

FACTUAL HISTORY

On November 21, 2014 appellant, then a 43-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee on September 11, 2013 while stepping down from her work vehicle. She indicated that she felt her knee pop.³ Appellant identified her injury as a right knee strain. On her claim form she requested continuation of regular pay not to exceed 45 days. On the same form, the employing establishment controverted appellant's claim as fact of injury and causal relationship had not been established. The employing establishment also controverted her continuation of pay claim noting that she failed to report her injury on Form CA-1 within 30 days of the claimed injury.⁴

On January 21, 2015 OWCP accepted appellant's traumatic injury claim for right knee medial meniscus tear and closed fracture of the right patella.

On April 1, 2015 appellant submitted a claim for compensation (Form CA-7) for the period September 12, 2013 through July 26, 2014. Time analysis information (Form CA-7a) provided by her and confirmed by the employing establishment indicated that she stopped work on September 12, 2013, returned to work on September 18, 2013,⁵ and claimed intermittent wage loss through October 30, 2013. Beginning October 31, 2013, appellant stopped all work and claimed temporary total disability through July 26, 2014.

On June 1, 2015 OWCP advised appellant that additional evidence was necessary to establish disability for the claimed period of September 12, 2013 through July 26, 2014.

Appellant submitted an October 30, 2013 report, in which Dr. Thaddeus W. Hume, an attending Board-certified orthopedic surgeon, indicated that she was restricted from physical activities requiring prolonged standing or walking. Dr. Hume diagnosed right knee sprain with possible torn meniscus and opined that her right knee condition was work related.

In an October 30, 2013 note, Dr. James D. Key, an attending Board-certified orthopedic surgeon, noted that appellant should remain off work for "October 30, 2013 -- pending [magnetic resonance imaging (MRI) scan]/possible surgery." In a report dated November 13, 2013, he indicated that she described the mechanism of her September 11, 2013 right knee injury and reported having 7/10 pain in her right knee. Dr. Key detailed findings upon physical examination noting that appellant had 3/5 motor strength in her right knee upon all knee motions, a positive McMurray's test in her right knee, and 100 percent intact sensory findings in her right lower extremity. He diagnosed tear of the right medial meniscus and chondral fracture of the right patella and noted, "In my medical rationale, after reviewing the patient's job duties and based on my physical examination, the patient has suffered a traumatic injury while at work on

³ Appellant later indicated that, after she felt the pop in her right knee, she "jerked forward stumbling and tried to catch [her] balance."

⁴ Appellant signed and dated the Form CA-1 on October 16, 2014. However, the employing establishment indicated that it did not receive notice of the alleged injury until November 21, 2014.

⁵ Appellant's limited-duty work involved casing mail indoors and delivering mail to one or two apartments due to the prescription that she only engage in limited walking.

[September 11, 2013] and is currently off work due to the injury.” In reports dated December 11, 2013 and March 12, 2014, Dr. Key again diagnosed tear of the right medial meniscus and chondral fracture of the right patella.

On April 1, 2014 Dr. Hume diagnosed torn meniscus of the right knee and osteoarthritis in both knees. He recommended that appellant remain off work and indicated, “I anticipate return to work within next six months.”

In an October 7, 2014 report, an attending physician with an illegible signature indicated that appellant could return to work when released by an orthopedic physician.

In a January 28, 2015 report, Dr. Key indicated that appellant recently had gastric bypass surgery and that her weight went from 407 pounds down to 290 pounds. He noted that she had several right knee conditions including anterior cruciate and meniscus tears, three-compartment arthritis, and internal derangement. Appellant reported that her main problem was instability of her right knee. Dr. Key indicated that she was back at work and recommended that she continue using a knee brace. On March 11, 2015 he noted that appellant was performing her job on a full-time basis.

Appellant submitted reports from other attending physicians detailing her right knee condition in 2015.

