

FACTUAL HISTORY

On June 26, 2012 appellant, then a 41-year-old food inspector, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right ankle, left elbow, and left knee in the performance of duty. OWCP accepted the claim for contusions of multiple sites, left knee and leg sprain, left medial and lateral meniscus tears, and left cruciate ligament sprain. Appellant stopped work on the date of injury and received appropriate wage-loss compensation.² The record indicates that she was placed on the periodic rolls for temporary total disability beginning August 26, 2012. Left knee arthroscopic surgery was authorized by OWCP and performed on November 28, 2012.

On March 12, 2013 Dr. Charles R. Kaelin, a treating Board-certified orthopedic surgeon, diagnosed possible left knee medial meniscus tear, left knee posterior cruciate ligament tear, and left elbow contusion. He provided physical examination findings and work restrictions, which were permanent. The restrictions included no kneeling, squatting, climbing or crawling and no carrying more than 20 pounds.

An April 1, 2013 work restriction form released appellant to light-duty work, effective that same date. Work restrictions included: no bending, squatting, or kneeling; no lifting more than 20 pounds; and a permanent restriction of driving no more than 70 miles per day.

On August 2, 2013 appellant accepted a modified job offer from the employing establishment for work as an intermittent food inspector. She returned to work on August 12, 2013. The job was located at Tysons Food Incorporated in Shelbyville, Tennessee. The physical requirements for the job included optional sitting/standing up to 8 hours; less than 30 minutes of walking; up to 20 pounds lifting; no squatting, crouching, crawling, kneeling, bending or stooping; climbing and balancing of stairs: one step up to a platform with two steps up to an inspection stand; frequent simple grasping, firm hand grasping, and bilateral fine manipulation of fingers; and normal vision and hearing requirements.

By decision dated April 4, 2014, OWCP issued a loss of wage-earning capacity decision in which it determined that appellant had no loss of wage-earning capacity as her actual earnings as an intermittent food inspector met or exceeded the current wages of her date-of-injury job. As appellant had no loss of wage-earning capacity, her wage-loss compensation payments were terminated.

Dr. Kaelin reported that appellant was seen on May 13, June 3 and 17, 2014 and he diagnosed posterior cruciate ligament left knee tear and left knee osteoarthritis. He noted that appellant was seen for a follow-up visit for her knee condition and that she was waiting for approval of total left knee arthroplasty surgery. On May 13, 2014 Dr. Kaelin reported that last week appellant missed work due to pain. He noted “an adjuster reviewed her work and thought she was climbing one to two steps a day.” In actuality, appellant claimed she was actually climbing five to six stairs at least 10 times per day, which Dr. Kaelin noted was outside of her

² By decision dated October 8, 2013, OWCP granted appellant a schedule award for 12 percent permanent impairment of the left lower extremity, which was affirmed by an OWCP hearing representative in a decision dated June 27, 2014.

work restrictions. In his reports, Dr. Kaelin indicated that appellant was capable of working and provided work restrictions. The restrictions included: limited activities by using a cane at work with or without her braces; no sitting more than 10 minutes per hour; no bending, kneeling, climbing or squatting; and no driving more than 70 miles per day. Dr. Kaelin noted that appellant was capable of working if the restrictions were followed.

Dr. Kaelin, on May 13, June 3, 17, and July 15, 2014, completed work status forms indicating that appellant could return to light-duty work. He provided work restrictions which included no repetitive bending, squatting, kneeling or climbing; no sitting more than 10 minutes per hour; no driving more than 70 miles per day; and use of cane with or without knee brace.

Appellant filed claims for wage-loss compensation (CA-7 forms) for the period May 4 to July 12, 2014.

In a letter dated June 10, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim that her disability beginning May 4, 2014 was causally related to the accepted work conditions. It advised as to the evidence required and gave her 30 days to provide the requested information.

On June 17, 2014 Dr. Kaelin responded to OWCP's June 10, 2014 letter. He provided a history of appellant's injury, diagnoses, and medical treatment including a November 28, 2012 surgery. Dr. Kaelin noted placing appellant in a brace based on residual pain to assist her with returning to work. Dr. Kaelin related total knee arthroplasty surgery was recommended due to appellant's chondral disease and posterior instability. Next, he provided permanent work restrictions of no sitting more than 10 minutes per hour; no repetitive crawling, bending, kneeling, squatting, or climbing; and the recommendation of using a cane along with her brace. Dr. Kaelin reported appellant was currently waiting to be scheduled for total knee arthroplasty surgery.

On June 18, 2014 appellant filed a recurrence of disability claim (Form CA-2a) as of May 4, 2014 causally related to the accepted June 26, 2012 employment injury.

On July 17, 2014 OWCP authorized left total knee arthroplasty surgery, which occurred on August 5, 2014.

By decision dated July 22, 2014, OWCP denied appellant's claim for wage-loss compensation for the period May 4 to July 12, 2014. It found the medical evidence of record insufficient to establish that she was totally disabled due to her accepted employment injuries. OWCP further noted that recent medical evidence indicated she was able to work with restrictions.

In a separate decision dated July 22, 2014, OWCP accepted appellant's recurrence claim and requested she submit medical evidence supporting any claim for time lost due to medical appointments.

On August 4 and 14, 2014 OWCP received appellant's CA-7 forms claiming wage-loss compensation for the period July 13 to August 9, 2014.

On August 12, 2014 OWCP received appellant's July 26, 2014 request for a telephonic hearing before an OWCP hearing representative. The hearing was held on December 12, 2014.

