

FACTUAL HISTORY

On January 9, 2013 appellant, then a 51-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2013 she sustained an injury as she was lifting a parcel at work when her left knee became entangled in webbing and twisted.³ OWCP accepted her claim assigned OWCP File No. xxxxxx406, for left knee/leg sprain (unspecified sites) and temporary aggravation of localized primary osteoarthritis of her lower left leg. Appellant stopped work on January 4, 2013. She received disability compensation on the daily rolls beginning February 23, 2013.⁴

In a February 6, 2013 report, Dr. Michael V. Jablonksi, an attending Board-certified orthopedic surgeon, diagnosed several left knee conditions, including arthritis, degenerative changes, joint effusion, Baker cyst, and subtle tear of the medial meniscus. He found appellant partially disabled due to her January 3, 2013 work injury and provided various work restrictions.

On April 14, 2013 appellant returned to work as a modified manual mail processor on a full-time basis.⁵ The job required walking/standing for up to four hours per day and manual letter sorting for up to eight hours per day. Appellant was restricted from walking for more than two hours at a time and from standing for more than two hours at a time.

On November 6, 2013 OWCP referred appellant to Dr. Brian Leung, a Board-certified orthopedic surgeon for a second opinion examination, and requested that he provide an opinion regarding whether her January 3, 2013 work injury had resolved.

In a report dated December 11, 2013, Dr. Leung discussed appellant's factual and medical history and detailed his physical examination findings from that date. He noted that she had undergone magnetic resonance imaging scans in March 2011 and January 2013 that confirmed left knee osteoarthritis. Dr. Leung reported that his examination showed no mechanical symptoms and noted, "These findings are likely the natural progression of [appellant's] disease and not attributable to the work injury. Her osteoarthritis has returned to baseline." He opined that appellant's January 3, 2013 work injury had resolved. Dr. Leung indicated that she did have pain in her left knee, but found that it was related to her preexisting knee arthritis and was "not a result of her twisting injury."

In a March 14, 2014 duty status report (Form CA-17), Dr. Robert Reppy, an attending Board-certified family practitioner, listed the date of injury as January 3, 2013, diagnosed internal derangement of the left knee, and indicated that appellant could not work for four weeks.

³ Appellant's work as an automation clerk required lifting up to 20 pounds.

⁴ Under a prior claim, assigned OWCP File No. xxxxxx253, OWCP accepted that appellant sustained contusions and internal derangement of both knees due to a December 18, 1997 fall at work and paid medical expenses related to that injury. It administratively considered that file with the present case, with File No. xxxxxx253 serving as the master file. The Board notes that appellant's December 18, 1997 injury is not the subject of the present appeal.

⁵ Appellant received disability compensation on the daily rolls through April 12, 2013.

OWCP determined that there was a conflict in the medical opinion evidence between Dr. Leung and Dr. Reppy regarding the “nature and extent of residuals of accepted conditions.” On March 18, 2014 it referred appellant to Dr. Narinder S. Aujla, a Board-certified orthopedic surgeon, for an impartial medical examination.

On April 7, 2014 appellant filed a claim for compensation (Form CA-7), alleging that she sustained total disability for the period March 22 to April 4, 2014 due to her January 3, 2013 work injury.⁶

In support of her claim for total disability from March 22 to April 4, 2014, appellant submitted an April 14, 2014 report in which Dr. Reppy noted that her medical condition had not changed since he completed a Form CA-17 on March 14, 2014. Dr. Reppy indicated that the note was valid from April 14 to May 14, 2014.

In an April 18, 2014 letter, OWCP requested that appellant submit additional medical evidence in support of her claim for total disability beginning March 22, 2014.⁷

In an April 14, 2014 narrative report, Dr. Reppy reported examination findings and diagnosed left knee osteoarthritis, chondromalacia, and left knee medial meniscus tear. He expressed his disagreement with Dr. Leung’s opinion, as presented in his December 11, 2013 report, that appellant’s January 3, 2013 work injury had resolved. Dr. Reppy noted that she had swelling in her left knee and was unable to fully flex it.

In an April 29, 2014 report, Dr. Aujla discussed appellant’s factual and medical history and detailed the findings of his physical examination on that date. He reported that, upon examination of the left knee, the collateral ligaments were observed to be stable, the patella tracked centrally, and the anterior drawer test was negative. Dr. Aujla diagnosed “Resolved left knee sprain from [January 3, 2013]” and “Ongoing significant tricompartment arthritis, preexisting.” He opined that appellant’s January 3, 2013 left knee sprain had resolved and indicated that her present symptoms were related to the preexisting tricompartment arthritis of her left knee, which had been getting progressively worse with time. Dr. Aujla advised that her work-related condition was not permanent and that it had resolved. He indicated that the prognosis for appellant’s return to post office work was related to her preexisting tricompartment arthritis and not to the accepted left knee sprain.

⁶ Appellant had stopped work on March 22, 2014. She later filed additional Forms CA-7 alleging total disability from April 5 to May 16, 2014.

