

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

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**K.M., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, Chicago, IL, Employer**

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**Docket No. 17-1730  
Issued: February 9, 2018**

*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 August 7, 2017 appellant filed a timely appeal from a July 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish total disability commencing May 25, 2017 causally related to his accepted left knee conditions.

On appeal appellant contends that at the time of his August 9, 2012 work injuries his physician, Dr. Priti Khanna, a Board-certified physiatrist, diagnosed knee strain and pain in the lower joint of the left knee, but she subsequently performed a magnetic resonance imaging

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

(MRI) scan which revealed that he had a lateral meniscus tear and partial tear of the anterior cruciate ligament (ACL).

### **FACTUAL HISTORY**

On August 10, 2012 appellant, then a 51-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2012 he sustained a possible tear of a left knee ligament at work. On September 28, 2012 OWCP accepted sprain of unspecified sites of his left knee and leg and pain in the joint of his left lower leg. Appellant did not stop work, but began light duty with restrictions on lifting and no kneeling or squatting.

On August 11, 2012 Dr. Khanna noted the history of the August 9, 2012 work injury, reported findings, and diagnosed a left knee sprain. She noted that appellant had a left knee lateral meniscus tear for which he had surgery in January 2012. Dr. Khanna advised that left knee x-rays showed degenerative joint disease, particularly in the lateral joint space. She released appellant to modified duty. An October 2, 2012 MRI scan of the left knee revealed advanced osteoarthritic changes associated with chondromalacia, diminution of the posterior horn of the medial meniscus which was possibly a post meniscectomy change, lateral meniscus tear, and a possible partial ACL tear or myxoid degeneration. Dr. Khanna and associates continued submitting status reports noting appellant's status and restrictions.

Appellant began treating with Dr. Joseph L. D'Silva, a Board-certified orthopedic surgeon, in 2015. OWCP received an April 4, 2016 progress note from Dr. D'Silva in which he noted that appellant received injections and nonoperative treatment for his aggressive left knee pain. Dr. D'Silva reported findings on examination, including an x-ray that revealed advanced degenerative changes of the lateral compartment of the left knee and medial compartment of the right knee. He indicated that appellant wished to proceed with knee replacement surgery due to his persistent symptomatology.

On June 7, 2016 Dr. D'Silva requested authorization to perform a total left knee arthroplasty. On October 6, 2016 OWCP forwarded appellant's medical records and a statement of accepted facts to a district medical adviser (DMA) for review. In an October 17, 2016 medical report, the selected DMA opined that the proposed left knee surgery was not causally related to the accepted medical conditions as appellant's claim had only been accepted for left knee sprain and left knee joint pain. He further opined that the proposed surgery was not medically necessary as appellant did not have an accepted condition that required the proposed surgery. The DMA also opined that appellant's left knee arthritis was not work related, reasoning that his mechanism of injury was inconsistent with a degenerative disease as seen in his knees. He maintained that this was an idiopathic onset of osteoarthritis seen in many individuals. The DMA related that it was reasonable to perform surgery given the x-ray and examination findings, but concluded that care should be sought through appellant's private insurance.

On October 26, 2016 OWCP advised appellant that his physician's request for authorization to perform left knee arthroscopy surgery was denied because the medical evidence of record was insufficient to establish that the proposed treatment was medically necessary for and/or causally related to the accepted employment-related conditions.

By letter May 10, 2017, OWCP advised appellant that the medical evidence of record was insufficient to establish that his bilateral knee arthritis was causally related to his accepted August 9, 2012 employment injuries. It requested that he submit additional factual and medical evidence, including a rationalized medical report from his physician explaining how the diagnosed condition was caused by the accepted work injuries.<sup>2</sup>

On May 25, 2017 appellant filed a claim for compensation (Form CA-7) requesting compensation for leave without pay (LWOP) beginning May 14 through 27, 2017. The employing establishment indicated that he stopped work on May 25, 2017. In a time analysis form (Form CA-7a) also dated May 25, 2017, appellant claimed LWOP for 23 total hours of disability during the claimed period. He indicated that he was participating in vocational rehabilitation.

