



further contends that he sustained a recurrence of disability because the employing establishment could not accommodate his work restrictions.

### **FACTUAL HISTORY -- ISSUE 1**

OWCP accepted that on January 6, 2011 appellant, then a 61-year-old letter carrier, sustained a right knee and leg sprain and right knee medial and lateral meniscus tears when he fell while in the performance of duty.<sup>2</sup> Appellant stopped work on June 11, 2011 because the employing establishment could not accommodate his work restrictions. He returned to work on July 11, 2011 for two hours a day and received partial wage-loss compensation. Appellant returned to full duty with no restrictions on August 10, 2011.

Appellant filed several claims for compensation (Forms CA-7) for leave without pay (LWOP) from March 28 to August 10, 2012. Time analysis forms (Forms CA-7a) indicated that he used 501.94 hours of LWOP during the claimed period.

In a March 28, 2012 duty status report (Form CA-17), Dr. Jennings diagnosed internal derangement of the right knee due to appellant's accepted January 6, 2011 employment injuries. He checked a box marked "no" with regard to whether appellant could resume work.

In reports dated April 23, May 21, and June 18, 2012, Dr. Borden listed findings on examination and reviewed diagnostic test results. He diagnosed right knee medial femoral condyle articular cartilage damage and underlying medial meniscal tear, and low back pain. Dr. Borden requested authorization to perform arthroscopic meniscectomy and chondroplasty to treat appellant's right knee condition. He recommended that appellant continue his current modified-duty work until surgery was authorized. In a June 18, 2012 report, Dr. Borden found that appellant could continue with a desk job. He subsequently indicated that surgery was scheduled for July 17, 2012.

In CA-17 form reports dated May 21 and June 18, 2012, Dr. Borden diagnosed internal derangement of the right knee due to appellant's accepted January 6, 2011 employment injuries. He advised that appellant's other disabling condition was degenerative joint disease of the lumbosacral spine. Dr. Borden set forth appellant's restrictions and checked a box marked "no" as to whether appellant could resume work. In reports dated July 23, 2012, he advised that appellant was status post right knee arthroscopy and temporarily totally disabled from July 17 to September 4, 2012.

An April 23, 2012 Form CA-17 report, which contained an illegible signature listed a diagnosis of internal derangement of the right knee due to appellant's accepted January 6, 2011 employment injuries. Appellant's other disabling condition was degenerative joint disease of the lumbosacral spine. The report listed his restrictions and the box marked "no" was checked with regard to whether he could resume work.

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<sup>2</sup> Appellant has an unrelated claim under OWCP File No. xxxxxx120, with a date of injury of January 1, 2011, accepted for lumbar strain.

In reports dated May 7 and 29 and July 3, 2012, Dr. David W. Cheshire, Board-certified in occupational medicine, reviewed Dr. Borden's April 23, May 21, and June 18, 2012 findings. He advised that there was no reason to change his prior diagnosis and treatment recommendation.<sup>3</sup>

In a June 5, 2012 letter, Samantha Hoang, an employing establishment assessment coordinator, stated that management met with appellant around the end of March 2012 regarding his March 28, 2012 medical documentation. Ms. Hoang noted that although appellant's physician clearly provided restrictions, appellant advised that he could not work until his surgery was performed.

By letters dated July 19, 2012, Postmaster Jose Melendez stated that appellant was incapacitated and not available to return to work based on medical restrictions set forth by his physicians. He noted that appellant was released to return to work with limitations on June 18, 2012.

In an August 27, 2012 decision, OWCP found that appellant was entitled to total disability compensation as of July 17, 2012, the date he underwent authorized right knee surgery. It, however, denied his claims for LWOP compensation from March 28 to June 1, 2012 and continuing up to the date of his right knee surgery, finding that he failed to submit the requested medical evidence to establish that he was totally disabled during the claimed period due to his accepted January 6, 2011 employment injuries. OWCP stated that the medical evidence of record indicated that appellant could perform modified-duty work pending his surgery.

