



## **FACTUAL HISTORY**

On January 3, 2014 appellant, then a 33-year-old instrument mechanic leader, filed a traumatic injury claim (Form CA-1) alleging that on December 27, 2013, while working light duty, he bent down to move a box and experienced sharp pain in his low back, groin, and knee when he stood up. He noted that he had a preexisting left knee condition and had undergone multiple knee surgeries. OWCP accepted appellant's claim for left knee sprain and left knee anterior cruciate ligament (ACL) tear. Appellant received wage-loss compensation on the supplemental rolls for disability.

Appellant continued to receive medical treatment. On August 25, 2014 he underwent authorized left knee arthroscopic ACL reconstruction. Appellant stopped work and received compensation on the supplemental rolls from August 25 to October 5, 2014. On October 6, 2014 he returned to full-time modified duty as an instrument mechanic leader.

Appellant continued to seek medical treatment. In a May 19, 2015 report, Dr. Ronald G. Hayter, a Board-certified orthopedic surgeon, related appellant's complaints of worsening left knee and low back pain, which limited his ability to work. On examination of appellant's left knee, he observed trace effusion with a ballotable patella. Ligament examination revealed negative subluxation and negative Lachman's, drawer, and pivot shift tests. Dr. Hayter reported pain with varus stress and lateral joint line tenderness. Examination of appellant's back revealed a postural abnormality, a small degree of posterior paraspinal muscle spasm that was palpable in the lumbar paraspinal musculature with associated tenderness, and decreased flexion of the hip on the affected side. Dr. Hayter also observed tenderness to palpation along the course of the sciatic notch. He related that an x-ray of the left knee revealed minimal degenerative joint disease (DJD) and an x-ray of the lumbar spine demonstrated degenerative joint and disc disease and significant narrowing of neural foramina at L4-L5 and L5-S1 due to facet arthritis. Dr. Hayter diagnosed status post lateral meniscus allograft, status post ACL, and lumbar DJD. He opined that, based on appellant's history, physical examination, and appropriate tests, left knee arthroscopy would aid in both diagnosis and treatment. Dr. Hayter submitted a worksheet which indicated diagnoses of lateral tear of appellant's meniscus, degenerative disc disease of the lumbar spine with sciatica, and ACL. He noted that appellant should not work.

In a handwritten May 19, 2015 prescription note, Dr. Hayter indicated that appellant was "off work due to left knee scheduled for knee surgery."

Appellant stopped work and submitted a request for leave without pay dated May 21, 2015.<sup>3</sup>

On May 27, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for the period May 21 to 31, 2015. He indicated that he was out of work waiting for authorization for surgery. Appellant submitted additional wage-loss compensation claims for continuing disability.

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<sup>3</sup> In a May 21, 2015 memorandum, Victor M. Alas, a compensation specialist, noted that appellant had been placed on compensation effective 7:00 p.m. on May 22, 2015 and continuing. The record does not reflect that appellant received FECA wage-loss compensation as of May 22, 2015.

By letter dated June 11, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his recurrence of disability claim. It requested that he respond to the attached questionnaire and provide a narrative medical report with a physician's opinion supported by medical rationale explaining why he was unable to work modified duty due to his original employment injury. Appellant was afforded 30 days to submit this additional evidence.

On June 29, 2015 OWCP received appellant's completed questionnaire. Appellant indicated that there was no specific injury that caused his recurrence of injury, but his knee just started hurting more. He described his work activities as walking, getting in and out of carts to service equipment, and repairing equipment. Appellant related his belief that his knee never completely healed and was still causing pain and inflammation.

In a July 1, 2015 report, Dr. Hayter related appellant's complaints of pain in his left knee and low back and reviewed appellant's previous left knee surgeries, which included a lateral meniscus allograft in November 2013 and ACL reconstruction in August 2014. Upon examination, he observed effusion in the knee, pulled ligaments, and good range of motion. Dr. Hayter reported that lateral symptoms were suggestive of possible lateral meniscal tear or disruption of his allograft. He administered an injection to appellant's left knee and recommended arthroscopy of the left knee.

On July 21, 2015 appellant requested authorization for left knee arthroscopic surgery.

In a July 23, 2015 form, appellant indicated that on December 27, 2013 he tore his left knee ACL at work and had surgery to repair it on August 25, 2014. He related that on approximately March 12, 2015 his knee started hurting when he tried to bend it. Appellant went to his doctor who recommended that he return to the surgeon who performed his left knee surgery because there was a screw that needed to be removed. He reported that the surgeon confirmed that he had excessive scar tissue from the ACL surgery and needed the screw removed. Appellant noted that the surgeon took him off work and advised him that he could not return to work until after the surgery.

In a handwritten July 23, 2015 prescription note, Dr. Hayter indicated that appellant was "unable to work due to mechanical instability in left knee due to torn cartilage."

In a decision dated July 27, 2015, OWCP denied appellant's recurrence of disability claim. It found that the evidence submitted was insufficient to establish that his accepted left knee injury had worsened to the extent that he was unable to continue to work his modified position. OWCP also denied appellant's request for authorization for arthroscopic surgery on his left knee because the medical evidence failed to establish that the surgery was medically necessary to treat his December 27, 2013 work injury.

