United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 15-0697**
	)	**Issued: July 15, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Los Angeles, CA, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 11, 2015 appellant, filed a timely appeal from a September 23, 2014 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 to establish total disability from November 2 to December 3, 2012 causally related to her accepted employment condition.

FACTUAL HISTORY

On February 24, 2010 appellant then a 43-year-old nursing assistant, slipped and fell injuring both knees, her left ankle, and her lumbar spine. On April 6, 2010 OWCP accepted left ankle sprain, acute lumbar strain of the back superimposed on preexisting L5-S1 derangement

[1] 5 U.S.C. § 8101 *et seq.*

and collapse, internal derangement of the bilateral knees, and tear of the medial meniscus of the left knee.[2] Appellant did not stop work, but returned to limited duty. She returned to full-time regular duty with no restrictions on June 11, 2010.

Dr. Solomon Forouzesh, a Board-certified internal medicine and rheumatology, treated appellant from May 10 to 25, 2012 for knee and shoulder pain after a fall on February 24, 2010. He noted appellant's history was significant for a herniated disc in her low back in 2000. In a progress note dated October 11, 2012, Dr. Forouzesh treated appellant for bilateral knee pain. He noted findings of morning stiffness, back pain, joint swelling, and bilateral knee pain. On November 8, 2012 Dr. Forouzesh advised that appellant was unable to work due to her fall, Baker's cyst, degenerative joint disease, low back pain, hypertension, and edema. He noted that appellant was unable to sit, stand or stay in one position for long periods. Dr. Forouzesh noted that appellant's work status would be determined based on the results of the diagnostic testing.

On November 13, 2012 appellant filed a Form CA-7, claim for compensation, for total disability from November 2 to December 3, 2012.

In a letter dated November 21, 2012, OWCP requested that appellant submit additional information regarding her claim. It asked that she submit medical evidence establishing that total disability was due to the accepted condition for the period claimed.

Appellant was treated by Dr. Forouzesh on October 25, 2012 for bilateral knee pain, back pain, and joint swelling. Dr. Forouzesh noted that appellant's job required prolonged sitting. He diagnosed degenerative joint disease and took appellant off work for four weeks. On November 8, 2012 Dr. Forouzesh noted that appellant was to be off work for one month due to low back pain. Appellant reported that her job required prolonged sitting for eight hours a day. Dr. Forouzesh noted findings of swelling of the right knee, left ankle pain, morning stiffness, joint swelling, back pain, and a bilateral Baker's cyst. He diagnosed degenerative joint disease, degenerative disc disease, low back pain, and Baker's cyst.

On November 20, 2012 Dr. Forouzesh noted physical findings of back pain, joint swelling and stiffness, and bilateral Baker's cyst. He repeated his previous diagnoses. Dr. Forouzesh noted that appellant was off work for one month. In reports dated November 30 and December 5, 2012 Dr. Forouzesh noted that appellant fell on October 24, 2010 and an MRI scan of the left knee revealed a meniscal tear. He diagnosed low back pain, joint swelling, stiffness, bilateral Baker's cysts, degenerative joint disease, and degenerative disc disease. Dr. Forouzesh recommended physical therapy and noted that appellant was off work for one month.[3]

Appellant submitted a report from Dr. Solemon Hakimi, a Board-certified physiatrist, dated December 21, 2012. She reported her February 24, 2010 fall at work where she injured both knees, ankle, and back. Dr. Hakimi noted that appellant's job required prolonged sitting and answering telephones seven hours daily. Appellant reported increasing pain and being

[2] OWCP authorized a left knee arthroscopy on December 6, 2010, but there is no indication in the record that appellant underwent the surgery.

[3] A November 19, 2012 lumbar spine MRI scan revealed L5-S1 disc desiccation, mild-to-moderate disc height loss, and dorsal disc protrusion coming in contact with the course of the left S1 nerve root at L5-S1.

treated in the emergency room. Dr. Hakimi advised that appellant was disabled from November 2 to December 5, 2012. Appellant's history was significant for a back injury in 2000. Dr. Hakimi opined that appellant was disabled due to the work injury and she should not engage in heavy lifting, constant bending, lifting, or prolonged sitting. He recommended that appellant be allowed to stretch her back and knees every 2 hours for 10 minutes and that she be provided a chair with back cushion support. Dr. Hakimi also recommended physical therapy twice weekly.

In a December 22, 2012 attending physician's report, Dr. Hakimi noted appellant's history was significant for continuous trauma since 1998, a back injury in 2000 and a fall at work on February 24, 2010. He noted examination findings and diagnosed neck pain, back pain, lumbar disc, bilateral knee pain, arthritis, Baker's cyst, and hypertension. Dr. Hakimi noted with a check mark "yes" that appellant's condition was caused or aggravated by a work injury and noted continuous trauma caused neck pain, back pain, knee pain, and hypertension. He found appellant totally disabled from November 2 to December 5, 2012. Appellant could return to work with a special chair if she could stretch 10 minutes every hour.