On September 7, 2012 appellant requested reconsideration of the August 27, 2012 decision. In letters dated May 23 and September 6, 2012, Keisha Lewis, the director of safety and injury compensation for his union, requested that he be paid compensation from March 28 to July 16, 2012. She contended that appellant did not take himself off work and that Postmaster Melendez' July 19, 2012 letters established that the employing establishment did not have any work available within appellant's work restrictions. Ms. Lewis stated that Dr. Jennings' March 28, 2012 report and Dr. Borden's June 18, 2012 report found that it was best to take appellant off work based on their subjective and objective findings related to his right knee condition.

In a December 6, 2012 decision, OWCP denied modification of the August 27, 2012 decision. It found that appellant failed to submit rationalized medical evidence to establish that he was totally disabled from March 28 to June 1, 2012 due to his accepted January 6, 2011 employment injuries.

On January 26, 2013 appellant requested reconsideration of the December 6, 2012 decision. In a December 15, 2012 letter, he contended that Dr. Borden released him to return to work even though he complained about knee pain as he had not completely recovered after surgery. Appellant stated that on November 14, 2012 he experienced excruciating pain in his back and knee while delivering mail and lifting something heavy. He returned to the employing

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<sup>3</sup> In prior reports dated January 10 and February 8, 2011, Dr. Cheshire diagnosed appellant as having sprain/strain of an unspecified area of the right knee and leg, and lumbar strain.

establishment and reported his symptoms to his superior and sought medical treatment on the same day.

In a March 28, 2012 report, Dr. Jennings listed a diagnosis of sprains/strains in an unspecified site of the right knee and leg, and lumbar strain. He noted appellant's complaint of recurrent pain in the right knee with difficulty walking and intermittent recurrent back pain. Appellant had been performing modified work activities with no improvement in his symptoms. Dr. Jennings provided examination findings and recommended an orthopedic consultation and treatment. He placed appellant on temporary total disability pending the orthopedic evaluation.

In a March 25, 2013 decision, OWCP denied modification of the December 6, 2012 decision. It found that appellant was not entitled to disability compensation from March 28 to June 1, 2012 as the medical evidence of record was insufficient to establish that his work restrictions and diagnosed lumbosacral degeneration were causally related to his January 6, 2011 work-related injuries.

By letter dated June 1, 2013, the employing establishment informed appellant that work was no longer available within his work restrictions pursuant to the National Reassessment Process (NRP). It instructed him to complete a leave request form (PS Form 3971) for either continuation of pay if eligible or LWOP for the remainder of his workday.

By letter dated March 18, 2014, Ms. Lewis, on behalf of appellant, requested reconsideration of the March 25, 2013 decision. She stated that he had an accepted back condition and reiterated her prior contention that management did not provide him with work after he submitted his CA-17 form reports.

In a May 9, 2014 decision, OWCP denied modification of the March 25, 2013 decision. It found that appellant did not sustain a recurrence of disability from March 28 to June 1, 2012 as the evidence failed to establish a change in his medical condition or work duties.

### **FACTUAL HISTORY -- ISSUE 2**

On November 16, 2012 appellant filed a Form CA-7 claim for compensation for LWOP from November 3 and 16, 2012. A Form CA-7a dated November 16, 2012 stated that he used 66.60 hours of LWOP and 8 hours of sick leave during the claimed period.

In a November 7, 2012 report, Dr. Borden noted appellant's continued complaint of right knee pain. He provided examination findings and diagnosed status post right knee arthroscopy performed approximately four and one-half months ago. Dr. Borden stated that appellant continued to struggle with a low pain threshold and limited activity based on his poor ability to tolerate pain. He advised that, based on his arthroscopic findings and physical examination, there were no significant objective reasons for appellant's continued pain. Appellant's continued use of pain medication was not warranted. Dr. Borden suggested that appellant return to his usual and customary duties with no restrictions the next day with a four-hour shift only and that he follow up in three weeks for reevaluation.

In Form CA-17 reports dated November 8, 14, and 21, 2012, Dr. Jennings advised that appellant was postoperative right knee surgery and had lumbar strain due to his January 6, 2011

employment-related injuries. He released appellant to return to work with restrictions on November 8, 2012, but indicated in the November 14 and 21, 2012 reports that appellant was off work and had not been advised to resume work.

A November 28, 2012 Form CA-17 report contained an illegible signature and stated that appellant had right knee and leg strain, and right knee medial and lateral meniscus tears due to the accepted January 6, 2011 employment injuries. Appellant was released to return to work with restrictions that day.