OWCP received a May 15, 2017 follow-up progress note from Dr. D'Silva in which he noted that appellant's bilateral knee pain had plateaued. Dr. D'Silva indicated that appellant continued to require meloxicam one to two times a week. Appellant reported to Dr. D'Silva that he was on limited-duty at work. Dr. D'Silva reviewed a history of appellant's medical, surgical, and social background, and medications. He conducted a review of systems and related that appellant's physical examination remained unchanged with moderate crepitation with range of motion from 0 to 110 degrees. Dr. D'Silva advised that appellant had advanced degenerative arthritis of both knees. In a May 15, 2017 work restriction form, he increased appellant's work restrictions, advising that he needed a sitting job and should use a cane at work.

On May 26, 2016 appellant informed OWCP that the employing establishment could not accommodate his new restrictions and it had released him from service.<sup>3</sup>

OWCP received a follow-up progress note dated May 16, 2017 from Dr. Megan R. Leahy, a podiatrist, in which she noted appellant's complaints of onychomycosis and preulcerative lesions bilaterally and right ankle pain with posterior tibial tendon dysfunction. Dr. Leahy discussed examination findings and assessed posterior tibial tendinitis on the right with the possibility of an interstitial tear that was doing well. She also assessed painful calluses, onychomycosis pes planovalgus, and hallux valgus bilaterally. Appellant also had Type 2 diabetes mellitus with peripheral neuropathy bilaterally and hammer digit syndrome bilaterally.

By letter dated June 5, 2017, OWCP afforded appellant 30 days to submit a medical report from his physician discussing his history of injury and objective findings explaining how his accepted work-related condition had worsened such that he was no longer able to perform the duties of his position when he stopped work on May 25, 2017.

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<sup>2</sup> The record reveals that the employing establishment referred appellant's medical records, including the DMA's findings, to Dr. Tifani Gleeson, Board-certified in occupational medicine, for her review. Dr. Gleeson agreed with the DMA's findings and conclusions.

<sup>3</sup> On May 24, 2017 the employing establishment informed appellant that it had been providing him light duty as prescribed by his physician, but that it could not accommodate the increased restrictions set forth by Dr. D'Silva on May 15, 2017.

In a June 2, 2017 letter, received on June 5, 2017, appellant requested a 15-day extension to respond to OWCP's May 10, 2017 development letter as Dr. D'Silva was out of work for two weeks.

On June 7 and 22, and July 6, 2017 appellant filed CA-7 forms for LWOP beginning May 28 through June 24, 2017. In CA-7a forms of the same date, he claimed LWOP for 240 total hours of disability during the claimed period. Appellant indicated that he was referred to vocational rehabilitation.

In a June 15, 2017 letter, appellant related that he was examined on August 9, 2012 by Dr. Khanna and diagnosed as having sprain, stiffness, and joint pain of the left knee. He noted that she also diagnosed degenerative joint disease with narrow medial and lateral joint space, particularly in the lateral joint space of the left knee. Appellant maintained that an October 2012 MRI scan revealed a lateral meniscus tear in his left knee and a partial tear in his ACL joint. He attributed his conditions to his work duties.

In a June 15, 2017 employee statement regarding an occupational disease claim (Form CA-2),<sup>4</sup> appellant provided a history of his left knee injuries and medical treatment beginning in May 2006. He noted that he was diagnosed as having a left knee meniscus tear and underwent surgery performed by Dr. D'Silva in July 2006. Appellant indicated that in October 2011 he sustained a second left knee injury resulting in a lateral meniscus tear and underwent surgery in January 2012 again performed by Dr. D'Silva. He referenced his accepted August 9, 2012 left knee injuries and medical treatment. Appellant attributed his current left knee condition to his federal employment duties.

Appellant submitted reports dated October 27, 2011 to February 23, 2012 from Dr. D'Silva, which addressed his left wrist and left knee conditions, January 20, 2012 left knee surgery, and work capacity. He also submitted a June 13, 2017 work status report in which Dr. D'Silva advised that he could return to work with restrictions.

By decision dated July 21, 2017, OWCP denied appellant's claim for disability compensation commencing May 25, 2017. It found that the medical evidence of record failed to establish that the claimed disability was related to the accepted August 9, 2012 employment injuries.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish essential elements of his or her claim by the weight of the evidence.<sup>5</sup> 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.<sup>6</sup> Whether a particular injury causes an employee

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<sup>4</sup> No occupational disease claim has been adjudicated in the claim that is presently before the Board.

