United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 18-0131**
	)	**Issued: May 11, 2018**
DEPARTMENT OF THE NAVY, NORFOLK NAVAL SHIPYARD, Portsmouth, VA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 23, 2017 appellant filed a timely appeal from a May 26, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 his burden of proof to establish total disability from work for the period January 23 through February 10, 2017 causally related to his accepted employment injury.

FACTUAL HISTORY

On September 8, 2016 appellant, then a 47-year-old environmental supervisor, filed a traumatic injury claim (Form CA-1) alleging that, while performing inspections on August 25, 2016, he stepped in a gap in the floor grating. This action twisted his right ankle and caused right

[1] 5 U.S.C. § 8101 *et seq.*

knee pain and fluid build-up. He did not initially stop work. The employing establishment provided a form documenting appellant's August 25, 2016 employment incident.

In an attending physician's report (Form CA-20) dated January 20, 2017, Dr. Jeffrey A. Levy, an osteopath, diagnosed derangement of the meniscus of the right knee and chondromalacia of the right knee. He performed right knee surgery and indicated that appellant was partially disabled from January 13 through February 13, 2017 and could return to full duty on June 13, 2017. Dr. Levy indicated that he was unable to assess whether appellant's condition was caused by his history of right knee pain for four months. He provided work restrictions indicating that appellant could not stand for more than 10 minutes without rest.

By decision dated January 27, 2017, OWCP accepted appellant's claim for derangement of the medial meniscus due to tear or injury of the right knee.

On February 27, 2017 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for leave without pay from January 23 through February 10, 2017.

In a development letter dated March 10, 2017, OWCP requested additional medical evidence establishing appellant's disability from work during the period claimed. Appellant was advised that he should submit a comprehensive medical report which noted objective findings and explained why appellant's condition had worsened such that he could no longer perform his work activities as of January 23, 2017. OWCP afforded 30 days for a response.

OWCP thereafter received additional evidence. A September 2, 2016 magnetic resonance imaging (MRI) scan of appellant's right knee demonstrated a complex posterior horn medial meniscal tear with some mild thinning of the cartilage consistent with chondromalacia. In a note dated December 21, 2016, Dr. Levy related that appellant sustained a twisting injury to his right lower extremity with significant swelling around his knee and difficulty with ambulating. A January 13, 2017 operative report indicated that appellant underwent arthroscopic right knee medial meniscus debridement performed by Dr. Levy. OWCP also received notes from Kenneth Morris, Giselle M. Hamlin, Michael Owens, and Sarah Zeisler, physical therapists, dated from October 13 to November 30, 2016 and February 22 and 28, 2017. In a March 1, 2017 progress note, Dr. Levy related that appellant was doing well, without complaints, but that he was using crutches.

By decision dated May 26, 2017, OWCP denied appellant's claim for wage-loss compensation for the period January 23 through February 10, 2017, finding that he had failed to submit medical evidence which explained how his accepted right knee condition had worsened or why his surgery was causally related to his work injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish 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.[3]

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.[4]

Whether a particular injury causes an employee disability from employment is a medical issue which must be resolved by competent medical evidence.[5] Whether a particular injury causes an employee to be disabled from work and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.[6]

For each period of disability claimed, the employee has the burden of proof to establish that he was disabled from work as a result of the accepted employment injury.[7] 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.[8]

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.[9] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] 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.[11]

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[2] *Supra* note 1.

[3] *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).

[4] 20 C.F.R. § 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).

[5] *See S.J., supra* note 3; *Edward H. Horton*, 41 ECAB 301 (1989).

[6] *See S.J., id.*; *Tammy L. Medley*, 55 ECAB 182 (2003).

[7] *See S.J., id.*; *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[8] *See S.J., id.*; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] *See S.J., id.*; *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[10] *See S.J., id.*; *Elizabeth Stanislaw*, 49 ECAB 540 (1998).

[11] *Id.*

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof to establish disability from January 23 through February 10, 2017 causally related to his accepted employment injury.

OWCP accepted appellant's August 25, 2016 employment injury for derangement of the medial meniscus due to tear or injury of the right knee. Appellant filed a Form CA-7 claiming wage-loss compensation from January 23 through February 10, 2017. In its May 26, 2017 decision, OWCP denied his claim for wage-loss compensation from January 23 through February 10, 2017, finding that the medical evidence of record was insufficient to establish total disability as a result of his accepted condition for the claimed period.

Appellant was treated by Dr. Levy who diagnosed derangement of the meniscus of the right knee and chondromalacia of the right knee. Dr. Levy performed right knee surgery on January 13, 2017 and indicated that appellant was partially disabled from January 13 through February 13, 2017 and could return to full duty on June 13, 2017. In his January 23, 2017 form report, he indicated that appellant could return to work on February 13, 2017. In his March 1, 2017 note, Dr. Levy indicated that appellant was undergoing physical therapy treatments, but neither provided specific work restrictions nor opined that appellant was totally disabled.

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.[12] By development letter dated March 10, 2017, OWCP advised appellant to submit a comprehensive medical report which explained, with objective medical findings, why appellant was disabled from work. While Dr. Levy related that appellant had undergone repair of his accepted knee condition on January 13, 2017, he did not provide any specific medical findings explaining why appellant was disabled from work from January 23 through February 13, 2017. Without physical findings and an explanation as to why appellant was disabled due to his accepted condition[13] on the dates alleged by appellant, Dr. Levy's report lacks the probative value necessary to establish appellant's claim.[14] As previously noted, 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.[15]

With regard to the accepted derangement of the medial meniscus due to tear or injury of the right knee, 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 he was disabled from January 23 through February 10, 2017 causally related to his accepted conditions.[16]

[12] *See S.J., supra* note 3; *Jennifer Atkerson,* 55 ECAB 317, 319 (2004).

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

[14] *See S.J., supra* note 3.

[15] *Supra* note 8.

[16] *Id.*

Appellant submitted treatment notes from Terria Moore, a physician assistant, and Kenneth Morris, Giselle M. Hamlin, Michael Owens, and Sarah Zeisler, physical therapists.[17] However, the Board has previously found that reports by a physician assistant or a physical therapist are not considered medical evidence as these providers are not considered physicians under FECA.[18]

Appellant submitted no probative evidence contemporaneous to the alleged dates of disability that would indicate he was disabled from work either directly due to his accepted injuries or due to a medical appointment.[19]

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 from work for the period January 23 through February 10, 2017 causally related to his accepted employment injury.

[17] The Board notes that appellant has not submitted any physical therapy notes for the period January 23 through February 10, 2017 which would establish partial disability. *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).

[18] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[19] 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 3.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2018
Washington, DC

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

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

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