In California Division of Workers' Compensation form reports dated November 14 and 21, 2012, Dr. Jennings reiterated his diagnosis of lumbar strain. He noted that appellant had returned to his usual work duties on November 14, 2012, but was only able to complete two hours of his scheduled four-hour work shift. Dr. Jennings reported recurrent lumbosacral and right knee pain, listed physical examination findings, and addressed appellant's treatment plan and restrictions. He placed appellant off work following each examination until his next reevaluation appointments on November 21 and December 5, 2012.

In a November 28, 2012 report, Dr. Borden listed examination findings and diagnosed status post right knee arthroscopy performed approximately four and one-half months ago. He discussed the lack of objective findings on physical examination and minimal findings at the time of arthroscopic surgery with appellant. Dr. Borden explained that placing permanent restrictions on appellant's ability to work may ultimately result in a termination from his current job if his restrictions could not be accommodated. He suggested that appellant attempt to perform his usual customary duties with permanent restrictions. Dr. Borden concluded that it appeared that the injuries noted above were related to the January 6, 2011 work-related injuries.

On December 26, 2012 appellant filed a Form CA-7 claim for compensation for LWOP used from December 26, 2012 to January 9, 2013. A Form CA-7a dated December 26, 2012 indicated that he used LWOP during the claimed period because no work was available.

In a January 7, 2013 decision, OWCP denied appellant's claim for disability compensation beginning November 22, 2012. It found that Dr. Borden released appellant to return to work effective November 8, 2012. OWCP further found that Dr. Jennings' reports did not constitute probative and substantive medical evidence as he was not an authorized physician and he did not provide a rationalized medical opinion to support appellant's claimed disability due to the accepted January 6, 2011 employment injuries.

In CA-17 form reports dated December 24, 2012 and January 9, 2013, Dr. Jeffrey D. Olsen, a physiatrist, diagnosed lumbosacral strain and herniated nucleus pulposus, and right knee sprain, strain, and osteoarthritis. He listed appellant's restrictions and released him to return to work on January 9, 2013.

On February 8, 2013 appellant filed a Form CA-7 for LWOP from November 18 to 28, 2012.

On March 6, 2013 OWCP received a November 21, 2012 CA-17 form report from Dr. Jennings. He reiterated his diagnosis of lumbar strain and postoperative right knee surgery

due to appellant's January 6, 2011 employment injuries, and found that appellant could not resume his regular work.

In a March 11, 2013 decision, OWCP denied appellant's claim for compensation commencing November 22, 2012 which had been denied and that he had returned to full-duty work four hours a day on November 8, 2012. It found that he was entitled to four hours of disability compensation each day from November 19 to 21, 2012. OWCP found that appellant was not entitled to disability compensation for November 18, 2012 as it was a Sunday.

On June 18, 2013 appellant requested reconsideration of the January 7, 2013 decision.

In CA-17 form reports dated February 11 and May 21 2013, Dr. Olsen reiterated his prior diagnoses of herniated nucleus pulposus, and osteoarthritis of the right knee. He advised that appellant could resume work with restrictions on both examination dates.

In an April 12, 2013 Form CA-17 report, Susan McCabe, a physician assistant, diagnosed a meniscus tear versus osteoarthritis.

In a May 31, 2013 restriction order and narrative report, and June 4, 2013 Form CA-17 report, Dr. Moshe H. Wilker, a Board-certified orthopedic surgeon, provided a history of the January 6, 2011 employment injuries, and appellant's medical, family, and social background. He reported examination findings and diagnosed lumbago, right knee internal derangement, and arthritis. Dr. Wilker advised that the diagnosed conditions arose out of the accepted employment injuries. He further advised that appellant could return to work with certain indefinite restrictions.

In a June 28, 2013 decision, OWCP found that the medical evidence of record was sufficient to establish that appellant was entitled to four hours of disability compensation from November 22 to 28, 2012 and modified the January 7, 2013 decision. It, however, found that he was not entitled to disability compensation after November 28, 2012 as he was released to his usual and customary work duties on that day.

On June 28, 2013 appellant filed a Form CA-7 for LWOP from June 15 to 28, 2013.

