United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 18-1054**
	)	**Issued: April 8, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Orange, VA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 30, 2018 appellant filed a timely appeal from a March 15, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the March 15, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "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 disability from work for the period March 1 through October 17, 2016 causally related to her accepted January 29, 2016 employment injury.

FACTUAL HISTORY

On March 1, 2016 appellant, then a 43-year-old mail city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2016 she injured her left knee when she slipped on ice/snow and fell to the ground delivering mail while in the performance of duty. On the reverse side of the claim form, appellant's supervisor noted that appellant was a temporary employee who worked Mondays, Wednesdays, Thursdays, Fridays, and Saturdays, as directed.[4] Appellant continued to work as a city carrier assistant until she stopped work on March 1, 2016.

OWCP accepted the claim for aggravation of right knee chondromalacia patella on March 15, 2017.

Prior to the acceptance of her claim, appellant submitted several reports of Dr. David Zijerdi, a Board-certified orthopedic surgeon.[5] In a report dated March 7, 2016, Dr. Zijerdi noted that appellant presented with complaints of right knee pain and reported that she had sustained a right knee injury on January 29, 2016 due to slipping on snow at work. On physical examination of the right knee, he observed normal station/gait, point tenderness about the medial structures, positive McMurray's test, and good range of motion.[6] Dr. Zijerdi assessed appellant with right knee pain likely secondary to a medial meniscus tear given her examination and persistent symptoms. He recommended that she limit her work duties to six hours per day. In a Form CA-17 dated March 7, 2016, Dr. Zijerdi listed January 29, 2016 as the date of injury and a "diagnosis due to injury" of medial meniscal tear of the right knee. He noted that appellant could return to work for up to six hours per day. In a note dated March 11, 2016, Dr. Zijerdi advised that appellant should work no more than six hours per day with restrictions of no squatting, climbing, lifting, or prolonged standing, as well as no walking for more than 15 minutes at a time.

In a March 21, 2016 report, Dr. Zijerdi advised that a magnetic resonance imaging (MRI) scan of the right knee showed chondromalacia of the patella with no evidence of meniscus or ligamentous tears. He diagnosed right knee pain secondary to chondromalacia patella.[7] In a physical capacities evaluation report dated March 21, 2016, Dr. Zijerdi recommended restrictions of walking or standing no more than one hour per day with no lifting, bending, squatting, climbing,

[4] Appellant's city carrier assistant position required her to intermittently lift up to 70 pounds and to engage in standing, sitting, driving, walking, bending, climbing, twisting, reaching, kneeling, pushing, and pulling.

[5] The earliest treatment documents in the case record were completed by Colleen Hayes, a physician assistant, who indicated in a March 1, 2016 emergency room report that appellant presented for initial treatment of right knee pain after a January 2016 fall at work. In a duty status report (Form CA-17) dated March 1, 2016, she indicated that appellant could resume her regular work. The findings of March 1, 2016 x-rays of the right knee showed no fracture, dislocation, foreign bodies, or significant joint effusion.

[6] Dr. Zijerdi found that appellant's right knee exhibited no varus/valgus stress deficits, but that valgus stress testing elicited medial-sided pain.

[7] In another March 21, 2016 report, Dr. Zijerdi diagnosed tear of medial meniscus of the right knee.

kneeling, or twisting. In an attending physician's report (Form CA-20) dated March 29, 2016, Dr. Zijerdi diagnosed right chondromalacia patella, noting that appellant had fallen onto her right knee in the snow on January 29, 2016. Under "period of total disability," he wrote "N/A." Dr. Zijerdi recommended restrictions of working no more than six hours per day with no squatting, climbing, lifting, or standing/walking for more than 15 minutes at a time.

In a May 2, 2016 report, Dr. Zijerdi noted that appellant continued to complain of persistent anterior knee pain. On examination of the right knee, he indicated that she had full range of motion, no instability, no sensorimotor deficits, and tenderness over the patellofemoral joint. In a May 26, 2016 report, Dr. Zijerdi diagnosed right knee pain secondary to chondromalacia and, in another report from the same date, he diagnosed tear of the medial meniscus of the right knee. In a June 6, 2016 note, he advised that appellant could work eight hours in "a different field other than the duties of postal services." On June 16, 2016 Dr. Zijerdi opined that appellant's preexisting chondromalacia patella was aggravated by the January 29, 2016 fall at work.

On September 20, 2016 Dr. Zijerdi performed surgery on appellant's right knee, including arthroscopic lateral release and arthroscopic excision of the infrapatellar fat pad. The procedure was not authorized by OWCP. In a May 4, 2017 report, Dr. Zijerdi indicated that appellant's right knee condition had reached maximum medical improvement. He diagnosed status post September 20, 2016 right knee surgery.