⁷ Under a separate claim, assigned OWCP File No. xxxxxx277, appellant filed a Form CA-1 alleging that on January 16, 2014 she sustained injury to both knees when she fell to the ground while pushing a chair. By decision dated March 10, 2014, OWCP denied her claim for a January 16, 2014 work injury. On November 24, 2014 an OWCP hearing representative remanded the case to OWCP for further development. In March 10 and December 14, 2015 decisions, OWCP again denied appellant’s claim for a January 16, 2014 work injury. OWCP File No. xxxxxx227 was combined with File Nos. xxxxxx253 and xxxxxx406, with xxxxxx253 serving as the master file. The Board notes that appellant’s claimed January 16, 2014 injury is not the subject of the present appeal.

In a May 12, 2014 narrative report, Dr. Reppy reported examination findings and diagnosed left knee osteoarthritis, chondromalacia, left knee medial meniscus tear, patella bone bruise, and L4-5 herniated disc. He again opined that appellant's January 3, 2013 work injury had not resolved. In a note dated May 12, 2014, Dr. Reppy noted that her medical condition had not changed since he completed a Form CA-17 on January 20, 2014.⁸ He indicated that the note was valid from May 12 to June 12, 2014.

In a May 27, 2014 decision, OWCP denied appellant's claim for disability compensation for the period beginning March 22, 2014 due to her January 3, 2013 work injury. It found that she had failed to submit sufficient medical evidence to establish her claim.⁹

By decision dated June 13, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 13, 2014.¹⁰

Appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearing and Review with respect to OWCP's May 27, 2014 decision.¹¹ During the hearing held on January 8, 2015, she argued that she had disabling residuals of her January 3, 2013 work injury during the claimed period of total disability.

By decision dated March 25, 2015, OWCP's hearing representative affirmed OWCP's May 27, 2014 decision and found that appellant had not established disability for the period March 22 to May 30, 2014 due to her January 3, 2013 work injury. The hearing representative noted that, in connection with appellant's claim for a January 16, 2014 work injury (OWCP File No. xxxxxx277),¹² Dr. Aujla had been asked to provide a supplemental report evaluating when the temporary aggravation of her left knee osteoarthritis had resolved. Appellant noted that Dr. Aujla indicated in a January 27, 2015 report, "[Appellant's] temporary aggravation of her left knee sprain was stabilized around May 3, 2013 and the ongoing symptoms are related to the preexisting arthritis."¹³ The hearing representative noted that appellant's total disability claim was denied because Dr. Aujla had opined, in a well-reasoned medical report, that her accepted

⁸ The Board notes that the record does not contain a Form CA-17 dated January 20, 2014.

⁹ On May 30, 2014 appellant filed a claim for compensation alleging total disability from May 17 to 30, 2014 due to her January 3, 2013 work injury.

¹⁰ OWCP based its termination action on the April 29, 2014 report of Dr. Aujla, the impartial medical specialist. Prior to taking its termination action, it had advised appellant of its proposed action and provided her an opportunity to submit evidence and argument. Appellant requested a hearing with a representative of OWCP's Branch of Hearings and Review and, in an April 2, 2015 decision, an OWCP hearing representative affirmed OWCP's June 13, 2014 decision. She requested reconsideration of the April 2, 2015 decision and, in a June 9, 2016 decision, OWCP denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The Board notes that the termination of appellant's wage-loss compensation and medical benefits effective June 13, 2014 is not the subject of the present appeal.

¹¹ Appellant submitted a Form CA-17 dated April 29, 2014 in which Dr. Reppy listed the date of injury as January 3, 2013, diagnosed internal derangement of the left knee, and noted that she could not work for four weeks."

¹² See *supra* note 7.

¹³ A copy of Dr. Aujla's January 27, 2015 report can be found in the file for appellant's claimed January 16, 2014 work injury under OWCP File No. xxxxxx277.

knee injuries had resolved by May 2013, well before the period of disability that she claimed beginning on March 22, 2014.

On March 11, 2016 appellant, through counsel, requested reconsideration of OWCP's March 25, 2015 decision. Counsel submitted a February 28, 2016 report of Dr. Reppy. In this report, produced at the request of counsel, Dr. Reppy expressed disagreement with Dr. Aujla's opinion that appellant's work-related left knee condition had resolved. He indicated that Dr. Aujla was making the case that appellant's left knee problems were solely due to the natural progression of her preexisting arthritis. Dr. Reppy felt that Dr. Aujla had not adequately explained his opinion given the fact that her right knee was not arthritic and, therefore, did not exhibit natural progression of degeneration occurring with age.

In a decision dated June 2, 2016, OWCP denied modification of its March 25, 2015 decision, finding that appellant had not met her burden of proof to establish total disability for the period March 22 to May 30, 2014 due to her January 3, 2013 work injury. It noted that the weight of the medical evidence rested with Dr. Aujla, the impartial medical specialist, because he provided a well-rationalized opinion that her left knee injuries had resolved by May 2013, a date 10 months prior to her claimed total disability beginning on March 22, 2014. OWCP also indicated that the reports of Dr. Reppy were of diminished probative value with respect to appellant's disability claim because their opinions on disability were not based on a complete and accurate history.