By letter dated September 24, 2013, appellant requested reconsideration of the June 28, 2013 decision.

In an August 20, 2013 report, Dr. Wilker requested that appellant's claim be expanded to include right knee arthritis. He clarified that the restrictions he provided in his prior report were meant to keep inflammation from appellant's arthritis at a minimum and to allow him to postpone a total knee replacement as long as possible.

In a June 12, 2013 lumbar magnetic resonance imaging scan report, Dr. Stanton S. Kremsky, a Board-certified radiologist, found a diffuse disc bulge that compressed the thecal sac and bilateral transiting nerve roots with compression to the bilateral exiting nerve roots, facet arthrosis and disc bulge results in bilateral neural foramina stenosis, and a disc that measured 4.0 millimeters (mm) in neutral and extension and 4.2 mm in flexion at L3-4. At the L4-5 level, he found a diffuse disc bulge that compressed the thecal sac and bilateral transiting nerve roots with

compression to the bilateral exiting nerve root, facet arthrosis, and a disc that measured 4.0 mm in neutral, 5.5 mm in extension, and 3.8 mm in flexion. At the L5-S1 level, Dr. Kremsky found a diffuse disc bulge that effaced the thecal sac and bilateral transiting nerve roots, facet arthrosis, and a disc that measured 2.7 mm in neutral and 3.0 mm in extension and flexion. He further found multilevel degenerative disc disease, disc desiccation, and dehydration at L3-4, L4-5, and L5-S1, and straightening of the lumbar lordosis, benign hemangioma at T9 and L5. No other abnormalities were seen.

In a January 17, 2014 decision, OWCP denied modification of the June 28, 2013 decision. It found that the medical evidence submitted was insufficient to establish that appellant was disabled as of November 28, 2012. OWCP found that Dr. Wilker did not explain with medical rationale and objective findings how appellant's employment-related fall on January 6, 2011 caused or aggravated his right knee arthritis condition. It stated that fear of future injury was not compensable.

In a September 10, 2013 electromyogram/nerve conduction velocity studies report, Dr. Olsen found evidence of moderate acute L5 radiculopathy on the right.

In a February 21, 2014 supplemental report, Dr. Wilker reiterated that the 2011 employment-related fall caused appellant's knee arthritis. He noted that two things were needed for the formation of arthritis, degeneration of the cartilage in the knee, and inflammation. Dr. Wilker stated that, although appellant had preexistent degeneration of the knee, he did not have any inflammation. It was the fall that actually sparked the inflammation. Dr. Wilker, therefore, advised that appellant's arthritis only started after his fall. He further advised that appellant's condition was permanently aggravated by the fall as it had not subsided since the time of injury. Dr. Wilker stated that it was clear appellant had arthritis due to the objective findings of swelling and tenderness to palpation, which were found in arthritic conditions. Due to his condition, appellant required the previously stated work restrictions.

On May 14, 2014 Ms. Lewis requested reconsideration of the January 17, 2014 decision.

In an August 14, 2014 decision, OWCP denied modification of the January 17, 2014 decision. It found that Dr. Wilker did not provide an opinion addressing appellant's disability commencing November 28, 2012. It further found that Dr. Wilker's February 21, 2014 report was not rationalized as it did not explain how appellant's right knee arthritis condition was caused by the accepted January 6, 2011 work injuries.

### **LEGAL PRECEDENT -- ISSUE 1**

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for

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<sup>4</sup> 20 C.F.R. § 10.5(x).

reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<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 or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>6</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant from work on and after the date of the alleged recurrence of disability.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that on January 6, 2011 appellant sustained a right knee and leg sprain, and right knee medial and lateral meniscus tears while working as a letter carrier. Following these injuries, appellant returned to part-time modified-duty work. He claimed a recurrence of disability from March 28 to June 1, 2012 due to his accepted injuries. Appellant must demonstrate either that his employment-related conditions have changed such that he could no longer perform the activities required by his modified job or that the requirements of the limited light-duty job changed.

