

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

R.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Ann Arbor, MI, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-1525
Issued: February 1, 2016**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 2, 2015 appellant, through counsel, filed a timely appeal of a March 3, 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.²

ISSUE

The issue is whether appellant has met her burden to proof to establish total disability for an additional four hours per day on and after December 16, 2013.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 3, 2015 hearing representative's decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On October 15, 2008 appellant, then a 34-year-old medical technician, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 2008 she sustained a left knee contusion when she struck her left knee on the corner of a metal bed rail in the performance of duty. OWCP accepted the claim for left knee contusion.³ Appellant stopped work on October 10, 2008 and returned to limited-duty work on October 13, 2008. OWCP thereafter paid compensation for intermittent periods of wage loss.

On September 18, 2009 appellant filed a Form CA-1 alleging that on September 14, 2009 she sustained a reinjury to her left knee when it was hit by a wheelchair which had been pushed and released by a patient's companion. OWCP accepted the claim for left knee contusion.⁴ Appellant stopped work on September 15, 2009 and returned to work two hours per day on October 15, 2009, which was gradually increased to eight hours per day, with restrictions, on April 19, 2010. OWCP paid wage-loss compensation for the hours appellant was disabled from work.

Appellant continued to file intermittent claims for wage loss, which OWCP paid through January 17, 2012.

On August 15, 2013 Dr. Athar Siddiqui, Board-certified in internal medicine, reported toe discoloration and, upon physical examination, diagnosed reflex sympathetic dystrophy (RSD). Appellant had complained of terrible left lower extremity, pain, and bluish discoloration. Dr. Siddiqui advised that appellant should not work, but that if she must return to work that it was not to exceed four hours per day.

On September 16, 2013 OWCP received an August 15, 2013 disability note from Dr. Siddiqui diagnosing acute exacerbation of patella/left knee injury finding appellant totally disabled beginning August 12, 2013. Dr. Siddiqui found, however, that appellant could return to work four hours per day on August 19, 2013.

On September 16, 2013 the employing establishment offered appellant a modified temporary limited-duty job as a medical technician for four hours of work per day based on restrictions set by her treating physician in effect as of August 15, 2013. Appellant accepted this position.

By decision dated October 24, 2013, OWCP expanded acceptance of appellant's claim to include left patellae chondromalacia, left closed patella dislocation, and left lower limb complex regional pain syndrome (CRPS)/RSD.

OWCP paid wage-loss compensation for intermittent periods of disability from October 21 to December 13, 2013.

³ This claim was assigned OWCP File No. xxxxxx773. On October 26, 2011 appellant filed a claim for a schedule award under that file number.

⁴ This claim was assigned OWCP File No. xxxxxx073. On April 19, 2010 OWCP combined OWCP File Nos. xxxxxx773 and xxxxxx073, with the latter number serving as the master file number.

On December 30, 2013 appellant filed another claim for total disability for the period December 16 to 27, 2013. On the back of the form, the employing establishment checked the box marked “no” as to whether the employee had returned to work. It noted that appellant was off work based on her doctor’s recommendation. The record establishes that she continued to receive four hours of wage-loss compensation per day.

Dr. Shahida H. Khan, an examining Board-certified internist, in a December 12, 2013 disability note, released appellant to return to work on December 16, 2013 and diagnosed left leg pain and RSD. In December 26, 2013 disability note, he indicated that she was covered from December 16 to 20, 2013 and could return to work on December 20, 2013.

Dr. Siddiqui, in his December 26, 2013 progress report, noted that appellant was seen for complaints of increased severe leg pain and noted that she had been working four hours per day. He diagnosed acute post-traumatic RSD aggravation with severe knee pain. Due to appellant’s severe knee pain and acute aggravation, Dr. Siddiqui opined that she was unable to even work four hours per day. He recommended that she “go on a medical for four weeks” as she was incapable of working at that time. In the December 26, 2013 disability note, Dr. Siddiqui released appellant to return to work on January 26, 2014 and diagnosed acute RSD exacerbation.

By letter dated January 6, 2014, OWCP informed appellant that the evidence submitted was insufficient to support her claim for wage-loss compensation for total disability. It noted that Dr. Khan’s report was unclear regarding whether she was totally disabled prior to or after her December 12, 2013 appointment. OWCP advised appellant as to the medical evidence required to support her claim of disability and gave her 30 days to provide this information.

OWCP received additional (Forms CA-7) claiming wage-loss compensation beginning December 28, 2013.

