

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of disability from June 17, 2014 to April 4, 2015 due to his accepted December 9, 2013 employment injury.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

On March 25, 2014 appellant, then a 57-year-old peer specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 9, 2013 he sustained a knee injury when he fell on his knee while ascending stairs in the front of his building at work.

In reports dated December 16, 2013, appellant's physician assistant diagnosed left knee osteoarthritis. Appellant was placed off work until December 26, 2013 and released to return to work with restrictions.

A document submitted in support of the claim indicated that appellant was in receipt of benefits from the Department of Veterans Affairs (VA) for a military-connected disability to the left knee.

By decision dated May 13, 2014, OWCP denied appellant's traumatic injury claim as the medical evidence of record did not contain a medical diagnosis from a qualified physician in connection with the accepted December 9, 2013 employment incident.

Following the May 13, 2014 decision appellant submitted additional medical evidence, including an April 10, 2014 attending physician's report (Form CA-20) from Dr. Jeffrey Spina, a Board-certified internist. Dr. Spina noted a history of the December 9, 2013 employment incident and appellant's preexisting history of severe tri-compartmental arthritis of the left knee. He provided examination findings and diagnosed left knee sprain. Dr. Spina indicated that the diagnosed condition was caused or aggravated by the work incident. He noted that appellant was totally disabled from December 9 to 26, 2013. Dr. Spina further noted that he was partially disabled from December 26, 2013 to June 1, 2014 and released to resume his regular work.

On September 9, 2014 appellant, through counsel, requested reconsideration and submitted medical evidence. In a May 13, 2014 Cedars-Sinai Medical Center emergency department note, Dr. Wendy W. Lin, Board-certified in emergency medicine, placed appellant off work for four days.

OWCP on December 9, 2014 vacated the May 13, 2014 decision and accepted appellant's claim for left knee sprain.

On March 31, 2015 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) from June 17, 2014 to April 4, 2015. On the reverse side of the claim form, the employing establishment noted that he did not return to work following his December 9, 2013 employment injury.

Appellant submitted return to work/school slips dated January 7 and February 17, 2015 from Dr. John V. Tiberi, III, an attending orthopedic surgeon, who restricted him from work from January 7 to May 27, 2015. A March 11, 2015 letter from Healthcare Partners Medical Group authorized a revision total left knee arthroplasty to be performed by Dr. Tiberi. Appellant also submitted documents pertaining to his VA application for service-connected disability benefits.

By letter dated April 2, 2015, OWCP indicated that it was treating appellant's claim as a recurrence of disability claim. It advised him of the deficiencies of his recurrence claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In a May 29, 2014 report, Dr. Tiberi advised that appellant suffered from degenerative joint disease (DJD) of the left knee that was possibly post-traumatic in origin. He recommended a knee replacement as all other conservative management had failed. Appellant also submitted page 3 of a July 29, 2014 operative report from Dr. Tiberi which described a knee surgery.

On April 6, 2015 appellant filed a Form CA-7 for compensation for LWOP from May 21 to June 16, 2014.

In a May 19, 2015 return to work slip, Dr. Tiberi restricted appellant from work through August 21, 2015.

In a June 18, 2015 decision, OWCP denied appellant's recurrence claim because the medical evidence of record failed to establish that his preexisting left knee condition and claimed disability were causally related to his accepted December 9, 2013 work injury.

By letter dated June 23, 2015, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

In a July 21, 2015 letter, Dr. Tiberi noted a history of the December 9, 2013 employment injury and appellant's medical treatment. He referenced his initial examination findings and reiterated his prior diagnosis of DJD and recommendation for left knee surgery. Dr. Tiberi advised that, while it was likely that appellant had some preexisting osteoarthritis within the knee based on his history, it was certainly possible that the December 9, 2013 work injury may have exacerbated or worsened his preexisting condition requiring total knee arthroplasty. In an August 18, 2015 return to work/school slip, he noted that appellant had recovered and released him to return to light-duty work as of September 21, 2015.

By decision dated March 31, 2016, an OWCP hearing representative affirmed the June 18, 2015 decision. He found that the medical evidence of record was insufficient to establish that appellant's preexisting left knee arthritis condition and disability from June 17, 2014 to April 4, 2015 were causally related to his accepted December 9, 2013 work-related injury.