On July 17, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work during the period March 1 through October 17, 2016. She claimed such compensation due to work stoppage for five hours during each workday of a six-day workweek. An employing establishment official noted on the Form CA-7 that appellant was released to limited-duty work on March 11, 2016, but indicated that she did not report to work and was eventually removed from the employing establishment.[8]

In a development letter dated July 26, 2017, OWCP informed appellant that the evidence of record was not sufficient to establish her claim for wage-loss compensation for the period March 1 through October 17, 2016. It noted that the submitted medical evidence of record indicated that she was able to work at least six hours per day and that the factual evidence of record demonstrated that she was a part-time worker, working less than six hours per day. OWCP requested that appellant submit medical documentation explaining her claimed disability from work. It afforded her 30 days to submit such evidence.

In response, appellant submitted a June 7, 2016 report of light-duty medical certification in which Dr. Zijerdi diagnosed right knee chondromalacia patella and recommended work restrictions of no lifting, carrying, pushing, pulling, stooping, squatting, twisting from the waist or knees, bending, or climbing ladders. He also recommended no more than two hours of walking or standing per day, with no prolonged walking of more than 15 minutes at a time. Dr. Zijerdi further noted that appellant could work up to six hours per day. In a June 7, 2016 report of return to duty medical certification, he advised that appellant could return to duty on May 26, 2016 with

[8] The official indicated that appellant's work schedule, prior to her work stoppage, was Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, and Saturdays, as directed. The Board notes that appellant's supervisor appears to have inadvertently neglected to note on appellant's Form CA-1 that appellant worked on Tuesday, as directed. The case record contains a May 2, 2017 notice of removal in which the employing establishment indicated that appellant was removed for unauthorized absences and improper conduct in form of failure to follow instructions.

restrictions. In a note dated August 11, 2016, Dr. Zijerdi noted that appellant should continue with her current restrictions and that she would be out of work for two weeks following surgery on September 20, 2016, after which she could return to light duty.[9]

By decision dated September 27, 2017, OWCP denied appellant's claim for wage-loss compensation from March 1 through October 17, 2016. It found that she had not submitted sufficient medical evidence to substantiate that her disability was caused by the accepted January 29, 2016 employment injury.[10] OWCP noted that appellant had not provided a response as to why she had been removed from the employing establishment or why she had never reported back to work.

On October 2, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing held on February 6, 2018, appellant reported that, after suffering an injury on January 29, 2016, she first stopped work on March 1, 2016 due to continued inflammation in her right knee. She advised that she had been working less than six hours per day at the employing establishment prior to January 29, 2016 and explained that her physician recommended postinjury work restrictions, including no walking for more than 15 minutes at a time and no squatting or lifting. Appellant noted that she had worked for another employer after her September 20, 2016 surgery. She claimed that the employing establishment had informed her that there was no work for her within her restrictions, but advised that she had no documents supporting this claim. Counsel argued that the work restrictions provided by Dr. Zijerdi in March 2016 prevented her from performing her date-of-injury job.

After the hearing, appellant submitted a February 22, 2018 report from Dr. Zijerdi who noted that he initially saw appellant on March 7, 2016 after a January 29, 2016 injury due to slipping on snow at work. Dr. Zijerdi advised that he diagnosed appellant with chondromalacia patella and that, after conservative treatment, she continued to experience anterior right knee pain which precluded her ability to work without restrictions. He noted that appellant subsequently underwent right knee arthroscopy with lateral release and excision of a fat pad.[11] Dr. Zijerdi again indicated that appellant was placed on work restrictions due to persistent anterior right knee pain, noting that she particularly experienced such pain upon ascending and descending stairs.[12]

By decision dated March 15, 2018, OWCP's hearing representative affirmed the September 27, 2017 decision. She found that there was a lack of medical evidence supporting employment-related partial or total disability for the period March 1 through October 17, 2016.

[9] Appellant also submitted an August 12, 2017 report from Dr. Robert Macht, a Board-certified general surgeon, who provided an opinion on the permanent impairment of appellant's right lower extremity.

[10] OWCP maintained that Dr. Zijerdi did not discuss why appellant's right knee symptoms and need for work restrictions were causally related to the accepted employment injury.

[11] Dr. Zijerdi indicated that, prior to the September 20, 2016 surgery, appellant also had Hoffa's disease, a form of impingement of the fat pad of the right knee.

[12] Appellant also resubmitted a number of reports which were previously of record.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[13]

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[14] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[15] An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[16] 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 loss of wages.[17]

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.[18]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for the period March 1 through October 17, 2016 causally related to her accepted January 29, 2016 employment injury.

Appellant submitted a March 7, 2016 report and accompanying CA-17 report from Dr. Zijerdi who noted that appellant presented with complaints of right knee pain and reported that she had sustained a right knee injury on January 29, 2016 due to slipping on snow at work. Dr. Zijerdi assessed appellant with right knee pain likely secondary to a medial meniscus tear given her examination and persistent symptoms. He recommended that she limit her work duties to six hours per day. The Board notes that, prior to stopping work on March 1, 2016, appellant worked less than six hours per day. Therefore, these reports are of no probative value regarding appellant's

[13] *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[14] 20 C.F.R. § 10.5(f).

