

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
D.W., Appellant)	
)	
and)	Docket No. 17-1954
)	Issued: April 18, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 21, 2017 appellant filed a timely appeal from an August 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability for 2.32 hours of work on October 5, 2016, and for 4 hours of work on October 6 and 20, 2016 causally related to her accepted September 4, 2014 employment injury.

FACTUAL HISTORY

On September 4, 2014 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she tripped on an uneven sidewalk and fell on both knees scraping both arms while she was responding to a management alert in the performance of

¹ 5 U.S.C. § 8101 *et seq.*

duty.² She returned to light-duty work on October 23, 2014. On November 4, 2014 appellant returned to full-time light-duty work. On December 3, 2014 OWCP accepted appellant's claim for bilateral knee contusion, bilateral knee sprain, bilateral forearm contusion, and sprain of the right hip.

Appellant continued to seek treatment for her knees and hip. On September 24, 2015 Dr. Louis Keppler, a Board-certified orthopedic surgeon, diagnosed right hip trochanteric bursitis and bilateral knee pain.

On October 14, 2016 appellant filed a claim for compensation (Form CA-7) and requested wage-loss compensation for leave without pay (LWOP) from October 5 to 6, 2016. She requested 2.32 hours of compensation on October 5, 2016³ and 8 hours of compensation on October 6, 2016. Appellant noted that her knees were hurting such that neither pain pills, nor knee braces alleviated her condition.

In a development letter dated October 17, 2016, OWCP requested additional medical evidence to establish appellant's disability for the period October 5 through 6, 2016. It afforded appellant 30 days for a response.

On November 3, 2016 appellant filed an additional claim for compensation (Form CA-7) requesting wage-loss compensation for October 20, 2016. She alleged that she used eight hours of LWOP on that date to seek medical treatment for her left knee. Appellant provided a bill for medical treatment on October 20, 2016 from Dr. Keppler.

In a letter dated November 15, 2016, OWCP requested additional medical documentation in support of appellant's claims for compensation for October 5, 6, and 20, 2016. It afforded appellant 30 days for a response.

Appellant underwent a left knee MRI scan on October 6, 2016. This scan demonstrated moderate medial collateral ligament bursitis, a tear of the posterior horn of the medial meniscus, mild tricompartmental chondromalacia, and mild degeneration of the anterior collateral ligament. Dr. Keppler examined appellant on October 20, 2016 due to left knee pain and examined her MRI scan. He diagnosed left knee bursitis, mild chondromalacia, and a small Baker's cyst.

Appellant also submitted a November 10, 2016 report from Dr. Keppler. He noted that appellant had a significant flare-up of her condition and had undergone a magnetic resonance imaging (MRI) scan. Dr. Keppler noted that appellant missed work on October 5 and 6, 2016 and required therapeutic treatment on October 20, 2016. He indicated that appellant missed work due to her workers' compensation injury which was "flaring up."

² OWCP administratively combined the following claims: OWCP File No. xxxxxx440 accepted for a February 25, 2000 right shoulder contusion; OWCP File No. xxxxxx693 accepted for a January 28, 2012 left arm contusion; and OWCP File No. xxxxxx837, an occupational disease claim beginning on January 12, 2013 accepted for right shoulder impingement and left shoulder rotator cuff tear, as well as August 23, 2014 right shoulder surgery and June 5, 2015 left shoulder surgery. OWCP File No. xxxxxx789 currently before the Board has not been combined with these claims.

³ Appellant worked 5.68 hours on October 5, 2016.

By decision dated January 11, 2017, OWCP denied appellant's claims for wage-loss compensation for the dates October 5, 6, and 20, 2016.

On January 31, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that on January 30, 2017 she was sent home as the employing establishment had no light-duty work within her restrictions.

In a report dated February 14, 2017, Dr. Keppler noted appellant's history of injury and fall on an uneven sidewalk at work. He reported appellant's continuing symptoms of bilateral knee pain and right hip discomfort. Dr. Keppler opined that appellant's right hip was aggravated by the way she walked due to her knee and hip discomfort. He noted that appellant's initial MRI scan on April 2, 2015 demonstrated medial collateral ligament bursitis, but that her October 6, 2016 MRI scan demonstrated tricompartmental osteoarthritis, Baker's cyst left knee, and medial meniscus tear left knee. Dr. Keppler opined that the arthritic changes in her knees were the result of her fall and diagnosed post-traumatic osteoarthritis of the knees bilaterally. He also attributed appellant's current knee conditions to her ongoing employment duties of walking, bending, lifting, and stooping. Dr. Keppler provided additional work restrictions of no bending, stooping, lifting more than 15 pounds, and no overhead reaching. OWCP continued to receive reports from Dr. Keppler documenting her current medical status.