On December 31, 2013 Dr. Moshe H. Wilker, a Board-certified orthopedist, saw appellant for complaints of low back and left knee pain that began in 2010. A lumbar MRI scan revealed disc herniation and desiccation and a left knee MRI scan showed a Baker's cyst. Dr. Wilker diagnosed left knee internal derangement and lumbar disc herniation. He noted that since appellant was not interested in surgery she had reached maximum medical improvement.[4]

In a January 12, 2014 statement, appellant stated that she had left knee pain since her fall at work. She reported that sitting and standing for prolonged periods caused back pain. Appellant noted that her physician prescribed a special chair, a foot board to lift her legs, two 15-minute breaks and a 30-minute lunch, but the employing establishment was unable to accommodate her. She indicated that she did not participate in activities outside or at home.

In a decision dated March 5, 2014, OWCP denied appellant's claim for compensation for total disability for the period November 2 to December 3, 2012. It advised that the evidence of record failed to support disability during the period claimed.[5]

On June 9, 2014 appellant requested reconsideration. She submitted a January 9, 2014 attending physician's report from Dr. Wilker who diagnosed lumbar disc herniation and left knee internal derangement. Dr. Wilker noted with a checkmark "yes" that appellant's condition was caused or aggravated by work activity and noted that appellant fell at work. In a report dated April 15, 2014, he diagnosed left knee Baker's cyst and discogenic back pain. Dr. Wilker noted that since appellant was not interested in diagnostic arthroscopy of the knee or back surgery she had reached maximum medical improvement. He noted the Baker's cyst, inflammation of the knee joint, discogenic back pain and inflammation of the discs at L5-S1 were related to the 2010 fall.

[4] A November 19, 2012 right knee x-ray revealed small osteophyte at the superior pole of the patella suggesting mild osteoarthritis. An x-ray of the left knee on the same date was negative.

[5] OWCP referred appellant's records to a district medical adviser for a determination of whether the Baker's cysts were causally related to the February 24, 2014 work injury. The medical adviser noted that the Baker's cysts were possibly related to the work injury, but there was insufficient information to reach a conclusion. She suggested obtaining additional medical records and then referring appellant for a second opinion examination.

In a March 23, 2014 statement, appellant noted that her physician released her to full duty because her position at the customer service information desk was sedentary. She indicated that prolonged sitting aggravated her Baker's cyst, lower back, ankles, and knees.

Appellant was treated by Dr. Todd D. Moldawer, a Board-certified orthopedist, on April 22, 2014. She reported performing customer service duties which required prolonged sitting for eight hours a day five days a week. Dr. Moldawer noted findings and diagnosed chronic lumbosacral strain, herniated disc at L5-S1 on the left, and internal derangement of the left knee. He advised that appellant had chronic back pain radiating to the legs after a trip and fall injury at work on February 24, 2010. Dr. Moldawer indicated that appellant could continue working in her usual and customary occupation.

Appellant also provided a December 5, 2012 report from Dr. Forouzesh who noted a history of injury and opined that appellant's preexisting injury to her back was exacerbated by the February 24, 2010 fall. Dr. Forouzesh diagnosed torn meniscus in the left knee, ankle sprain, and a preexisting back condition with a bulging disc of five mm which was aggravated by the fall. He noted that appellant was released to work with limited duties and frequent breaks.[6]

Appellant submitted a report from Dr. Elizabeth Bloze, Board-certified in physical medicine and rehabilitation, dated June 23, 2014, who noted a history of appellant's falls in 2007 and February 24, 2010 and resulting back pain and radiation into her legs. Dr. Bloze diagnosed chronic bilateral back pain and sciatica, radiating back pain to the lower extremities with no evidence of bilateral S1 radiculopathy.

Appellant was treated by Dr. Moldawer on July 10 and August 21, 2014, who diagnosed chronic lumbosacral strain, herniated disc at L5-S1 on the left, and internal derangement of the left knee. Dr. Moldawer advised that appellant experienced chronic back pain radiating to the lower extremities following a trip and fall injury at work on February 24, 2010. He continued her usual and customary occupation.

Appellant was treated by Dr. Marc J. Friedman, a Board-certified orthopedic surgeon, on September 2, 2014, who noted a history of injury on February 24, 2010 and diagnosed left knee pain, patellofemoral with MRI scan evidence of a tear of the lateral meniscus. Dr. Friedman noted appellant was restricted to sedentary activity.