[15] *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

[16] *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

[17] *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

[18] *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

claim for disability from March 1 to October 17, 2016 as Dr. Zijerdi's restrictions would not prevent her from performing her date-of-injury job. The Board has held that medical evidence that negates causal relationship is of no probative value.[19]

Appellant also submitted a March 11, 2016 report in which Dr. Zijerdi advised that appellant should work no more than six hours per day with restrictions of no squatting, climbing, lifting, or prolonged standing, as well as no walking for more than 15 minutes at a time. In a March 21, 2016 report, Dr. Zijerdi recommended restrictions of walking or standing no more than one hour per day, with no lifting, bending, squatting, climbing, kneeling, or twisting. In a March 29, 2016 report, he noted "N/A" under the section denoting "period of total disability," and he recommended restrictions of working no more than six hours per day with no squatting, climbing, lifting, or standing/walking for more than 15 minutes at a time. In a June 6, 2016 report and accompanying form reports, Dr. Zijerdi advised that appellant could work eight hours in "a different field other than the duties of postal services."[20] Although the work restrictions in these reports would prevent appellant from performing her date-of-injury position, these reports are of no probative value regarding appellant's claim for disability from March 1 to October 17, 2016 because Dr. Zijerdi did not provide a clear opinion that the need for these restrictions was causally related to the accepted January 29, 2016 employment injury. As noted above, medical evidence that does not offer an opinion on the cause of claimed disability is of no probative value on the issue of causal relationship.[21]

On September 20, 2016 Dr. Zijerdi performed surgery on appellant's right knee, including arthroscopic lateral release and arthroscopic excision of the infrapatellar fat pad. However, this procedure was not authorized by OWCP and Dr. Zijerdi did not provide an opinion that the surgery and any resultant disability was related to the January 29, 2016 employment injury. In a note dated August 11, 2016, Dr. Zijerdi had indicated that appellant would be out of work for two weeks following surgery on September 20, 2016, after which she could return to light duty. However, this report is of no probative value regarding appellant's claimed disability because, as noted, Dr. Zijerdi did not provide an opinion that the surgery had an employment-related cause.[22]

Appellant also submitted a February 22, 2018 report from Dr. Zijerdi in which he briefly discussed the January 29, 2016 employment injury, diagnosed chondromalacia patella and Hoffa's disease of the right knee, and detailed his treatment of her right knee condition. Dr. Zijerdi generally indicated that appellant was placed on work restrictions due to persistent anterior right knee pain, noting that she particularly experienced such pain upon ascending and descending stairs. Although he suggested in this report that appellant had long-term disability due to her January 29, 2016 employment injury, Dr. Zijerdi did not provide a rationalized medical opinion to this effect. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability

[19] *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

[20] Appellant also submitted reports of Dr. Zijerdi in which he diagnosed various medical conditions without providing an opinion on her ability to work, including two March 21, 2016 reports, two May 2, 2016 reports, and a June 16, 2016 report. However, these reports would have no probative value given this lack of an opinion regarding the claimed period of disability. *See id*.

[21] *Id*.

[22] *Id*.

has an employment-related cause.[23] Dr. Zijerdi did not discuss specific work restrictions which would have prevented appellant from working in her date-of-injury position or explain why the restrictions would have been necessitated by the accepted January 29, 2016 employment injury. His restrictions were primarily based on appellant's complaints, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition/period of disability and employment factors.[24]

Appellant also submitted reports concerning her right knee condition after the claimed period of disability in the present case. For example, in a May 4, 2017 report, Dr. Zijerdi indicated that appellant's right knee condition had reached maximum medical improvement. In an August 12, 2017 report, Dr. Macht provided an opinion on the permanent impairment of appellant's right lower extremity. These reports are of no probative value because they do not provide an opinion on disability.[25]

As appellant has not submitted rationalized medical evidence establishing causal relationship between her claimed period of disability and the accepted January 29, 2016 employment injury, the Board finds that she has not met her burden of proof.[26]

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 not met her burden of proof to establish disability for the period March 1 through October 17, 2016 causally related to her accepted January 29, 2016 employment injury.

[23] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[24] *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

[25] *See supra* note 19. Appellant also submitted a March 1, 2016 emergency room report and a Form CA-17 of the same date from Ms. Hayes, a physician assistant. Under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence. *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013). *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[26] Appellant asserted at the February 6, 2018 hearing that she sustained disability because the employing establishment did not provide appropriate limited-duty work during the claimed period of disability. However, the evidence of record does not support such an assertion and appellant acknowledged that she did not have evidence supporting her assertion. Moreover, at the time of her January 29, 2016 injury, appellant was not working in a limited-duty assignment whose withdrawal or alteration could, in some cases, constitute a basis for wage-loss compensation. *See generally* 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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