

FACTUAL HISTORY

On July 14, 2014 appellant, then a 32-year-old rural carrier, filed a claim for traumatic injury (Form CA-1) alleging that on July 11, 2014 she sustained a left knee injury when she twisted her knee as she attempted to exit her postal vehicle to deliver a package. She stopped work on July 12, 2014.

On July 21 and September 2, 2014 OWCP received unsigned treatment notes dated July 16 and August 27, 2014, which noted that patient care had been provided by Whitney R. Albright, a certified physician assistant at Sandhills Orthopedic & Spine Clinic. Physical examination of appellant's left knee revealed swelling, stiffness, and tenderness on palpation. Appellant was diagnosed with acute meniscal tear and patellar chondromalacia.

On July 24, 2014 OWCP received a duty status report (Form CA-17) dated July 16, 2014, from Dr. James E. Rice, a Board-certified orthopedic surgeon. Dr. Rice noted a date of injury of July 11, 2014 and diagnosis of torn meniscus. He recommended that appellant not work until July 31, 2014.

On September 2, 2014 appellant accepted a limited-duty job offer as a modified rural carrier.

OWCP received an unsigned September 22, 2014 treatment note, which also noted that appellant's care had been provided by Ms. Albright. The note recommended that appellant: "Continue on light-duty status for two months. Follow up in two months."

On October 20, 2014 OWCP received a July 29, 2014 left knee magnetic resonance imaging scan by Dr. Lacey F. Moore, a Board-certified diagnostic radiologist. Dr. Moore noted no structural derangement, meniscal tear, fracture, or acute bony injury. He observed a diffuse grade 1 to 2 chondromalacia of the patellofemoral compartment cartilage and very small joint effusion.

On October 27, 2014 OWCP received a duty status report (Form CA-17) dated August 27, 2014 from Dr. Rice who recommended that appellant work limited duty on September 1, 2014 with restrictions.

On November 24, 2014 and January 5, 2015 OWCP received unsigned November 20 and December 31, 2014 treatment notes, which related that appellant's care was provided by Ms. Albright. These notes provided examination findings of tenderness on palpation of the lateral aspect of the left knee, but no tenderness on the anteromedial or medial aspects. Appellant was diagnosed with patellar chondromalacia and advised not to work.

Appellant returned to full duty on December 31, 2014.

On February 27, 2015 OWCP received a work status note, also dated November 20, 2014, from Dr. Rice, which indicated that appellant was unable to work until December 25, 2014.

In a March 6, 2015 note, Dr. Rice examined appellant for complaints of left knee medial joint pain. Upon examination, he observed tenderness on palpation and positive McMurray test. Dr. Rice diagnosed acute medial meniscus tear, internal derangement of posterior horn of medial meniscus of the knee, and patellar chondromalacia.

On May 11, 2015 OWCP accepted appellant's claim for left knee medial meniscus tear.

On May 20, 2015 appellant filed two separate claims for wage-loss compensation (Form CA-7) alleging that she was unable to work during the periods August 26 to September 1, 2014 and September 22 to December 31, 2014.

By letter dated May 28, 2015, OWCP requested that appellant submit evidence to establish that she was unable to work during the periods claimed as a result of her July 11, 2014 employment injury. Appellant was afforded 30 days to submit this evidence.

In a narrative letter dated June 12, 2015, Dr. Rice related that in his initial September 22, 2014 note he had erroneously advised that appellant continue light duty for two months. He clarified that she was off work at that time. Dr. Rice's office had provided appellant with a work note that kept her off work from September 22 to November 22, 2014. In fact, appellant was off work beginning July 29, 2014. Dr. Rice explained that the error was made by his office and that he would make that correction. He noted that at appellant's December 31, 2014 appointment, she expressed that she felt capable of returning to work.

With his June 12, 2015 letter, Dr. Rice also submitted an amended September 22, 2014 examination note, which recommended: "No work at this time. Follow up in two months. [Appellant] is due to have her baby October 31, [2014] so it will be difficult to follow up in in one month." He also resubmitted examination notes dated July 16, August 27, September 22, November 20, and December 31, 2014 with his electronic signature.

In a decision dated August 3, 2015, OWCP denied appellant's claim for wage-loss compensation. It found that the medical reports submitted failed to establish that she was disabled from work for the period August 26 to December 31, 2014 as a result of her accepted injury.

On September 16, 2015 OWCP received appellant's timely request for reconsideration. In support of this request, appellant submitted a letter from Dr. Rice dated September 15, 2015. Dr. Rice indicated that she had been seen and treated in his office for a work-related left knee injury. He explained that, due to appellant's injury, she was placed off work beginning July 16, 2014 and continued off work on follow-up visits on July 29, August 27, and September 22, 2014. Dr. Rice indicated that she was seen again in November and December 2014 and remained out of work. He related that appellant's medical restrictions, due to her knee problems, were to avoid further injury.

