

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

A.D., Appellant	)	
	)	
and	)	<b>Docket No. 17-0793</b>
	)	<b>Issued: June 18, 2018</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Dallas, TX,	)	
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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 14, 2017 appellant filed a timely appeal from August 30, 2016 and February 10, 2017 merit decisions of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup>

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from August 30, 2016, the date of OWCP's last decision on the issue of appellant's entitlement to wage-loss compensation was February 26, 2017, a Sunday. Consequently, the period for filing the appeal ran to the next business day, Monday, February 27, 2017. Since using February 28, 2017, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 14, 2017, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUES**

The issues are: (1) whether appellant has established total disability from August 16, 2015 to October 19, 2016 causally related to his accepted employment injury; and (2) whether OWCP properly suspended his compensation benefits effective March 5, 2017 for failure to submit an EN1032 form as requested.

### **FACTUAL HISTORY**

On January 21, 2016 appellant, then a 64-year-old tractor trailer driver, filed an occupational disease claim (Form CA-2) alleging that he sustained left knee pain causally related to factors of his federal employment. He stopped work on August 9, 2015. OWCP accepted the claim for tear of the left meniscus, chondromalacia patellar of the left knee, left knee patellar tendinitis and effusion, sprain of the left hip, and other joint derangements of the left hip.<sup>4</sup>

In a report dated October 15, 2015, Dr. Olayinka Ogunro, a Board-certified orthopedic surgeon, evaluated appellant for left knee pain that began August 16, 2015 and increased over time. He diagnosed severe left knee degeneration and recommended a total knee replacement. Dr. Ogunro noted that appellant was working full duty and using his left leg to operate a clutch on his employing establishment vehicle.

On March 17, 2016 Dr. Mehdi Muzzaffar, who specializes in family medicine, discussed appellant's complaints of left knee pain due to "jamming and traction" at work. He diagnosed internal derangement of the left knee and found that appellant could perform modified employment.

Dr. Roy Allen, an osteopath, evaluated appellant on March 29, 2016 for left hip and knee pain beginning in August 2015 when appellant stepped incorrectly getting out of his truck. Appellant continued to work, but his left knee pain increased. Dr. Allen diagnosed internal derangement of the left knee and hip and referred appellant for magnetic resonance imaging (MRI) scan studies.<sup>5</sup> He noted that appellant was not working.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its February 10, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

<sup>4</sup> By decision dated March 10, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that he sustained a diagnosed medical condition causally related to the accepted work factors. By decision dated June 14, 2016, it vacated its March 10, 2016 decision and accepted the claim.

<sup>5</sup> The findings from an April 5, 2016 MRI scan study of the left knee included tricompartmental osteoarthritis with severe involvement of the medial femorotibial joint space compartment, grade three chondromalacia patella, and a diffuse tear of the medial meniscus.

In a May 18, 2016 attending physician's report (Form CA-20), Dr. Allen diagnosed internal derangement of the left knee and left hip. He checked a box marked "yes" indicating that the condition was caused or aggravated by employment. Dr. Allen noted that appellant's symptoms began after he stepped out of a truck at work. He found that appellant was totally disabled from work from March 29 through June 30, 2016.

Dr. Allen, in a May 23, 2016 report, noted that appellant experienced left knee and hip pain beginning at work on August 16, 2015 and described his work duties. He opined that his left hip and knee condition resulted from work duties as a tractor trailer operator. Dr. Allen related that MRI scan studies revealed left hip impingement and a labral tear and left knee chondromalacia patella, a medial meniscus tear, patellar tendinosis, and joint effusion. He opined, "Due to the nature and severity of the injury [appellant] is to remain off work at this time pending treatment response and further evaluation." Dr. Allen diagnosed left hip internal derangement, impingement, and a labral tear, and left knee internal derangement, a meniscus tear, chondromalacia patella, patellar tendinosis, and joint effusion.

On July 1, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) from August 16, 2015 through June 24, 2016. By letter dated July 20, 2016, OWCP requested that he submit evidence establishing disability for the period claimed.

Appellant submitted progress reports from Dr. Allen dated May and June 2016, which provided examination findings and diagnosing internal derangement of the left knee and left hip.