On February 20, 2014 OWCP received a December 12, 2013 report from Dr. Khan. Dr. Khan noted appellant’s complaints of left leg pain and history of RSD. Appellant complained of fatigue, tiredness, left leg muscle spasm, and neck problems. A physical examination revealed left leg and knee discoloration and neck pain. Dr. Khan diagnosed exacerbation of left leg RSD with the cold aggravating the condition.

In progress notes dated January 10, 2014, Dr. Khan reported seeing appellant for left leg, knee, and calf pain, numbness, on and off discoloration, tingling, and severe muscle spasm. He noted a history of RSD which had worsened over time. Dr. Khan opined that appellant was incapable of working due to severe worsening left leg pain.

Dr. Khan, in progress notes dated January 24, 2014, reported that appellant was seen for left knee complaints of pain, discoloration, and swelling. Appellant related that she was unable to sit or stand for more than one hour due to muscle spasms. A physical examination revealed left leg discoloration, some swelling, and muscle weakness. Dr. Khan diagnosed acute exacerbation of RSD. He concluded that appellant was disabled from working as “[a]ll of symptoms are exaggerated to the point that she cannot work more than one hour.”

In a February 7, 2014 report, Dr. Siddiqui reported that over the past six months to a year appellant had been working four hours per day. A physical examination revealed left lower

extremity redness and discoloration. Dr. Siddiqui noted that appellant's condition had been progressively worsening. Appellant related that after a half hour of sitting at work her leg becomes red, starts to swell, and she experiences pain with a throbbing sensation. Dr. Siddiqui noted her history of RSD, which occurs at work, that the condition is worsening and there was "No cure insight (sic)." He opined that appellant's current sedentary job was aggravating her RSD and that she was unable to perform her job due to her condition. Specifically, Dr. Siddiqui noted that her sedentary job of sitting and standing continuously was going to aggravate her RSD. He recommended that appellant apply for social security disability benefits.

In reports dated March 5 and April 4, 2014, Dr. Siddiqui noted that appellant had developed RSD and nerve damage. On March 5, 2014 a physical examination revealed left knee pain, tenderness in the ankle and knee areas, and left lower extremity blood vessel dilation. On April 4, 2014 Dr. Siddiqui reported appellant's problems as knee area trauma which developed into RSD. He noted that she attempted to work four hours a day, but was unable to work even four hours due to her left leg swelling which resulted in vasodilation and throbbing pain. Dr. Siddiqui stated that these symptoms were due to sitting for four hours. Physical examination findings included pain during left knee range of motion testing, thigh area muscle spasm, and left leg vasodilation.

Dr. Siddiqui, in progress notes dated May 2, 2014, provided physical examination findings of no calf tenderness and restricted left knee movement, which he noted were consistent with RSD.

By letter dated May 14, 2014, OWCP advised Dr. Siddiqui of the conditions it had accepted and requested that he provide a narrative detailed report responding to questions regarding appellant's ability to work. It also requested that he explain why she was disabled from performing her modified job of four hours of sedentary/limited-duty work. OWCP requested that any report be submitted by June 13, 2014. There was no response from Dr. Siddiqui.

By decision dated July 2, 2014, OWCP denied appellant's claim for compensation for total disability on and after December 16, 2013. It noted that by decision dated October 24, 2013 her claim was expanded to include CRPS/RSD, that she was able to work four hours per day, and therefore she received wage-loss compensation for four hours of disability per day. OWCP found that appellant failed to submit sufficient medical evidence establishing total disability due to her accepted employment conditions.

In a letter dated July 2, 2014, appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on January 13, 2015.

On February 2, 2015 OWCP received progress reports dated January 10 and August 14, 2015 from Dr. Khan and progress reports from Dr. Siddiqui covering the period May 29, 2014 to January 6, 2015.

In an August 14, 2014 progress report, Dr. Khan reported appellant had been seen for a follow-up visit for left leg pain, foot, and hip pain complaints. Appellant related that she was unable to perform any home duties, could not stand or bend for long periods of time, and that she

was miserable. She also complained that she only received partial wage-loss compensation instead of wage-loss compensation for total disability.

