggravated by the accepted left knee strain.

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 failed to establish that her partial disability for the period beginning April 14 to August 11, 2014 is causally related to the accepted employment injury.

[8] *Franklin D. Haislah,* 52 ECAB 457 (2001); *Jimmie H. Duckett,* 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[9] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[10] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan,* 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

[11] *Jimmie H. Duckett, supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2015
Washington, DC

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

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

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