On July 29, 2016, Dr. Khawaja Nimr Ikram, an osteopath and Board-certified orthopedic surgeon, diagnosed left knee medial and lateral meniscus tears and recommended a total knee replacement. He opined that appellant had left knee arthritis of "long standing but it was never symptomatic for [him] until his fall at work."

In a Form CA-20 dated August 3, 2016, Dr. Allen diagnosed internal derangement of the left knee and hip and checked a box marked "yes" indicating that the condition was causally related to employment. He found that appellant was totally disabled from work from March 26 to November 1, 2016 and noted that he was awaiting authorization for surgery.

Dr. Allen, on August 25, 2016, provided a response to OWCP's July 20, 2016 request for additional information regarding appellant's disability status. He noted that he had explained why appellant could not perform his work duties on May 23, 2016. Dr. Allen advised that appellant was waiting for left knee surgery and that his off-work status was supported by "functional capacity evaluations demonstrating unsafe functional work abilities *versus* work requirements, positive imaging of significant injuries and surgeon recommendations."

By decision dated August 30, 2016, OWCP denied appellant's claim for wage-loss compensation for total disability beginning August 16, 2015. It found that the medical evidence submitted was insufficiently rationalized to support that he was disabled from work during the period claimed, causally related to the accepted employment injury.

OWCP paid appellant wage-loss compensation for total disability beginning October 19, 2016. It placed him on the periodic rolls, effective November 13, 2016.

On December 12, 2016 OWCP informed appellant that federal regulations required him to make an affidavit regarding any earnings received or employment performed during the previous 15 months and that an EN1032 form was enclosed for that purpose. It advised that he had to completely answer all questions on the form and that his benefits would be suspended pursuant to 20 C.F.R. § 10.528 if a completed form was not received by OWCP within 30 days. OWCP mailed the letter to appellant's address of record. Appellant did not respond to OWCP's request.

By decision dated February 10, 2017, OWCP suspended appellant's wage-loss compensation benefits effective March 5, 2017 for failing to submit the EN1032 form as requested. It noted that if he completed and returned an enclosed copy of the EN1032 form, it would retroactively restore his wage-loss compensation benefits to the date of suspension.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>7</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>8</sup> Whether a particular injury causes an employee to become disabled from 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>9</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>10</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>11</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>12</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 employment, he 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

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>8</sup> *See Amelia S. Jefferson*, *id.*

<sup>9</sup> *See Edward H. Horton*, 41 ECAB 301 (1989).

<sup>10</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

<sup>11</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>12</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

claimed. To do so, would essentially allow an employee to self-certify his disability and entitlement to compensation.<sup>13</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant failed to submit sufficient medical evidence to establish employment-related disability from August 16, 2015 to October 19, 2016.

On October 15, 2015 Dr. Ogunro discussed appellant's complaints of increasing left knee pain that began August 16, 2016. He diagnosed severe left knee degeneration. Dr. Ogunro noted that appellant was working full duty. As he did not address causation or find that appellant was disabled from employment, his report is of little probative value.<sup>14</sup>

Dr. Muzzaffar, in a March 17, 2016 report, noted that appellant experienced left knee pain as a result of "jamming and traction" at work. He diagnosed left knee internal derangement. Dr. Muzzaffar found that appellant could perform modified work. He did not, however, specifically attribute the work restrictions to the August 16, 2015 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>15</sup>

On March 29, 2016 Dr. Allen related that appellant experienced pain in his left knee and knee that started in August 2015 when he stepped out of his truck. He diagnosed internal derangement of the left knee and hip and noted that appellant was currently off work. While Dr. Allen, indicated that appellant was not working, he did not make a specific finding regarding disability, and thus his report is of little probative value.<sup>16</sup>

Dr. Allen, in a Form CA-20 dated May 18, 2016, diagnosed internal derangement of the left knee and left hip and checked a box marked "yes" indicating that the condition was caused or aggravated by employment. He provided as a rationale that appellant's symptoms began after he stepped out of a truck at work. Dr. Allen indicated that appellant was totally disabled from work from March 29 through June 30, 2016. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>17</sup> Additionally, a medical opinion that a condition is causally related to an employment

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<sup>13</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>14</sup> See *A.D.*, 58 ECAB 149 (2006); *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship).