<sup>5</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>6</sup> See *Amelia S. Jefferson*, *id.*

to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>7</sup>

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>9</sup> An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>10</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.

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 his or her disability and entitlement to compensation.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability commencing May 25, 2017 causally related to his accepted left knee conditions.

While OWCP accepted that appellant sustained a sprain of unspecified sites of his left knee and leg and pain in the joint of his left lower leg, he bears the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between his claimed disability for that period and the accepted conditions.<sup>12</sup> The Board finds that he has failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to his accepted condition.<sup>13</sup>

Following his work injury, appellant returned to limited duty which the employing establishment provided until Dr. D'Silva increased his work restrictions on May 15, 2017 such that he required a sitting job. Although the withdrawal of a light-duty position may serve as the

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<sup>7</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>8</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

<sup>9</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>10</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>11</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>12</sup> *Amelia S. Jefferson*, *supra* note 5.

<sup>13</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

basis for payment of compensation,<sup>14</sup> it is the claimant's burden of proof to establish that any increase in disability for work is due to the accepted injury, rather than another cause.<sup>15</sup> However, Dr. D'Silva did not explain how the increased restrictions were due to the accepted left knee sprain. This is particularly important because appellant has other diagnoses involving the left knee that have not been accepted as employment related.<sup>16</sup>

In his June 13, 2017 work status report, Dr. D'Silva noted that appellant could return to work with restrictions. He failed, however, to address his disability status beginning May 25, 2017. The remaining progress note and reports from Dr. D'Silva predate the claimed period of disability and fail to provide an opinion regarding whether appellant was totally disabled beginning May 25, 2017 due to the accepted conditions. Thus, his reports and progress note are insufficient to meet appellant's burden of proof.<sup>17</sup>

Appellant also submitted a May 16, 2017 progress note from Dr. Leahy indicating that he had posterior tibial tendinitis on the right with the possibility of an interstitial tear, painful calluses, onychomycosis pes planovalgus, and hallux valgus bilaterally, Type 2 diabetes mellitus with peripheral neuropathy bilaterally, and hammer digit syndrome bilaterally. However, OWCP has not accepted these diagnoses as causally related to the accepted August 9, 2012 employment injuries. It has only accepted a left knee sprain in this case. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship.<sup>18</sup> Dr. Leahy did not provide rationale explaining how these conditions were caused or aggravated by the accepted August 9, 2012 employment injuries. The Board has held 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.<sup>19</sup> Moreover, Dr. Leahy did not offer a specific medical opinion addressing whether appellant's disability from work during the stated period was causally related to the accepted work injuries.<sup>20</sup> Therefore, for these reasons, her report is insufficient to meet appellant's burden of proof.

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<sup>14</sup> See *K.S.*, Docket No. 08-2105 (issued February 11, 2009).

<sup>15</sup> *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

<sup>16</sup> See *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (for conditions not accepted or approved by OWCP as due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

<sup>17</sup> See *R.R.*, Docket No. 17-1368 (issued October 19, 2017) (Board found reports that contained no opinion or explanation on causal relationship to be of limited probative value and insufficient to meet appellant's burden of proof).

<sup>18</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>19</sup> See *supra* note 16; *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo, id.*; *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>20</sup> *Id.*

As noted, appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which he claims compensation.<sup>21</sup> He did not provide medical evidence containing a rationalized opinion supporting that he could not work beginning May 25, 2017 due to his accepted conditions, and thus did not meet his burden of proof.

On appeal appellant contends that at the time of his August 9, 2012 work injuries his physician, Dr. Khanna, diagnosed knee strain and pain in the lower joint of the left knee, but she subsequently performed a left knee MRI scan which revealed that he had a lateral meniscus tear and partial tear of the AC joint. However, for the reasons set forth above, the Board finds that the weight of the medical evidence does not establish a causal relationship between appellant's diagnosed conditions and resultant total disability and his accepted employment injuries.

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 total disability beginning May 25, 2017 causally related to his accepted left knee conditions.

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<sup>21</sup> See *K.A.*, Docket No. 16-0592 (issued October 26, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 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