

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

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C.R., Appellant )  
and ) Docket No. 18-1805  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: May 10, 2019  
New Orleans, LA, Employer )  
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)

*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 September 27, 2018 appellant filed a timely appeal from a September 11, 2018 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.<sup>2</sup>

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

<sup>2</sup> The Board notes that appellant submitted additional evidence following OWCP's September 11, 2018 decision and on appeal. However, the Board's *Rules of Procedure* provide: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish total disability commencing July 14, 2018 causally related to her accepted December 26, 2017 employment injury.

## **FACTUAL HISTORY**

On May 7, 2018 appellant, then a 44-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on December 26, 2017, she developed pain and swelling in her right knee when she fell while in the performance of duty. She further noted that she had sustained a prior injury to her right knee. By decision dated July 5, 2018, OWCP accepted the claim for sprain of the anterior cruciate ligament (ACL) of the right knee and sprain of other specified parts of the right knee. Appellant stopped work on July 14, 2018.

On July 23, 2018 appellant filed a claim for compensation (Form CA-7) commencing July 14, 2018.

In a development letter dated August 2, 2018, OWCP informed appellant that the medical evidence of record was insufficient to establish total disability commencing July 14, 2018. It advised her to submit a comprehensive narrative report from her treating physician that included a history of her injury and a thorough explanation with objective findings as to how her condition had worsened such that she was no longer able to perform the duties of her position when she stopped work on July 14, 2018. OWCP afforded appellant 30 days to submit the necessary evidence.

In an August 14, 2018 report, Dr. Robert Steiner, a Board-certified orthopedic surgeon, noted that he saw appellant for follow-up examination. He indicated that her condition was worsening and she continued to have increasing pain, swelling, and giving way of her right knee, although there was no history of reinjury. Dr. Steiner opined that appellant remained symptomatic in regards to ACL tear of the right knee with anterolateral rotary instability. He noted that she had been disabled from work since July 17, 2018 and was currently disabled from work.

In an August 16, 2018 report, Dr. Joseph Finstein, a Board-certified orthopedic surgeon, noted a right knee examination showed that appellant had positive Lachman's, a 2+ anterior drawer, some pain over her medial meniscus, a positive McMurray's test, trace effusion, and pain in her lateral joint line. A magnetic resonance imaging (MRI) scan of the right knee showed some high grade partial tear of the ACL with parameniscal cyst at the lateral meniscus. Dr. Finstein assessed right high grade partial thickness tear of the ACL with instability and right lateral parameniscal cyst with likely lateral meniscal tear.

By decision dated September 11, 2018, OWCP denied appellant's claim for total disability commencing July 14, 2018. It found that the medical evidence of record was insufficient to establish that the claimed disability was related to the accepted December 26, 2017 employment injury.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup>

Under FECA, the term disability means “the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”<sup>5</sup> The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.<sup>6</sup> The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.<sup>7</sup>

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>8</sup> 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>9</sup>

## **ANALYSIS**

The Board finds appellant has not met her burden of proof to establish total disability commencing July 14, 2018 causally related to her accepted December 26, 2017 employment injury.

Dr. Steiner’s August 16, 2018 report indicated that appellant’s symptoms persisted and noted her disability. However, it did not address whether or how the accepted employment injury caused the disability. As Dr. Steiner neither provided clear physical findings supporting appellant’s disability from work during the period in question, nor provided any rationale explaining how or why appellant’s limitations resulted from the accepted injury, his report is insufficient to establish the claim.<sup>10</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *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).

<sup>5</sup> 20 C.F.R. § 10.5(f).

<sup>6</sup> See *S.A.*, Docket No. 18-0399 (issued October 16, 2018); see also *R.C.*, 59 ECAB 546, 551 (2008).

<sup>7</sup> 20 C.F.R. § 10.501(a).

<sup>8</sup> *Id.*; see *T.A.*, Docket No. 18-0431 (issued November 7, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>9</sup> See *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>10</sup> See *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

Similarly, Dr. Finstein's August 16, 2018 report provided assessments of right knee pain, but did not provide a firm medical diagnosis of appellant's right knee condition or set forth an opinion regarding causal relationship. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.<sup>11</sup> Thus, Dr. Finstein's report is also insufficient to establish appellant's claim.

As appellant has not submitted sufficiently rationalized medical opinion evidence establishing that she was disabled from work commencing July 14, 2018 causally related to the accepted December 26, 2017 employment injury, the Board finds that she has not met her burden of proof.

On appeal appellant contends that she cannot perform her normal duties "at all" as she "can't walk for a long period of time can't bend, stand" or carry out "the normal duties of a city carrier." As explained above, the medical evidence of record is insufficient to establish that appellant was totally disabled from work for the claimed period.<sup>12</sup>

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.

### **CONCLUSION**

The Board finds appellant has not met her burden of proof to establish disability for the period July 14, 2018 and continuing causally related to her accepted December 26, 2017 employment injury.

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<sup>11</sup> *Id.*

<sup>12</sup> The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; R.W., Docket No. 18-0894 (issued December 4, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2019  
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