

FACTUAL HISTORY

On July 28, 2016 appellant, then a 40-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained a left knee injury when he fell down stairs while in the performance of duty. OWCP accepted the claim for sprain of the medial collateral ligament of the left knee, other tear of the medial meniscus of the left knee, and aggravation of chondromalacia patellae of the left knee. Appellant stopped work on the date of injury and received wage-loss compensation on the supplemental rolls from September 12, 2016 and on the periodic rolls from March 5, 2017.

On January 26, 2017 Dr. Daniel O'Connor, a treating physician and Board-certified orthopedic surgeon, performed authorized arthroscopy of appellant's left knee with debridement, synovectomy, chondroplasty, and partial meniscectomy.

On October 3, 2017 OWCP referred appellant to Dr. Timothy Henderson, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of disability. Dr. Henderson determined that appellant could return to heavy work with lifting restrictions of 75 pounds. The record reflects that appellant returned to work on November 6, 2017 in a full-time capacity with lifting restricted to 75 pounds and restrictions of his ability to push, squat, kneel, and climb.

On October 1, 2018 appellant filed a claim for compensation (Form CA-7) for ongoing leave without pay commencing August 13, 2018.

In a development letter dated October 19, 2018, OWCP indicated that it appeared appellant was claiming disability due to a material change or worsening of his accepted work-related conditions. It noted that he had returned to work in a full-time, full-duty capacity on November 6, 2017 and worked until August 13, 2018 when he stopped work completely. OWCP advised appellant that no evidence had been submitted with his claim to establish disability during the claimed time period. It provided him with the definition of a recurrence and the evidence required to establish such a claim. OWCP afforded appellant 30 days to provide the requested evidence.

In a November 14, 2018 narrative statement, appellant responded to OWCP's development letter. He reported that on August 13, 2018 he was performing his carrier duties of walking, standing, and pushing on limited duty when he developed the recurrence. Appellant further stated that he had been on limited duty since returning to work on November 6, 2017, but that all of the walking and standing made his condition worse as of August 13, 2018. He reported no issues with his left knee prior to the work-related injury and no subsequent left knee injuries since the work incident. Appellant reported that he was limping while performing his employment duties and was essentially unable to walk after an eight-hour shift.

In support of his claim, appellant submitted an August 2, 2018 evaluation from Dr. Isaac Kreizman, Board-certified in physical medicine and rehabilitation. Dr. Kreizman evaluated appellant on July 26, 2018 and provided a history of injury, discussed objective findings, and determined that appellant sustained 15 percent permanent impairment of the left knee. He opined that based on his physical examination, appellant was partially disabled and his prognosis was fair. Dr. Kreizman further opined that appellant was permanently disabled based on his diagnosis of a

sprain of the medial collateral ligament of the left knee, other tear of the medial meniscus of the left knee, aggravation of chondromalacia patellae of the left knee, suprapatellar joint effusion, posterior lateral popliteal cyst, patellofemoral osteoarthritic changes, tricompartmental synovitis, and chondromalacia grades 2 and 3 of the femoral trochlea and grade 2 of the lateral plateau.

In support of his claim, appellant also submitted return to work notes dated November 27, 2017 through August 23, 2018 from Dr. Muhammad Bhatti, Board-certified in internal medicine, which documented appellant's treatments and medical appointments in which he released appellant to work the following day. In notes dated August 14, 16, and 23, 2018, Dr. Bhatti reported that appellant could work eight hours per day.

In a September 27, 2018 medical note, Dr. Bhatti reported that appellant was unable to work and had been advised by his orthopedic specialist that his left knee was permanently damaged. In a November 13, 2018 medical note, he reported that appellant was disabled as a result of left knee pain.

By decision dated December 14, 2018, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence of record was insufficient to establish disability on or after August 13, 2018 due to a material change/worsening of his accepted July 28, 2016 employment-related injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.³ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁴

OWCP procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁵

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative

³ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

evidence that the disability for which he or she claims compensation is causally related to the accepted injury.⁶ This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing August 13, 2018, causally related to the accepted July 28, 2016 employment injury.