Appellant also submitted a May 20, 2015 report in which Dr. Kevin A. Williams, an attending Board-certified orthopedic surgeon, expressed his belief that she had internal derangement of her right knee despite a “normal MRI [scan,]” which did not show any meniscal tears.

The findings of a June 11, 2015 MRI scan of appellant’s right knee showed advanced chondromalacia of the lateral patellar femoral articulation, grade 1 strain of the lateral patellofemoral ligament, and a grade 1 strain of the medial collateral ligament.

In a June 18, 2015 report, Dr. Louis Train, an attending Board-certified family practitioner, noted that appellant described sustaining a right knee injury upon stepping out of her postal vehicle on September 11, 2013. He indicated that, upon examination, she had a positive right McMurray’s test and he listed her accepted work injuries. Dr. Train noted:

“[Appellant] has explained her duties for the [employing establishment]. As a review of her medical records (confirmed by MRI [scan] evidence) and my examinations of [her,] was unable to work and was taken off work, because she was unable to perform the duties of her position.

“[Appellant] remained off work as her right knee condition worsened as she was not able to do bending, lifting, prolonged [sic] or duties of exertion. [She] was not able to do bending, stooping, lifting, twisting, or turning duties as a result of the injuries to her right knee.

“[Appellant] was temporarily totally disabled as a result of the on[-]the[-]job injury that she sustained on [September 11, 2013]....

“[Appellant] should be compensated for not being able to perform work tasks as a result of her on[-]the[-]job injury beginning [September 12, 2013 until July 26, 2014].”

In an August 4, 2015 decision, OWCP denied appellant’s claim for continuation of pay.⁶ It noted that the continuation of pay claim was denied because she did not report her injury on a form approved by OWCP within 30 days following the injury.

By decision dated August 12, 2015, OWCP denied appellant’s disability claim because she did not submit sufficient medical evidence to establish disability from September 12, 2013 to July 26, 2014 due to her September 11, 2013 work injury. It indicated that the opinion of her attending physicians did not contain medical rationale on the cause of her disability.

Appellant submitted physical therapy notes and two December 16, 2015 reports, in which Dr. Williams detailed his treatment of her right knee condition.

In two documents received on September 17, 2015, appellant requested reconsideration of OWCP’s August 4 and 12, 2015 decisions.

In a decision dated January 14, 2016, OWCP denied modification of its August 12, 2015 decision denying appellant’s disability claim. It noted that she had not submitted medical evidence establishing work-related disability from September 12, 2013 to July 26, 2014.

In another decision dated January 14, 2016, OWCP denied modification of its August 4, 2015 decision denying appellant’s claim for continuation of pay. It noted that the continuation of pay claim was denied because she did not report her injury on a form approved by OWCP within 30 days following the injury.

Appellant submitted a February 18, 2016 report, in which Dr. Key mentioned her September 11, 2013 work injury and discussed diagnostic testing conducted between March 2014 and June 2015. Dr. Key indicated that she injured her right knee on September 11, 2013, that she was placed off work immediately following her injury, and that she could not perform productive work. He indicated that appellant was not able to bend, lift, or engage in prolonged standing or walking. Dr. Key noted that she had reduced range of motion for both extension and flexion, swelling in the knee from the injury, and the symptomology of pain associated with standing and walking. He indicated:

“[Appellant] was provided a previous disability letter from Dr. Train dated June 18, 2015 explaining why she could not work. A review of [her] diagnostics supports the fact that her condition worsened in some respects even though she was off work and receiving medical treatment.... I concur with the findings of Dr. Train and Dr. Williams. Following a review of [appellant’s] medical records and my evaluation, in my medical opinion [she] was temporarily totally disabled

⁶ OWCP indicated that continuation of pay was denied for appellant’s absence from work for the period September 11 to October 26, 2013. It is noted that she actually stopped work on September 12, 2013 rather than September 11, 2013.

from work on [September 11, 2013] the day after the injury through [July 26, 2014], due directly to the injury to her right knee that she sustained in the on the job injury of [September 11, 2013].”