It is appellant's contention that he sustained a recurrence of disability from March 28 to June 1, 2012 because the employing establishment had no work available within his work restrictions. He did not submit any evidence to support this allegation and the employing establishment refuted his contention. Ms. Hoang, an employing establishment assessment coordinator, claimed that appellant had advised her that he could not work until after his surgery was performed, based on a March 28, 2012 report from his physician. In addition, Postmaster Melendez stated that appellant was incapacitated and not available to return to work based on medical restrictions from Dr. Borden dated February 22 to May 21, 2012. As appellant

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<sup>5</sup> *Id.*

<sup>6</sup> *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>7</sup> *James H. Botts*, 50 ECAB 265 (1999).

has provided no independent evidence to support his allegation, the Board finds that the light-duty position was available from March 28 to June 1, 2012.<sup>8</sup>

The Board further finds that the medical evidence submitted by appellant is insufficient to establish a worsening of his work-related condition during the period March 28 to June 1, 2012. Dr. Jennings' March 28, 2012 reports found that appellant had internal derangement of the right knee and lumbar strain due to the accepted January 6, 2011 employment injuries and that he was temporarily disabled from work. The Board notes that OWCP has accepted right knee and leg sprains, and right knee medial and lateral meniscus tears, but has not accepted appellant's claim for internal derangement of the right knee or a lumbar condition. Dr. Jennings failed to provide a medical opinion addressing whether appellant's resultant disability was causally related to the accepted work injuries. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.<sup>9</sup>

Dr. Borden's April 23, May 21, and June 18, 2012 reports found that appellant had medial femoral condyle articular cartilage damage, underlying medial meniscal tear, and internal derangement of the right knee, and low back pain. He advised that the right knee internal derangement was due to the accepted employment injuries. Dr. Borden provided appellant's work restrictions and stated that appellant had not been advised to resume work. In his May 21, 2012 narrative report, however, he opined that appellant could continue performing his current modified-duty job until his right knee surgery was authorized. As stated, appellant's claim has not been accepted for right knee internal derangement and Dr. Borden did not explain how this condition was caused by the accepted January 6, 2011 employment injuries.<sup>10</sup> Moreover, his opinion on appellant's disability from work is contradictory. While Dr. Borden found that appellant could continue performing his modified-duty work, he failed to explain the discrepancy with his May 21 and June 18, 2012 CA-17 form reports in which he stated that appellant had been advised not to return to work. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>11</sup> The Board finds that Dr. Borden's reports are insufficient to establish appellant's burden of proof.

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<sup>8</sup> The Board has consistently held that, when a light-duty job is withdrawn due to NRP and a claim for a recurrence of disability is filed, OWCP should follow the provisions of FECA Bulletin No. 09-05. FECA Bulletin No. 09-05 (issued August 18, 2009). *See C.R.*, Docket No. 12-1757 (issued April 2, 2013) In this case, however, as the employing establishment's notification to appellant on June 1, 2013 that his modified position was withdrawn pursuant to NRP occurred after his claimed recurrence of disability from March 28 to June 1, 2012, OWCP was not required to make any relevant findings on this issue under FECA Bulletin No. 09-05

<sup>9</sup> *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>10</sup> *Id.*

<sup>11</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

In reports dated May 7 and 29, 2012, Dr. Cheshire stated that he reviewed Dr. Borden's April 23, May 21, and June 18, 2012 reports. He advised that there was no reason for him to change his prior diagnoses of sprain/strain of an unspecified area of the knee and leg and lumbar strain. Dr. Cheshire did not provide a medical opinion addressing whether the diagnosed lumbar strain and any resultant disability from March 28 to June 1, 2012 were caused by the accepted employment injuries.<sup>12</sup> The Board finds that Dr. Cheshire's reports are insufficient to establish appellant's claim.

The April 23, 2012 CA-17 form report which contained an illegible signature is insufficient to establish appellant's claim. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.<sup>13</sup>

Appellant failed to submit rationalized medical evidence establishing a recurrence of disability from March 28 through June 1, 2012 due to his accepted employment-related right knee and leg conditions. The Board finds that he has failed to meet his burden of proof.

On appeal, appellant contends that Dr. Jennings' March 28, 2012 report and Dr. Borden's June 18, 2012 report established his employment-related disability. As stated, this evidence does not provide a rationalized medical opinion that the claimed disability from March 28 to June 1, 2012 was due to his accepted January 6, 2011 employment-related injuries.