<sup>15</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>16</sup> *Id.*

<sup>17</sup> *Deborah L. Beatty*, 54 ECAB 3234 (2003).

injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient to establish causal relationship.<sup>18</sup>

On May 23, 2015 Dr. Allen reviewed appellant's history of left knee and hip pain beginning at work on August 16, 2014 and discussed his employment duties. He diagnosed left hip internal derangement, impingement, and a labral tear, and left knee internal derangement, a meniscus tear, chondromalacia patella, patellar tendinosis, and joint effusion, and attributed the left hip and knee conditions to appellant's work duties. Dr. Allen found that appellant should remain off work pending treatment of the injury due to its severity. He did not, however, provide any rationale for his disability finding other than to note the severity of the work injury. A medical report must include rationale explaining how the physician reached his conclusion regarding disability.<sup>19</sup>

Dr. Ikram, on July 29, 2016, recommended a total knee replacement, noting that appellant previously had knee arthritis that was asymptomatic prior to his work injury. He did not, however, offer an opinion on disability. 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.<sup>20</sup>

In an August 3, 2016 Form CA-20, Dr. Allen diagnosed internal derangement of the left knee and hip and checked a box marked "yes" indicating that the condition was related to employment. He determined that appellant was totally disabled from work from March 26 to November 1, 2016. As discussed however, a checkmark on a form question is of little probative value on the issue of causal relationship and thus is insufficient to discharge appellant's burden of proof.<sup>21</sup>

Dr. Allen, on August 25, 2016, advised that he had provided information regarding why appellant was unable to perform the duties of his employment beginning May 23, 2016. He noted that his disability finding was supported by diagnostic studies, the recommendation of a surgeon, and a functional capacity evaluation. Dr. Allen, however, did not reference the specific physical findings supporting disability for work during the period in question or provide rationale regarding how or why appellant's limitations resulted from his accepted injury.<sup>22</sup> The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>23</sup>

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<sup>18</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>19</sup> *See J.I.*, Docket No. 17-0485 (issued June 22, 2017).

<sup>20</sup> *See Amelia S. Jefferson*, *supra* note 7.

<sup>21</sup> *See I.L.*, Docket No. 17-1113 (issued September 15, 2017).

<sup>22</sup> *See P.W.*, Docket No. 17-0154 (issued June 9, 2017).

<sup>23</sup> *See A.C.*, Docket No. 17-1296 (issued February 15, 2018).

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.<sup>24</sup>

Under section 10.528 of OWCP's implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.<sup>25</sup> If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.<sup>26</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly suspended appellant's compensation benefits effective March 5, 2017 for failure to complete the EN1032 form as requested.

On December 12, 2016 OWCP provided appellant with the EN1032 form. It notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. OWCP properly notified appellant that, if he did not completely answer all questions and return the statement within 30 days, his benefits would be suspended.

Appellant failed to timely submit the EN1032 form within 30 days. OWCP paid him wage-loss compensation and thus he was required to complete the EN1032 form.<sup>27</sup> The failure to file an EN1032 form within 30 days results in the suspension of compensation. The Board thus finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective March 5, 2017 pursuant to 20 C.F.R. § 10.528.<sup>28</sup>

### **CONCLUSION**

The Board finds that appellant has not established total disability from August 16, 2015 to October 19, 2016 causally related to his August 16, 2015 employment injury. The Board further

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<sup>24</sup> 5 U.S.C. § 8106(b).

<sup>25</sup> 20 C.F.R. § 10.528; *see also* *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

<sup>26</sup> *Id.*; *see also* 20 C.F.R. § 525.

<sup>27</sup> *See* *A.S.*, Docket No. 17-1530 (issued November 7, 2017).

<sup>28</sup> *See* *P.M.*, Docket No. 16-0382 (issued May 19, 2016); *M.W.*, Docket No. 15-0507 (issued June 18, 2015).

finds that OWCP properly suspended his compensation benefits, effective March 5, 2017, for failure to submit an EN1032 form as requested.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 10, 2017 and August 30, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board