Dr. Siddiqui, in the various progress notes covering the period June 30, 2014 to January 16, 2015, detailed physical examination findings including constant pain and throbbing in the left lower extremity, vasodilation, painful and restricted left knee range of motion, and motor weakness. On June 30, 2014 appellant informed him that even a “[l]ittle bit of work makes it miserable” and that she is unable to do any work or duties at home. In the progress notes, Dr. Siddiqui recommended full medical retirement. He opined that appellant was unable to perform any type of work in his October 22, 2014 notes. On December 19, 2014 Dr. Siddiqui observed that she was unable to work for even two or three hours per day as she experienced throbbing, pain, and swelling of her leg when sitting for two to three hours. He, in January 16, 2015 notes, observed that appellant’s prognosis was poor and that she would eventually have to apply for social security disability benefits. Dr. Siddiqui reported that appellant had constant left leg burning pain and throbbing. He advised she that there was no cube.

By decision dated March 3, 2015, an OWCP hearing representative affirmed the July 2, 2014 decision denying appellant’s claim for an additional four hours of wage-loss compensation.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁶ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁷ 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.⁸

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁹ Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.¹⁰

⁵ *Supra* note 1.

⁶ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁷ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁸ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ 20 C.F.R. § 10.5(x).

¹⁰ *Theresa L. Andrews*, 55 ECAB 719 (2004).

Where an employee claims a recurrence of total disability due to an accepted employment-related injury, he or she has the burden of establishing that the recurrence is causally related to the original injury.¹¹ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the disability is causally related to the employment injury.¹² The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.¹³

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.¹⁴

ANALYSIS

OWCP accepted appellant's claim for left knee contusion, left patellae chondromalacia, left closed patella dislocation, and left lower limb CRPS/RSD. By decision dated October 24, 2013, it found her partially disabled for four hours per day. OWCP has paid appellant partial disability for four hours a day since October 21, 2013.

Appellant claimed total disability beginning December 16, 2013. By decision dated July 2, 2014, OWCP denied compensation for the additional four hours and that decision was affirmed by an OWCP hearing representative on March 3, 2015. The issue on appeal is whether appellant has established total disability as of December 16, 2013.

The Board finds that appellant has not met her burden of proof.

Initially, it is noted that appellant has not claimed that her light-duty job requirements changed, or that her light-duty work was withdrawn. Rather, she claims that her condition worsened sufficient to render her totally disabled effective December 16, 2013.

In support of her claim appellant submitted reports and disability notes from Drs. Siddiqui and Khan. Both physicians attributed her inability to work a four-hour modified job to pain and acute RDS exacerbation. In various reports, Dr. Siddiqui noted appellant's symptoms of fatigue, leg pain, spasms, swelling, and discoloration rendering her unable to work even one hour of her modified sedentary job. In his February 7, 2014 report, he opined that her sedentary job had aggravated her RSD. Dr. Siddiqui did not, however, provide objective findings of a worsening of appellant's accepted condition. He contended that her condition could only deteriorate if she continued to work and recommended that she apply for social security disability benefits. The Board has found that subjective complaints are not sufficient, in

¹¹ *J.W.*, Docket No. 15-465 (April 29, 2005); 20 C.F.R. § 10.104(b).

¹² *See S.S.*, 59 ECAB 315 (2008).

¹³ *Id.*

¹⁴ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

and of themselves, to support payment of compensation.¹⁵ Likewise, the Board finds medical limitations based solely on the fear of a possible future injury are insufficient to support payment of compensation.¹⁶

Dr. Siddiqui failed to provide any medical rationale explaining how or why the accepted left knee contusion, left patellae chondromalacia, left closed patella dislocation, and left lower limb CRPS/RSD were the cause of appellant's inability to perform her part-time modified job. Without such rationale, these reports are insufficient to establish disability on and after December 16, 2013.¹⁷

Appellant also submitted medical evidence from Dr. Khan. On December 12, 2012 Dr. Khan first noted that the cold weather had aggravated her RSD, while in his January 10, 2014 report, he noted that she had a history of RSD, which had worsened over time. On January 10, 2014 he concluded that appellant was disabled from working even four hours per day due to severe worsening left leg pain. In a subsequent January 24, 2014 note, Dr. Khan diagnosed acute exacerbation of RSD and opined that she was disabled from working even one hour due to exaggeration of all her symptoms. He failed to provide any medical rationale explaining how or why her accepted conditions caused total disability. Dr. Khan opined that symptoms of her accepted conditions increased, but he did not support with rationalized medical findings that her accepted condition had worsened sufficient to cause total disability. The Board finds these reports, which fail to provide a rationalized medical opinion connecting the accepted conditions to the disability, lack probative value.¹⁸

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated.

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 to establish total disability after December 16, 2013.

¹⁵ A.G., Docket No. 14-1590 (issued September 9, 2015).

¹⁶ *Id.*

¹⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 3, 2015 is affirmed.

Issued: February 1, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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