In a letter dated May 12, 2017, OWCP referred appellant and a statement of accepted facts (SOAF) for a second opinion evaluation with Dr. William Bohl, a Board-certified orthopedic surgeon.

On June 15, 2017 appellant requested reconsideration of the January 11, 2017 decision denying her wage-loss compensation on October 5, 6, and 20, 2016. She asserted on October 5, 2016 Dr. Keppler directed her to go home due to her pain, and to rest, ice, compress, and elevate her leg until the emergency appointment on October 6, 2016 which resulted in an MRI scan. Appellant alleged that she had an additional appointment with Dr. Keppler on October 20, 2016 to review the MRI scan. At that time he performed an injection and prescribed rest for her knees and hips.

In his June 14, 2017 report, Dr. Bohl reviewed appellant's history of the September 4, 2014 employment injury, medical records, and the provided SOAF. On physical examination he found an antalgic waddling gait, with tenderness under the medial patella facet and medial joint line in the right knee. Appellant's left knee demonstrated moderate patellar crepitus with tenderness in the patellar facets and along the medial joint line. Dr. Bohl found tenderness over the greater trochanter in the hips bilaterally. He reviewed appellant's knee x-rays and found increasing loss of joint space on the left. Dr. Bohl determined that appellant's hip x-rays were normal. He diagnosed preexisting and continued osteoarthritis of both knees "which is not work related." Dr. Bohl also found trochanteric bursitis of both hips, which he determined was not work related. He determined that appellant's work-related conditions of contusions and sprains had resolved. Dr. Bohl attributed appellant's disability after October 20, 2014 to osteoarthritic changes in both knees and trochanteric bursitis in both hips. He concluded that appellant had no evidence of residuals of her date-of-injury work-related conditions of contusions and sprains. However, Dr. Bohl found that appellant could not perform her date-of-injury position due to her currently diagnosed conditions of osteoarthritic knees and trochanteric bursitis.

By decision dated August 30, 2017, OWCP reviewed the merits of appellant's claim and modified the January 11, 2017 decision, in part. It found that appellant had established disability for four hours a day on October 6 and 20, 2016 as she had obtained medical treatment on those dates. OWCP determined that appellant had not submitted sufficient rationalized medical opinion evidence to establish the remaining period of disability claimed.⁴

LEGAL PRECEDENT

An employee seeking benefits under the FECA⁵ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶

Under FECA 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.⁷

Whether a particular injury causes an employee disability for employment is a medical issue, which must be resolved by competent medical evidence.⁸ Whether a particular injury causes an employee to be disabled from work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁹

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.¹⁰ The Board 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. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹¹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹² Causal relationship is a medical issue and the

⁴ By decision dated August 31, 2017, OWCP denied appellant's claims for recurrence of disability and resulting wage-loss compensation beginning January 25, 2017. Appellant did not appeal this decision to the Board and the Board will not consider this issue on appeal.

⁵ *Supra* note 1.

⁶ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 CFR § 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).

⁸ *See S.J.*, *supra* note 6; *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *See S.J.*, *supra* note 6; *Tammy L. Medley*, 55 ECAB 182 (2003).

¹⁰ *See S.J.*, *supra* note 6; *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹¹ *See S.J.*, *supra* note 6; *Fereidoon Kharabi*, 52 ECAB 291 (2001)

¹² *See S.J.*, *supra* note 6; *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

medical evidence required to establish causal relationship is rationalized medical evidence.¹³ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.¹⁴

ANALYSIS

The Board finds that appellant has failed to establish disability for work for 2.32 hours on October 5, 2016 and for 4 hours on October 6 and 20, 2016 causally related to her accepted employment injuries.

OWCP accepted appellant's September 4, 2014 employment injury for bilateral knee contusion, bilateral knee sprain, bilateral forearm contusion, and sprain of the right hip. She returned to full-time light-duty work and filed Form CA-7s claiming wage-loss compensation for 2.32 hours on October 5, 2016 and 8 hours on both October 6 and 20, 2016. In its August 30, 2017 decision, OWCP found that appellant sought medical treatment for her accepted conditions on both October 6 and 20, 2016 and granted four hours of wage-loss compensation on each of those dates. It denied compensation for the remaining 10.25 hours. OWCP found that the medical evidence of record was insufficient to establish total disability as a result of her accepted condition for the remaining hours claimed.