In a decision dated September 23, 2014, OWCP denied modification of the March 5, 2014 decision noting that appellant failed to submit medical evidence supporting disability from November 2 to December 3, 2012.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled from work as a result of an accepted employment injury and submit medical evidence

[6] Appellant submitted a May 13, 2014 impairment rating from Dr. Hosea Brown, III, a Board-certified internist, and a May 20, 2014 impairment rating from Dr. George Thomas Ricks, a family practitioner. Neither physician addressed disability for the period at issue. On July 1, 2014 appellant filed a Form CA-7, claim for a schedule award. Matters pertaining to a schedule award are not before the Board on the present appeal.

for each period of disability claimed.[7] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[8] The issue of whether a particular injury causes disability from work must be resolved by competent medical evidence.[9] 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.[10]

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 he or she was disabled for work as a result of the accepted employment injury.[11]

ANALYSIS

OWCP accepted appellant's claim for left ankle sprain, acute lumbar strain of the back superimposed on preexisting L5-S1 derangement and collapse, internal derangement of the bilateral knees, and tear of the medial meniscus of the left knee. Appellant did not stop work, but returned to limited duty and resumed full-time regular duty work on June 11, 2010. The Board finds that the medical evidence of record is insufficient to establish that total disability beginning November 2 to December 3, 2012 was caused or aggravated by the accepted conditions.

Appellant was treated by Dr. Forouzesh on October 25, 2012 for bilateral knee pain. Dr. Forouzesh noted findings and diagnosed degenerative joint disease. He took appellant off work for four weeks. On November 8, 2012 Dr. Forouzesh diagnosed degenerative joint disease, degenerative disc disease, low back pain, and Baker's cyst. He noted that appellant was unable to sit, stand, or stay in one position for long periods of time. Dr. Forouzesh opined that appellant was unable to work for one month due to her fall. Similarly, on November 20 and 30, 2012 he noted a history of injury, diagnoses, and diagnostic test findings. Dr. Forouzesh placed appellant off work for one month. Although these notes indicated that appellant had disability from work in November and December 2012, he failed to provide a reasoned opinion explaining that the disability was causally related to the accepted work injury.[12] Additionally, Dr. Forouzesh attributed appellant's disability to degenerative joint disease, degenerative disc disease, Baker's cyst, hypertension, and edema, but these conditions have not been accepted by OWCP as work

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

[8] *Id.*

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

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

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

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

related.[13] He did not offer a reasoned explanation as to why particular accepted conditions caused or contributed to the claimed period of disability. Dr. Forouzesh's December 5, 2012 report does not specifically address whether appellant had any employment-related disability from November 2 to December 3, 2012 causally related to her February 24, 2010 employment injury. Thus, his reports are insufficient to establish the claim.

Appellant submitted a December 21, 2012 report from Dr. Hakimi who treated her for injuries sustained in a slip and fall at work on February 24, 2010. Dr. Forouzesh placed her on disability from November 2 to December 5, 2012. Dr. Hakimi diagnosed neck pain due to work trauma, prolonged sitting, and answering telephones; back pain; bilateral knee pain and arthritis due to fall and trauma; left knee internal derangement due to trauma; bilateral knees Baker's cyst; lumbar disc due to trauma; and neurological deficits in both upper and lower extremities. Dr. Hakimi opined that appellant was disabled due to the work injury. In his December 22, 2012 attending physician's report, Dr. Hakimi noted with a check mark in a box marked "yes" that appellant's condition was caused or aggravated by an employment injury and noted continuous trauma caused neck pain, back pain, knee pain, arthritis, Baker's cysts and hypertension. Dr. Hakimi noted that appellant was totally disabled from November 2 to December 5, 2012. Although Dr. Hakimi supports work-related disability for the claimed period, he failed to provide a reasoned opinion explaining how the accepted conditions caused disability during this period.[14] As with Dr. Forouzesh, he attributes the disability, at least in part, to conditions not accepted by OWCP. Furthermore, it is well established that a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value.[15]

Reports from Dr. Wilker dated December 31, 2013 to April 15, 2014 noted diagnoses and opined that appellant's conditions were related to the 2010 fall. However, Dr. Wilker did not specifically address whether appellant had any employment-related disability beginning November 2 to December 3, 2012 causally related to her February 24, 2010 work injury. Likewise, reports from Dr. Moldawer, Dr. Bloze, and Dr. Friedman noted a history of the February 24, 2010 injury and offered diagnoses, but did not specifically address whether appellant had any disability from November 2 to December 3, 2012 causally related to her February 24, 2010 work injury. Similarly, the remainder of the medical evidence, including reports of diagnostic testing, does not provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of February 24, 2010. Consequently, this evidence is of limited probative value with regard to causal relationship.[16]

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed. As noted above, 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. The Board notes that appellant failed to

[13] *Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

[14] *See supra* note 12.

[15] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[16] *See supra* note 11; *Jaja K. Asaramo*, 55 ECAB 200 (2004).

submit rationalized medical evidence which provides sufficient support for causal relationship between the claimed period of disability and the accepted injuries.

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 from November 2 to December 3, 2012 causally related to her accepted employment condition.

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board