In a September 15, 2016 letter, counsel requested reconsideration and submitted medical evidence. In an August 22, 2016 addendum to his July 20, 2015 report, Dr. Tiberi reiterated the history of the December 9, 2013 employment injury, and his diagnosis of DJD. He also referenced appellant's knee symptoms and examination findings set forth in his May 29, 2014

report. Dr. Tiberi clarified his July 21, 2015 report, stating that it was likely that a component of appellant's diagnosis preceded his injury; however, the injury certainly led to a substantial increase in his symptoms, notably pain. He related that it was known that an injury can both temporarily and permanently worsen the symptoms and pathology of underlying DJD of the knee through a variety of mechanisms, such as increased inflammation and/or additional damage to any remaining cartilage, including both articular and meniscal cartilage. Dr. Tiberi opined that this process occurred as, prior to his injury, the knee symptoms did not justify significant treatment, particularly total knee replacement.

By decision dated December 12, 2016, OWCP denied modification of the March 31, 2016 decision. It found that Dr. Tiberi's August 22, 2016 report did not provide a rationalized medical opinion to establish that appellant's claimed total disability was causally related to his accepted employment injury.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."³

When an appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports this conclusion with sound medical reasoning.⁴

ANALYSIS

OWCP accepted that appellant sustained a work-related left knee sprain injury on December 9, 2013. Appellant did not return to work following his accepted injury. He claimed compensation for a recurrence of total disability from June 17, 2014 to April 4, 2015. The Board finds that appellant has failed to submit medical evidence establishing a recurrence of total disability due to his accepted December 9, 2013 work injury.

In a May 29, 2014 report, Dr. Tiberi opined that appellant had left knee DJD that was "possibly" post-traumatic in origin and recommended a knee replacement. His July 21, 2015 report restated his diagnosis of DJD and advised that it was certainly "possible" that appellant's preexisting left knee osteoarthritis "may" have been exacerbated or worsened by the December 9, 2013 employment injury necessitating total knee arthroplasty. Dr. Tiberi did not

³ 20 C.F.R. § 10.5(y); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.a (June 2013). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

provide a definitive opinion on the cause of appellant's current condition in either report. The Board has held that medical opinions which are speculative or equivocal regarding causal relationship have no probative value.⁵

Further, while Dr. Tiberi in his August 22, 2016 addendum report clarified his July 21, 2015 opinion regarding causal relationship. He did not sufficiently explain how the accepted employment injury aggravated appellant's preexisting left knee condition. Dr. Tiberi merely noted that it was likely that appellant's work injury substantially increased his pain symptoms related to his underlying left knee DJD because it was known that an injury could temporarily and permanently worsen the symptoms and pathology of this condition in the form of increased inflammation and/or additional damage to any remaining articular and meniscal cartilage. The Board has held that the fact that a condition manifests itself or worsens during a period of employment⁶ or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.⁷ Dr. Tiberi did not otherwise provide medical rationale explaining how or why appellant's claimed disability was caused or aggravated by the December 9, 2013 accepted left knee sprain. The need for rationale is particularly important where the record indicates that appellant has a preexisting left knee condition for which he was in receipt of VA benefits.⁸ For these reasons, these reports of Dr. Tiberi are insufficient to establish a recurrence of total disability or work-related disability during the claimed period.

Appellant submitted several other reports from Dr. Tiberi noting appellant's status including his disability or work limitations. However, these other reports did not provide a medical opinion specifically addressing whether his disability was causally related to the accepted December 9, 2013 work injury. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Other medical evidence of record is also of diminished probative value on the issue of causal relationship as it did not address whether the December 9, 2013 work injury was a cause of the claimed disability.¹⁰

On appeal, counsel contends that OWCP's decision is contrary to fact and law. As explained above, however, appellant has not submitted sufficient medical evidence to establish his recurrence claim.

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001) (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).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

⁸ See *J.D.*, Docket No. 16-0887 (issued November 4, 2016); *L.M.*, Docket No. 16-0143 (issued February 19, 2016).

⁹ *K.H.*, Docket No. 16-0776 (issued October 19, 2016).

¹⁰ *Id.*

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish a recurrence of disability from June 17, 2014 to April 4, 2015 due to his accepted December 9, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board