Appellant has not alleged a change in his light-duty job requirements. Instead, he attributed his inability to work to a change in the nature and extent of his employment-related conditions. Appellant, therefore, has the burden of proof to provide medical evidence to establish that he was disabled due to a worsening of his accepted work-related conditions.⁹ The Board finds that he has not met his burden of proof to establish his claim for a recurrence of disability.

Dr. Bhatti's return to work notes are insufficient to establish disability on or after August 13, 2018. Medical notes dated November 27, 2017 through August 23, 2018 indicated that appellant was capable of working eight hours per day. It was not until his September 27, 2018 note that Dr. Bhatti restricted appellant from returning to work altogether, noting that his orthopedic specialist advised that his left knee was permanently damaged. Dr. Bhatti's November 13, 2018 note determined that appellant was disabled as a result of left knee pain. The Board notes that Dr. Bhatti's return to work notes are insufficient to establish appellant's claim for a recurrence of disability. Specifically, Dr. Bhatti had not provided objective findings to demonstrate how appellant's accepted left knee condition had worsened to the point of total disability, but merely attributed his inability to work to subjective complaints of pain and the opinion of his orthopedic specialist. Although he indicated that appellant should remain off work, Dr. Bhatti did not provide a rationalized medical explanation discussing why the July 28, 2016 employment injury caused a period of total disability based on his own findings and examination.¹⁰ He has not provided an explanation as to why appellant was disabled, only correlating in general terms that appellant began experiencing left knee pain.¹¹ When a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability. Because Dr. Bhatti failed to provide

⁶ See *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁷ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁸ *H.T.*, Docket No. 17-0209 (issued February 8, 2018); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

⁹ *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

¹⁰ *C.B.*, Docket No. 18-0040 (issued May 7, 2019).

¹¹ *J.H.*, Docket No. 14-0775 (issued July 14, 2014).

medical rationale for his conclusion, his opinion is of diminished probative value and fails to establish appellant's inability to work on or after August 13, 2018.¹²

Dr. Kreizman's August 2, 2018 evaluation is also insufficient to establish appellant's claim for a recurrence of disability. He also opined that appellant could not work, but did not provide objective findings or medical rationale explaining how appellant's accepted left knee condition had changed or worsened to the extent that he was no longer able to work.¹³ The Board also notes that Dr. Kreizman provided contradictory findings, noting that appellant was partially disabled in one section of his report while opining that he was permanently disabled in another section. Dr. Kreizman failed to provide an explanation as to why appellant was disabled other than generally noting pain and difficulty performing activities of daily living, nor did he provide adequate bridging evidence to show a spontaneous worsening of the accepted condition.¹⁴ Moreover, while Dr. Kreizman found appellant disabled as a result of his accepted July 28, 2016 work-related conditions, he also related appellant's disability to a plethora of other left knee conditions which have not been accepted as work related, rendering the cause of his disability unclear. The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.¹⁵ As Dr. Kreizman's report contains no rationale explaining why appellant was disabled as a result of his accepted July 28, 2016 employment injury, his opinion is insufficient to support a worsening of his accepted employment-related conditions to establish a recurrence of disability.¹⁶

For each period of disability claimed, an employee has the burden of proof to establish a causal relationship between his or her recurrence of disability and his or her accepted employment injury.¹⁷ Because appellant has not submitted sufficient medical evidence to establish that he was unable to work beginning August 13, 2018 due to a spontaneous change or worsening of his accepted July 28, 2016 employment-related conditions, the Board finds that appellant has not met his burden of proof in this case.

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.

¹² *T.G.*, Docket No. 18-1064 (issued April 26, 2019); *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

¹³ *N.M.*, Docket No. 18-1584 (issued March 15, 2019).

¹⁴ *Id.*

¹⁵ *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹⁶ *See Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

¹⁷ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing on or after August 13, 2018, causally related to his accepted July 28, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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