By letter dated August 20, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim for wage-loss compensation for the period July 27 to August 9, 2014. Appellant was advised that additional evidence was required to support her claim for disability for the period July 27 to August 9, 2014. OWCP noted that surgery was approved for July 30, 2014, but medical evidence was required to support disability for the period July 27 to 29, 2014. Appellant was given 30 days to provide the requested information.

In a letter dated September 15, 2014, OWCP informed the employing establishment that compensation had been approved beginning July 30, 2014, which it noted as the date of surgery. Evidence in the record, including computer printouts and a September 30, 2014 letter, show that appellant was paid wage-loss compensation for the period July 30 to October 18, 2014.

Dr. Kaelin, in a December 12, 2014 report, opined that appellant was disabled from May 4 to July 30, 2014 due to her accepted June 26, 2012 employment injury. In support of this conclusion, Dr. Kaelin related that he had advised OWCP that appellant was waiting for total knee arthroplasty surgery and she was totally disabled from performing her employment duties for the period in question.

By decision dated February 27, 2015, an OWCP hearing representative affirmed the denial of wage-loss compensation for the period May 4 to July 29, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁵ 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 probative and reliable medical opinion evidence.⁶

Under FECA the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

wages.⁸ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

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 their disability and entitlement to compensation.¹⁰

OWCP's procedures provide that, if a formal loss of wage-earning capacity decision has been issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss. In that instance, the claims examiner will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity.¹¹ OWCP is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued.¹²

ANALYSIS

OWCP accepted the claim for contusions of multiple sites, left knee and leg sprain, left medial and lateral meniscus tears, and left cruciate ligament sprain. It denied appellant's claim for wage-loss compensation for May 4 to July 29, 2014. The issue on appeal is whether appellant met her burden of proof to establish her claim for wage-loss compensation for the period in question. The Board finds appellant has not met her burden of proof.

The Board notes that as appellant is claiming a limited period of disability, OWCP properly determined that her claim should not be developed as a request for modification of a wage-earning capacity decision. Rather, appellant has the burden of establishing that her disability for the limited period in question was causally related to her accepted employment injury.¹³

Appellant submitted reports and work status reports from Dr. Kaelin to support her claim for wage-loss compensation for the period May 4 to July 29, 2014. While Dr. Kaelin addressed appellant's diagnosed condition, work restrictions, and scheduling for surgery, the only reports

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Modification of Loss of Wage-Earning Capacity Decision*, Chapter 2.1501.3 (October 2013).

¹² *K.R.*, Docket No. 09-415 (issued September 30, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹³ *See K.R., id.*; *Katherine T. Kreger*, 55 ECAB 633 (2004).

addressing disability are the May 13 and December 19, 2014 reports. In the May 13, 2014 report, Dr. Kaelin noted that appellant missed work the previous week due to pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹⁴ In addition, Dr. Kaelin's statement regarding appellant's disability is a repetition of appellant's complaints that she was unable to work due to pain without providing any objective finding of disability. Dr. Kaelin has not presented a medical opinion on the issue of disability or a basis for payment of compensation based on his reliance of appellant's statement that she was disabled due to pain.¹⁵ Similarly, the December 19, 2014 report is insufficient to support appellant's claim. While Dr. Kaelin attributes appellant's disability for the period in question, May 4 to July 29, 2014, to her accepted June 26, 2012 employment injury, he has not supported that opinion with any rationale or objective findings. The Board has held that medical evidence consisting solely of conclusory statements without supporting rationale are of little probative value.¹⁶ 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.¹⁷ Therefore these reports are insufficient to meet appellant's burden of proof.

While Dr. Kaelin noted appellant's work restrictions, he did not explain why these restrictions were necessitated by objective medical findings. He also did not explain why these restrictions would preclude appellant from performing her modified work duties as a food inspector.¹⁸ Dr. Kaelin noted appellant's allegation that she was working outside of her climbing restrictions and reiterated her work restrictions, relating that if she was climbing five to six stairs at least 10 times per day as alleged, that this was outside her restrictions. However, the record contains no evidence supporting appellant's claim that she was required to work outside of her restrictions in her modified job.

Although appellant alleged that she was entitled to wage-loss compensation for the period claimed, due to her accepted employment injury, the medical evidence of record does not establish that her claimed disability during the period in question was related to her accepted condition. In addition, the fact that OWCP accepted disability beginning on July 30, 2014 does not establish that appellant's disability prior to that date was due to the accepted employment injury.¹⁹ The acceptance of surgery as employment related does not, by itself, establish a period of employment-related disability prior to the surgery.²⁰

¹⁴ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

¹⁵ *Fereidoon Kharabi*, *supra* note 10.

¹⁶ *See T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁷ *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).

¹⁸ *See T.B.*, Docket No. 11-0663 (December 15, 2011).

¹⁹ *M.S.*, Docket No. 13-665 (issued June 11, 2013); *see also R.W.*, Docket No. 12-282 (issued June 12, 2012).

²⁰ *Id.*

The remaining work status reports are of limited probative value as they do not address the period of disability. Appellant has, therefore, not met her burden of proof to establish that she was disabled from work due to her accepted contusions of multiple sites and left knee and leg sprain, left medial and lateral meniscus tears, and left cruciate ligament sprain, for the period in question.

On appeal, counsel argues that the medical evidence of record, and in particular Dr. Kaelin's December 19, 2014 report, provided sufficient rationale to support her disability for work particularly as OWCP accepted appellant's claim for disability beginning July 30, 2014. However, as the Board has found, the reports from Dr. Kaelin were insufficiently rationalized and insufficient to establish her claim.

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 met her burden of proof in establishing entitlement to wage-loss compensation for the period May 4 to July 29, 2014 as causally related to her accepted June 26, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 27, 2015 is affirmed.

Issued: April 1, 2016
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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