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁵

Appellant was treated by Dr. Keppler. Dr. Keppler provided medical records supporting visits on October 6 and 20, 2016, which OWCP relied upon in granting four hours of compensation for those dates.¹⁶ He also provided a November 10, 2016 report indicating that appellant missed work on October 5 and 6, 2016 and required therapeutic treatment on October 20, 2016. Dr. Keppler indicated that appellant missed work due to her workers' compensation injury which was "flaring up." The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁷ Dr. Keppler did not provide any further specific findings regarding appellant's total disability for work on October 5, 6, and 20, 2016. Without

¹³ See *S.J.*, *supra* note 6; *Elizabeth Stanislaw*, 49 ECAB 540 (1998).

¹⁴ *Id.*

¹⁵ See *S.J.*, *supra* note 6; *N.G.*, Docket No. 16-1421 (issued December 12, 2016).

¹⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.0901.19(c) (February 2013) (for a routine medical appointment, a maximum of four hours of wage-loss compensation may be allowed).

¹⁷ See *S.J.*, *supra* note 6; *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

physical findings and a clear diagnosis establishing total disability due to her accepted conditions,¹⁸ his report lacks the probative value necessary to establish appellant's claim.¹⁹

On October 20, 2016 Dr. Keppler examined appellant due to left knee pain and reviewed her MRI scan. He diagnosed left knee bursitis, mild chondromalacia, and a small Baker's cyst. These conditions have not been accepted by OWCP as causally related to the September 4, 2014 employment injury. Therefore, this report cannot establish appellant's total disability for eight hours on October 20, 2016.²⁰

In his report dated February 14, 2017, Dr. Keppler noted appellant's history of injury and fall on an uneven sidewalk at work. He opined that the arthritic changes in her knees were the result of her fall and diagnosed post-traumatic osteoarthritis of the knees bilaterally. Dr. Keppler further noted that appellant had developed hip pain due to her gait. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.²¹ Furthermore, while Dr. Keppler provided an accurate history of injury and opined that appellant's current diagnosis of bilateral knee arthritis was due to her employment injury, he did not provide medical reasoning explaining the process by which appellant developed arthritis and OWCP has not accepted bilateral knee arthritis as due to appellant's September 4, 2014 employment injury.²²

The record further reflects that Dr. Bohl, an OWCP referral physician, found in his June 14, 2017 report that appellant's diagnosed conditions of preexisting and continued osteoarthritis of both knees as well as trochanteric bursitis of both hips were not work related. Dr. Bohl determined that appellant's work-related conditions of contusions and sprains had resolved. He attributed appellant's disability after October 20, 2014 to osteoarthritic changes in both knees and trochanteric bursitis in both hips. This report does not support appellant's claim for disability for work due to her September 4, 2014 employment injury. Dr. Bohl found that appellant's accepted employment injuries had resolved on or before October 20, 2014 and that her ongoing conditions and disability was not employment related.²³

With regard to the accepted bilateral knee contusion, bilateral knee sprain, bilateral forearm contusion, and sprain of the right hip, the Board finds that appellant failed to submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, established that she was disabled for 2.32 hours on October 5, 2016 and for more than 4 hours on October 6 and 20, 2016 causally related to her accepted employment injuries.²⁴

¹⁸ *S.H.*, Docket No. 16-1378 (issued October 16, 2017); *Vanessa Young*, 55 ECAB 575 (2004).

¹⁹ *See S.J.*, *supra* note 6.

²⁰ *S.H.*, *supra* note 18.

²¹ *Robert Broome*, 55 ECAB 339 (2004).

²² *S.H.*, *supra* note 18.

²³ *Id.*

²⁴ *Id.*

Appellant submitted no probative evidence contemporaneous to the alleged dates of disability that would indicate she was totally disabled from work either directly due to her accepted injuries or due to a medical appointment requiring more than four hours as granted by OWCP.²⁵

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 establish disability for 2.32 hours of work on October 5, 2016 and 4 hours each on October 6 and 20, 2016 causally related to her accepted September 4, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2018
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

²⁵ An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services. See 5 U.S.C. § 8103(a); *Gayle L. Jackson*, 57 ECAB 546 (2006); *S.J.*, *supra* note 6.