On August 24, 2015 OWCP received appellant's reconsideration request.

In an August 19, 2015 letter, Dr. Hayter reviewed appellant's medical history regarding his left knee condition, including the various surgeries he had undergone. He reported that during a May 19, 2015 examination appellant described difficulty standing and walking because of pain in his knee and leg. Dr. Hayter observed limited range of motion, secondary to pain, lateral joint line tenderness, and positive McMurray's test findings in the lateral compartment of

the knee. He reported that at the time of the examination he believed that appellant either had worsening of his arthritis in the knee or some type of disruption or failure of his meniscal allograft. Dr. Hayter recommended that appellant not return to work in an effort to control his symptoms and limit further damage to his knee and arthroscopy of his left knee. He opined that appellant did not sustain a new injury, but that the most likely explanation for his symptoms was either progression of degenerative arthritis in his left knee, which was related to his original injury causing a lateral meniscal tear and cruciate ligament tear, or possible failure of the meniscal allograft. Dr. Hayter explained that appellant needed diagnostic arthroscopy to identify the source of his symptoms.

Appellant also resubmitted Dr. Hayter's July 21, 2013 medical report.

By decision dated September 2, 2015, OWCP denied modification of the July 27, 2015 decision. It found that the evidence was insufficient to establish that appellant was unable to work modified duty as a result of his December 27, 2013 employment injury.<sup>4</sup>

### **LEGAL PRECEDENT**

OWCP's implementing regulations define a recurrence of disability as 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.<sup>5</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he cannot perform the limited-duty position. As part of this burden, 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 limited-duty requirements.<sup>6</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup>

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<sup>4</sup> OWCP did not reconsider the issue of authorization for arthroscopic surgery. Thus, it is not before the Board on this appeal. See 20 C.F.R. § 501.2(c).

<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); see *Nicolea Bruso*, 33 ECAB 1138 (1982). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

## ANALYSIS

OWCP found that on December 27, 2013 appellant sustained a work-related left knee sprain and left knee ACL tear. On August 25, 2014 appellant underwent authorized left knee surgery and stopped work. He returned to modified duty on October 6, 2014. On May 21, 2015 appellant stopped work again and filed claims for wage-loss compensation. In decisions dated July 27 and September 2, 2015, OWCP denied his claim for recurrence of disability. The Board finds that appellant has failed to establish a recurrence of disability beginning May 21, 2015 causally related to his December 27, 2013 employment injury.

Appellant alleged that his physician took him off work due to his original injury. Accordingly, he must submit evidence sufficient to demonstrate a change in the nature and extent of his accepted condition such that he could no longer perform the light-duty assignment.<sup>8</sup> Appellant submitted various reports dated May 19 to August 19, 2015 from Dr. Hayter. In a July 23, 2015 prescription note, Dr. Hayter opined that appellant was unable to work “due to mechanical instability in left knee due to torn cartilage.” He further explained in an August 19, 2015 letter that the most likely explanation for appellant’s symptoms was either progression of degenerative arthritis in his left knee, which was related to his original injury, or possible failure of the meniscal allograft surgery.

Although Dr. Hayter provided an opinion regarding appellant’s ability to work, the Board finds that he did not sufficiently explain, with sound medical reasoning, how the December 27, 2013 work injury disabled appellant for work on and after May 21, 2015. Dr. Hayter reported that appellant could not work due to scheduled left knee surgery and mechanical instability due to a torn cartilage. He failed to provide an explanation, based on objective evidence, as to how appellant’s left knee condition had worsened in less than a year to the extent that he could no longer perform his modified-duty job assignment.<sup>9</sup> Furthermore, the Board notes that Dr. Hayter attributed appellant’s current symptoms to either a progression of his degenerative arthritis, which is not an accepted condition, or possible failure of his left knee surgery. Dr. Hayter did not provide a definitive opinion on the cause of appellant’s current condition nor a fully-rationalized explanation as to why appellant was disabled beginning May 21, 2015 as a result of his accepted left knee injury.<sup>10</sup>

In his August 19, 2015 report, Dr. Hayter explained that he recommended appellant not return to work to control his symptoms and limit further damage to his left knee. It is well established that the possibility of future injury or disability is not a basis for payment of compensation.<sup>11</sup>

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<sup>8</sup> *Supra* note 4.

<sup>9</sup> *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> The Board has found that medical opinions that are speculative or equivocal in nature are of diminished probative value. *See D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>11</sup> *L.J.*, Docket No. 15-0188 (issued March 25, 2016).

The Board finds, therefore, that appellant failed to submit rationalized medical evidence establishing that his disability on May 21, 2015 was causally related to his December 27, 2013 employment injury.

On appeal appellant explains that after he went back to work following the surgery he continued to experience left knee pain and decreased range of motion. He asserts that these symptoms were evidence of a worsening of his condition. The issue of whether a claimant's inability to work is related to an accepted condition, however, is a medical question that must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>12</sup> As noted above, appellant did not submit sufficiently rationalized medical evidence to establish that he sustained a recurrence of disability beginning May 21, 2015 causally related to his accepted December 27, 2013 employment injury.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not establish that he sustained a recurrence of disability beginning May 21, 2015 causally related to the December 27, 2013 employment injury.

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<sup>12</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 2, 2015 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2016  
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