On October 26, 2015 OWCP contacted the employing establishment regarding appellant's work status from September 2 to 21, 2014. It requested that the employing establishment verify whether she worked the limited-duty job offer she had been offered. By letter dated October 26, 2015, J.A., a health and human resource management specialist for the employing establishment, reported that appellant worked the limited-duty job assignment from

September 2 to 19, 2014. She noted that appellant stopped work beginning September 22, 2014 based on medical documentation from her treating physician.

By decision dated December 11, 2015, OWCP affirmed in part and modified in part the August 3, 2015 decision. It determined that appellant was entitled to wage-loss compensation for the period August 27 to September 1, 2014, because the employing establishment confirmed that her limited-duty position did not begin until September 2, 2014. However, OWCP affirmed the decision regarding her claim for disability compensation from September 22 to December 31, 2014 finding that the medical evidence of record failed to sufficiently support a causal relationship between her inability to work during the above period and her accepted injury.

On January 13, 2016 OWCP spoke with J.A. from the employing establishment who indicated that appellant had clearance to return to work on December 31, 2014.

On January 28, 2016 OWCP received appellant's request for reconsideration. Appellant submitted a treatment note by Dr. Rice dated December 23, 2015. Dr. Rice related her complaints of left knee pain and noted joint swelling and stiffness on the left knee. Upon physical examination, he observed tenderness on palpation and positive McMurray test. Dr. Rice diagnosed internal derangement of the posterior horn of the lateral meniscus of the knee and patellar chondromalacia. He explained that appellant had a history of left knee problems, especially with the twisting and driving involved with her job as a rural mail carrier. Dr. Rice indicated that he discussed the problems she had with her knee when he tried to release her back to light duty. He reported that spending the majority of the time on appellant's feet moving mail and twisting her knee did not help at all, but this was not documented at the time. Dr. Rice explained that "with [appellant's] continued problems and increasing history with her knee we placed her out of work in September to try to avoid further trauma to her knee especially in the last trimester of pregnancy."

In a decision dated March 9, 2016, OWCP denied modification of the December 11, 2015 decision. It found that the new December 23, 2015 treatment notes from Dr. Rice did not contain a rationalized medical opinion explaining why appellant was disabled from work during the period September 22 to December 31, 2014 as a result of her July 11, 2014 employment injury.

On April 21, 2016 appellant again requested reconsideration. No further evidence was received.

OWCP denied appellant's request for reconsideration in a decision dated May 18, 2016. It found that she neither raised a substantive legal question, nor submitted new and relevant evidence sufficient to warrant further merit review according to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

³ *Supra* note 1.

evidence.⁴ For each period of disability claimed, an employee has the burden of proof to establish a causal relationship between his or her recurrence of disability and his or her accepted employment injury.⁵

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.⁶ 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 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.⁷

OWCP's procedures require that in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.⁸

For each period of disability claimed, an employee must establish that he or she was disabled from work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for 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.⁹

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left knee medial meniscus tear as a result of her July 11, 2014 employment injury. Appellant stopped work and returned to limited duty on September 2, 2014. She stopped work again on September 22, 2014 and filed a claim for disability compensation for the period September 22 to December 31, 2014. Appellant's limited-duty assignment was not withdrawn by the employing establishment. OWCP denied her claim for wage-loss compensation finding that the evidence failed to establish that she was unable to work her limited-duty position. The Board finds that appellant has not met her burden of proof to establish that appellant she a recurrence of disability for the period September 22 to December 31, 2014.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁶ 20 C.F.R. § 10.5(x).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

⁹ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

Because appellant has claimed a recurrence of disability less than 90 days from her first return to duty, she must submit medical evidence which describes the duties which she cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work. In cases where recurring disability for work is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury.¹⁰

The only medical reports addressing appellant's claimed period of disability from September 22 through December 31, 2014 were medical reports, work status notes, and letters dated September 22, 2014 to December 23, 2015 from the Sandhills Orthopedic and Spine Clinic, wherein Dr. Rice was a medical provider. OWCP initially received unsigned treatment notes dated September 22, November 20, and December 31, 2014, which indicated that appellant's care was provided by Ms. Albright, a physician assistant. However, on June 18, 2015 Dr. Rice resubmitted these previously unsigned treatment notes, with his electronic signature.