LEGAL PRECEDENT

An employee seeking benefits under FECA¹⁴ 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.¹⁵ In general the term disability under FECA means an incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.¹⁶ This meaning, for brevity, is expressed as disability for work.¹⁷

The medical evidence required to establish 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 appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

¹⁴ *Supra* note 2.

¹⁵ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹⁶ *See* 20 C.F.R. § 10.5(f).

¹⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.¹⁸

ANALYSIS

OWCP accepted that on January 3, 2013 appellant sustained left knee/leg sprain and temporary aggravation of localized primary osteoarthritis of her lower left leg. Appellant stopped work on January 9, 2013. She received disability compensation on the daily rolls beginning July 23, 2006 and on the periodic rolls beginning July 8, 2007. Appellant returned to modified work on a full-time basis on April 14, 2013. She alleged total disability for the period March 22 to May 30, 2014 due to her January 3, 2013 work injury.

Preliminarily, the Board notes that the record contains April 29, 2014 and January 27, 2015 reports of Dr. Aujla, an impartial medical specialist, which OWCP found represented the weight of the medical evidence with respect to appellant's claim for total disability from March 22 to May 16, 2014.¹⁹ FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.²⁰ Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.²¹

The Board notes, however, that Dr. Aujla's reports do constitute the weight of the medical opinion evidence with respect to whether appellant had total disability from March 22 to May 30, 2014 due to her January 3, 2013 work injury as the case was referred to him prior to the time that she filed her claim for total disability from March 22 to May 30, 2014 and she was referred to him to settle a different medical question, *i.e.*, whether she continued to have residuals of her January 3, 2013 work injury. At the time of the referral to him, there was no conflict in the medical evidence regarding the question of whether appellant had total disability from March 22 to May 30, 2014 due to her January 3, 2013 work injury. Therefore, appellant's claim for total disability for the period March 22 to May 30, 2014 due to her January 3, 2013 work injury is more appropriately evaluated by considering the probative value of the medical evidence she submitted in support of her claim.

Appellant submitted several reports of Dr. Reppy, an attending physician, which addressed the claimed period of disability from March 22 to May 30, 2014, but the Board finds that these reports are of limited probative value on the relevant issue of the case and that she did

¹⁸ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁹ Dr. Aujla's April 29, 2014 report was produced in connection with the present claim under OWCP File No xxxxxx406, but his January 27, 2015 report was produced in connection with appellant's claim for a January 16, 2014 work injury under OWCP File No. xxxxxx277.

²⁰ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

²¹ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

not meet her burden of proof to establish total disability for the period March 22 to May 30, 2014 due to her January 3, 2013 work injury.

In Forms CA-17 dated March 14 and April 29, 2014, Dr. Reppy listed the date of injury as January 3, 2013, diagnosed internal derangement of the left knee, and noted that appellant could not work for four weeks. In a note dated April 14, 2014, he noted that her medical condition had not changed since he completed a Form CA-17 on March 14, 2014.²² In a note dated May 12, 2014, Dr. Reppy reported that appellant's medical condition had not changed since he completed a Form CA-17 on January 20, 2014.²³ In April 14 and May 12, 2014 narrative reports, he discussed his examination findings and diagnosed left knee osteoarthritis, chondromalacia, left knee medial meniscus tear, patella bone bruise, and L4-5 herniated disc. Dr. Reppy opined that appellant's January 3, 2013 work injury had not resolved.

The Board finds that, although some of the above-described reports contain an opinion that appellant had total disability during the claimed period March 22 to May 30, 2014, they are of limited probative value because Dr. Reppy did not provide any medical rationale in support of his opinion that she had total disability during this period due to her January 3, 2013 work injury. The Board has held that a medical 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.²⁴ Dr. Reppy did not explain how the January 3, 2013 work injury could have caused appellant's disability from March 22 to May 30, 2014. He diagnosed several conditions that were not accepted as work related, such as left knee medial meniscus tear and patella bone bruise, and it is unclear to what extent his opinion on disability was based on these nonwork-related conditions. In April 14, May 12, 2014, and February 28, 2016 narrative reports, Dr. Reppy opined that appellant's January 3, 2013 work injury had not resolved. However, he did not provide any opinion in these reports on her disability for any specific period. The Board has held that medical evidence which does not offer a clear opinion regarding a given medical question is of limited probative value with respect to that medical question.²⁵

For these reasons, the Board finds that appellant has not established total disability for the period March 22 to May 30, 2014 due to her January 3, 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.

²² Dr. Reppy indicated that the note was valid from April 14 to May 14, 2014.

²³ Dr. Reppy indicated that the note was valid from May 12 to June 12, 2014. The Board notes that the record does not contain a Form CA-17 dated January 20, 2014.

²⁴ *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

²⁵ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish total disability for the period March 22 to May 30, 2014 due to her January 3, 2013 work injury.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 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