Appellant further contends on appeal that he sustained a recurrence of disability because the employing establishment could not accommodate his work restrictions. As discussed, the record on appeal reflects that he could not work based on the opinion of his treating physicians and not because his restrictions could not be accommodated by the employing establishment.

### **LEGAL PRECEDENT -- ISSUE 2**

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>14</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>15</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>16</sup> The medical evidence required to

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<sup>12</sup> See cases cited, *supra* note 11 and 12.

<sup>13</sup> See *R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>14</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>15</sup> 20 C.F.R. § 10.5(f); see *e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury, but no loss of wage-earning capacity).

<sup>16</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

establish a period of employment-related disability is rationalized medical evidence.<sup>17</sup> Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.<sup>18</sup> The Board, however, 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.<sup>19</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>20</sup>

### ANALYSIS -- ISSUE 2

As stated, OWCP accepted that on January 6, 2011 appellant sustained a right knee and leg sprain, and right knee medial and lateral meniscus tears while working as a letter carrier. Appellant claimed compensation for disability from November 3 to 28, 2012. OWCP paid him four hours of disability compensation each day from November 19 to 28, 2012, but denied his claim for compensation commencing November 28, 2012, finding the medical evidence insufficient to establish that the claimed disability was due to his accepted employment injuries. Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his claimed disability and the accepted condition.<sup>21</sup> The Board finds that he failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted injuries.

In a May 31, 2013 restriction order and narrative report, and June 4, 2013 CA-17 form report, Dr. Wilker found that appellant had lumbago, right knee internal derangement, and arthritis due to the accepted January 6, 2011 employment injuries. He requested that appellant's claim be expanded to include right knee internal derangement, explaining that while appellant had preexistent degeneration without inflammation, which was one of two things needed to form arthritis, the January 6, 2011 work-related fall caused inflammation in his knee. Dr. Wilker, therefore, determined that appellant's arthritis only started after his fall. He stated that it was clear appellant's arthritis was due to the objective findings of swelling and tenderness to palpation, which were found in arthritic conditions. Dr. Wilker advised that appellant's condition was permanently aggravated by the fall as it had not subsided since the time of injury.

Although Dr. Wilker supported causal relationship, he has failed to establish medical rationale explaining the basis of his opinion regarding causal relationship. He did not sufficiently explain how falling at work would cause, or how appellant's objective examination findings would demonstrate, arthritis in the right knee. The Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>22</sup> or that work activities

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<sup>17</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>18</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>19</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>20</sup> *See William A. Archer*, 55 ECAB 674 (2004); *supra* note 16.

<sup>21</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>22</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.<sup>23</sup> Further, Dr. Wilker released appellant to return to work on May 31, 2013, but he did not address causal relationship between the claimed disability commencing November 28, 2012 and the accepted employment injuries.<sup>24</sup> For the stated reasons, the Board finds that his reports are insufficient to establish appellant's claim.

The reports of Dr. Olsen and Dr. Kremsky addressed appellant's lumbar and right knee conditions, work restrictions, and ability to return to work as of January 9, 2013, but failed to relate the diagnosed conditions, restrictions, and claimed disability commencing November 28, 2012 to the accepted January 6, 2011 employment injuries. These reports are of diminished probative value and insufficient to establish appellant's claim.<sup>25</sup>

The April 12, 2013 CA-17 form report of Ms. McCabe, a physician assistant, has no probative medical value in establishing appellant's claim. The Board has held that physician assistants are not considered physicians as defined under FECA.<sup>26</sup>

Appellant failed to submit rationalized medical evidence to establish that his total disability commencing November 28, 2012 resulted from residuals of his accepted employment-related right knee and leg conditions.

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 failed to establish that he was totally disabled from March 28 through June 1, 2012 due to his January 6, 2011 employment injuries. The Board further finds that he failed to establish that he was totally disabled commencing November 28, 2012 causally related to the same accepted employment injuries.

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<sup>23</sup> *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>24</sup> See cases cited, *supra* note 12.

<sup>25</sup> *Id.*

<sup>26</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); 5 U.S.C. § 8101(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 14 and May 9, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>27</sup>

Issued: September 28, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>27</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.