Appellant also submitted March 18, May 20, September 28, and December 16, 2015, and February 22, 2016 reports, in which Dr. Williams further discussed her right knee condition.

In a document received on March 14, 2016, appellant requested reconsideration of OWCP’s January 14, 2016 decisions.

In a decision dated April 8, 2016, OWCP denied modification of its January 14, 2016 decision denying appellant’s claim for work-related disability from September 12, 2013 to July 26, 2014. It again indicated that she did not submit sufficient rationalized medical evidence to establish her claim.

In another decision dated April 8, 2016, OWCP denied modification of its January 14, 2016 decision denying appellant’s claim for continuation of pay. It again noted that the continuation of pay claim was denied because she did not report her injury on a form approved by OWCP within 30 days following the injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.⁸ This meaning, for brevity, is expressed as disability for work.⁹

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

⁷ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁸ *See* 20 C.F.R. § 10.5(f).

⁹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

¹⁰ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ANALYSIS -- ISSUE 1

On November 21, 2014 appellant filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2013 she sustained injury to her right knee when she stepped down from a postal vehicle and felt her right knee pop. On the CA-1 form she also claimed entitlement to continuation of pay. OWCP accepted that appellant sustained a tear of the medial meniscus of her right knee and a closed fracture of the patella of her right knee. Appellant stopped work on September 12, 2013 and later filed a Form CA-7 claiming total disability for intermittent periods between September 12, 2013 and July 26, 2014.

The Board finds that appellant failed to submit sufficient medical evidence to establish disability from September 12, 2013 to July 26, 2014 due to her September 11, 2013 work injury.

Appellant submitted an October 30, 2013 report in which Dr. Hume, an attending physician, indicated that she was restricted from physical activities requiring prolonged standing or walking. Dr. Hume diagnosed right knee sprain with possible torn meniscus and opined that her right knee condition was work related. The Board finds that the submission of this evidence does not support appellant's claim for work-related disability from September 12, 2013 to July 26, 2014 because he did not provide a rationalized medical opinion that she had disability due her September 11, 2013 work injury.¹¹

In an October 30, 2013 note, Dr. Key, an attending physician, indicated that appellant should remain off work for "October 30, 2013 -- pending [MRI scan]/possible surgery." The submission of this evidence would not support her disability claim because he did not identify the cause of her disability. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition/disability is of limited probative value.¹²

In a report dated November 13, 2013, Dr. Key noted that appellant described the mechanism of her September 11, 2013 right knee injury and he reported findings upon physical examination. He diagnosed tear of the right medial meniscus and chondral fracture of the right patella and noted, "In my medical rationale, after reviewing [appellant's] job duties and based on my physical examination, [she] has suffered a traumatic injury while at work on [September 11, 2013] and is currently off work due to the injury." Although Dr. Key provided an opinion on causal relationship, he did not provide rationale explaining how the September 11, 2013 work injury could have caused disability for any specific period. He did not describe the September 11, 2013 work injury in any detail or explain how specific, objective findings from that injury could have been competent to cause disability.¹³ The Board has held that a medical

¹¹ *See id.*

¹² *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹³ On April 1, 2014 Dr. Hume diagnosed torn meniscus of the right knee and osteoarthritis in both knees. He recommended that appellant remain off work and indicated, "I anticipate return to work within next six months." However, Dr. Hume did not clearly identify the cause of the disability. In an October 7, 2014 report, an attending physician with an illegible signature indicated that appellant could return to work when released by an orthopedic physician. This physician also did not identify work factors as the cause of the observed disability.