The initial September 22, 2014 treatment note recommended appellant continue on light duty for two months. The Board notes that this report failed to establish that she was disabled from work as of September 22, 2014. To the contrary, this authorized appellant to continue working light duty. Although Dr. Rice provided a June 12, 2015 letter explaining that the initial September 22, 2014 note was in error as she was off work during that time, and an amended September 22, 2014 note that recommended "no work at this time," he did not provide any explanation or specify any objective medical findings to support his conclusion that she was unable to work as of September 22, 2014. Because he failed to provide any medical rationale for his conclusion, his opinion regarding appellant's inability to work is of diminished probative value.¹¹

In a November 20, 2014 note, Dr. Rice further related that appellant was examined for follow-up of left knee complaints. Upon examination, he observed tenderness on palpation of the lateral aspect of the left knee, but no tenderness on the anteromedial, or medial aspects. Dr. Rice diagnosed patellar chondromalacia and related that appellant "reports that her knee is still bothering her." He advised that she not work and submitted a work status note which indicated that she was unable to work until December 23, 2014. Although Dr. Rice opined that appellant was disabled from work, he failed to provide any medical rationale explaining how her left knee injury had changed or worsened to the extent that she was unable to work her light-duty assignment. He merely noted that her knee was still bothering her. The Board has found that when a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability.¹² Dr. Rice did not provide objective evidence and medical rationale that explained why appellant was disabled from modified-duty employment from September 22 to December 31, 2014.

¹⁰ *Supra* note 8.

¹¹ *See S.B.*, Docket No. 13-1162 (issued December 12, 2013).

¹² *P.D.*, Docket No. 14-0744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

Dr. Rice also provided various letters dated September 15 to December 23, 2015 regarding appellant's wage-loss compensation claim. He explained in a September 15, 2015 letter that, due to her injury, she was placed off work beginning July 16, 2014, and he continued to place her off work on follow-up visits on July 29, August 27, and September 22, 2014. Dr. Rice noted that she was seen again in November and December 2014 and remained off work. In a December 23, 2015 treatment note, he examined appellant again and explained that "with [appellant's] continued problems and increasing history with her knee we placed her off work in September to try to avoid further trauma to her knee especially in the last trimester of pregnancy."

Dr. Rice reported that he placed appellant off work in order to avoid future trauma to her knee, especially during the last trimester of her pregnancy. The Board has found that fear-of-future injury is not compensable under FECA.¹³ Accordingly, the Board finds that Dr. Rice failed to provide a sufficiently rationalized medical opinion explaining how or why appellant was disabled from work for the period September 22 to December 31, 2014 due to objective medical findings substantiating disability.¹⁴ Other reports from Dr. Rice are of limited probative value regarding her disability compensation claim as they predate the claimed period of disability or do not otherwise address her claimed period of disability.

The additional diagnostic report from Dr. Moore did not specifically address whether appellant sustained a recurrence of disability for the period September 22 to December 31, 2014 and was therefore of limited probative value.¹⁵

On appeal, appellant alleges that her limited-duty job caused a flare-up in her left knee injury with swelling, pain, and inflammation. As explained above, however, self-certification of disability is not sufficient¹⁶ and none of the medical reports submitted provided sufficient objective findings and medical rationale to establish that appellant was unable to work limited duty for the period September 22 to December 31, 2014. Because appellant did not submit medical reports providing rationalized medical opinion explaining how or why she was unable to work light duty for the claimed period of disability, the Board finds that OWCP properly denied her claim for wage-loss compensation for the period September 22 to December 31, 2014.

The Board finds, however, that the case is not in posture for decision regarding whether appellant is entitled to any compensation on September 22, November 20, and December 31, 2014 for medical treatment. OWCP procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.¹⁷ A claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable

¹³ See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980).

¹⁴ *Supra* note 8.

¹⁵ *L.N.*, Docket No. 16-0566 (issued October 18, 2016).

¹⁶ *Supra* note 10.

¹⁷ *Supra* note 8 at Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

time spent traveling to and from the medical provider's location.¹⁸ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹⁹

The case record contains medical reports that establish that appellant received medical treatment on September 22, November 20, and December 31, 2014 from Dr. Rice. The case will be remanded for OWCP to determine whether she is entitled to up to four hours of wage-loss compensation for these dates. On remand, OWCP shall issue a *de novo* decision on this issue.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.²⁰

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²¹

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.²² If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²³ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁴

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on April 21, 2016 of OWCP's decision denying her claim for recurrence of disability for the period September 22 to December 31, 2014.

¹⁸ *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

¹⁹ *Supra* note 10 at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

²⁰ 5 U.S.C. § 8128(a).

²¹ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²² *Id.* at § 10.607(a).

²³ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²⁴ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

The Board finds that appellant failed to show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered by OWCP.

The underlying issue in this case is whether appellant submitted medical evidence establishing a recurrence of disability from September 22 to December 31, 2014. That is a medical issue which must be addressed by relevant and pertinent new medical evidence.²⁵ However, appellant did not submit any relevant or pertinent new medical evidence with her request for reconsideration.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period September 22 to December 31, 2014. However, the case is not in posture for a decision as to whether appellant is entitled to compensation benefits for her September 22, November 20, and December 31, 2014 medical appointments. The Board also finds that OWCP properly denied further merit review of her case pursuant to 5 U.S.C. § 8128(a).

²⁵ *B.G.*, Docket No. 16-1377 (issued November 22, 2016).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this decision. The May 18, 2016 decision is affirmed.

Issued: June 26, 2017
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