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.¹⁴

In a June 18, 2015 report, Dr. Train mentioned appellant's September 11, 2013 work injury and indicated that she reported not being able to perform her bending, stooping, lifting, twisting, or turning duties as a result of the injuries to her right knee. He indicated, "[Appellant] was temporarily totally disabled as a result of the on[-]the[-]job injury that she sustained on [September 11, 2013].... "[Appellant] should be compensated for not being able to perform work tasks as a result of her on the job injury beginning [September 12, 2013 until July 26, 2014]." The Board finds that Dr. Train did not provide medical rationale in support of his opinion on the cause of appellant's disability from September 12, 2013 until July 26, 2014. Dr. Train only provided physical examination findings from a period after her claimed period of disability (September 12, 2013 until July 26, 2014) and he did not discuss how findings contemporaneous with this claimed disability period showed that her disability was due to her September 11, 2013 work injury. He did not discuss appellant's work injury in any detail or explain the mechanism through which it could have caused disability. Moreover, appellant was performing light-duty work beginning September 18, 2013 and Dr. Train did not explain how her September 11, 2013 work injury prevented her from performing such limited duties. She had nonwork conditions affecting her right knee, included degenerative arthritis, and he did not discuss the possible effect of these conditions on her disability.

In a February 18, 2016 report, Dr. Key noted, "Following a review of [appellant's] medical records and my evaluation, in my medical opinion [she] was temporarily totally disabled from work on [September 11, 2013] the day after the injury through [July 26, 2014], due directly to the injury to her right knee that she sustained in the on the job injury of [September 11, 2013]." However, this opinion regarding disability does not contain sufficient medical rationale to establish appellant's claim. Although Dr. Key referenced right knee symptoms which he felt prevented her from working, these references were only general in nature and he did not describe specific, objective findings which correlated to the claimed period of work-related disability. Moreover, he did not explain how appellant's September 11, 2013 work injury was competent to cause the observed symptoms. Dr. Key also failed to discuss the possible effect of her nonwork-related right knee problems on her disability.

Appellant also submitted a number of reports of attending physicians from 2015, but these reports discussed her right knee condition in 2015, rather than during the claimed period of disability, *i.e.*, September 12, 2013 to July 26, 2014. These physician reports are therefore irrelevant to pending claim.

For these reasons, appellant failed to meet her burden of proof to establish disability from September 12, 2013 to July 26, 2014, due to her September 11, 2013 work injury.

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.

¹⁴ *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

LEGAL PRECEDENT -- ISSUE 2

Section 8118 of FECA¹⁵ provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his or her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.¹⁶ Claims that are timely under section 8122 are not necessarily timely under section 8118(a). FECA authorizes continuation of pay for an employee who has filed a valid claim for traumatic injury.¹⁷ Section 8118(a) makes continuation of pay contingent on the filing of a written claim within 30 days of the injury. When an injured employee makes no written claim for a period of wage loss within 30 days, he or she is not entitled to continuation of pay, notwithstanding prompt notice of injury.¹⁸

Section 10.205 of OWCP's regulations provide in pertinent part that to be eligible for continuation of pay, a person must: (1) have a traumatic injury which is job related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant is not entitled to continuation of pay because she failed to timely file her claim within 30 days, as required under FECA.²⁰ Appellant filed a written notice of injury (Form CA-1) on November 21, 2014 more than 30 days after her September 11, 2013 traumatic work injury. On the Form CA-1 she filed on November 21, 2014, appellant's immediate supervisor indicated that November 21, 2014 was the first time he received notice from appellant of her September 11, 2013 work injury. There is no provision under FECA for excusing a late filing and appellant therefore is not entitled to continuation of pay.²¹

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish disability from September 12, 2013 to July 26, 2014 due to her September 11, 2013 work injury. The

¹⁵ 5 U.S.C. § 8118.

¹⁶ *Id.* at § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

¹⁷ *Id.* at § 8118(a).

¹⁸ *See P.R.*, Docket No. 08-2239 (issued June 2, 2009). *See also W.W.*, 59 ECAB 533 (2008).

¹⁹ 20 C.F.R. § 10.205(a).

²⁰ *See supra* notes 15 through 19.

²¹ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

Board further finds that OWCP properly denied her claim for continuation of pay as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 30, 2017
Washington, DC

Christopher J. Godfrey, 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