

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

_____	)	
<b>L.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0264</b>
	)	<b>Issued: January 28, 2020</b>
<b>SOCIAL SECURITY ADMINISTRATION,</b>	)	
<b>Richmond, CA, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On November 20, 2017 appellant filed a timely appeal from a June 28, 2017 merit decision and an October 30, 2017 nonmerit 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish intermittent disability during the period April 30 through November 8, 2013, causally related to her accepted March 14, 2013 employment injury; and (2) whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

---

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

## **FACTUAL HISTORY**

On March 15, 2013 appellant, then a 41-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on March 14, 2013 she bumped her knees on a drawer while in the performance of duty. On April 11, 2013 OWCP accepted appellant's claim for bilateral knee contusions.

In an April 17, 2013 report, Dr. Warren J. Strudwick, Jr., an orthopedic surgeon, found that appellant had probable post-traumatic chondromalacia of the left knee and a possible medial meniscal tear. He indicated that she was temporarily totally disabled. In an April 17, 2013 return to work certificate, Dr. Strudwick advised that appellant was under his care and could return to work on June 1, 2013. He diagnosed contusion, chondromalacia right knee and possible meniscal tear.

In a May 6, 2013 report, Dr. Strudwick found that appellant had continued bilateral knee pain and advised that a magnetic resonance imaging (MRI) scan of appellant's knees revealed grade 3 lateral facet chondromalacia. He completed a May 6, 2013 duty status report (Form CA-17), and related that she was restricted to 10 pounds maximum lifting, and two hours maximum of walking and standing.

In a June 3, 2013 report, Dr. Strudwick advised that appellant had continued knee pain exacerbated by work. He diagnosed left knee chondromalacia and a medial meniscus tear. Dr. Strudwick indicated that appellant could work as tolerated. He noted that she could continue to work on a full-time, full-duty basis with "self-limitation with the ability to sit and stand at will. If this is not accommodated, then appellant will be considered temporarily totally disabled again."

In a separate report dated June 3, 2013, Dr. Strudwick noted that appellant returned to work that day and had advised him that she had increased pain in her knee. He explained that it was understandable since he believed she had a medial meniscal tear and post-traumatic chondromalacia. Dr. Strudwick noted that appellant would continue to work full-time, full duty with self-limitations with the ability to sit and stand at will. He completed a Form CA-17 on June 4, 2013 noting a diagnosis of chondromalacia of the left knee and providing work restrictions.

On July 1, 2013 Dr. Strudwick diagnosed left knee chondromalacia patella and medial meniscal tear. He opined that appellant might ultimately require surgery. Dr. Strudwick explained that she had a positive MRI scan for degenerative meniscal tear and chondromalacia of her medial femoral condyle. He noted that appellant was having ongoing symptoms with no decreased symptoms with activity avoidance and rest. Dr. Strudwick noted that she attempted to return to work and had difficulty because of pain. He recommended that appellant be off work until August 1, 2013.

Dr. Strudwick provided several reports dated August 9, 2013. In a duty status report (Form CA-17), he noted that appellant hit her left knee on the corner of a desk. Dr. Strudwick diagnosed chondromalacia and recommended a return to full duty with a 10-pound lifting restriction and some limitations on standing, driving, and operating machinery. In an attending physician's report (Form CA-20), he diagnosed tricompartmental degenerative joint disease of the knee and responded "yes" with regard to whether he believed the condition was caused or aggravated by an

employment activity. Dr. Strudwick placed appellant on partial disability from March 19 to August 1, 2013. He noted that she had ongoing pain from the left knee injury and a medial meniscal tear. In an August 9, 2013 attending physician's report (Form CA-20), Dr. Strudwick diagnosed tricompartmental degenerative joint disease (DJD) of the knee and checked the box marked "yes" indicating that the condition was caused or aggravated by an employment activity. He noted that the period of total disability was from March 19 to August 1, 2013. Dr. Strudwick also noted that appellant was advised to resume work on August 1, 2013. He noted that she had ongoing pain from a left knee injury to include a medial meniscal tear. Dr. Strudwick also completed an August 9, 2013 duty status report (Form CA-17), which indicated that appellant could work full time with restrictions.

On August 29, 2015 OWCP received appellant's claim for compensation (Form CA-7) for leave buy back for the period April 30 to November 8, 2013.

On September 20, 2013 Dr. Strudwick diagnosed left knee osteoarthritis and a meniscal tear. He indicated that she could continue to work on a full-time full-duty basis.

In a November 18, 2013 report, Dr. Strudwick diagnosed chondromalacia of the patella and medial meniscus tear. He recommended acupuncture and reiterated that appellant could work full duty with no limitations or restrictions. In another report of even date, Dr. Strudwick noted that appellant had returned to her full and customary duties with some "self-limitations."

Dr. Strudwick treated appellant on December 30, 2013, and February 12 and April 25, 2014 where he continued to diagnose knee pain which he thought to be permanent and stationary. On June 11, 2014 he opined that her condition was permanent and stationary. Dr. Strudwick explained that radiographic studies revealed tricompartmental degenerative joint disease in the right knee with degenerative joint disease in the left knee as well as a medial meniscal tear in the left knee. He provided an apportionment allocation of 80 percent to appellant's acute injury and 20 percent to her underlying degenerative changes. Dr. Strudwick also indicated that her meniscal tear was 100 percent industrial. He advised that appellant continued to work full-time, full duty. Dr. Strudwick also saw her on September 11, 2014.

In a development letter dated May 16, 2017, OWCP explained that the evidence submitted was insufficient to support the claim for compensation. It advised appellant of the type of medical evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

In response to the development letter, OWCP thereafter received duplicative copies of Dr. Strudwick's reports.

By decision dated June 28, 2017, OWCP denied appellant's claim for compensation (Form CA-7) for leave buy back for the period April 30 through November 8, 2013 (550.25 hours). It explained that the only conditions accepted in the present claim were bilateral knee contusions due to bumping the knees on March 14, 2013. OWCP found that the medical evidence of record revealed that appellant's disability was related to the underlying degenerative condition of chondromalacia and a "possible" medial meniscus tear, which Dr. Strudwick diagnosed in medical records dated from April 17, 2013 through February 14, 2014. It found that the medical evidence

did not support that any disability was related to the accepted contusions, but rather, it indicated that the disability was related to her underlying nonwork-related degenerative conditions.

In an appeal request form dated June 30, 2017, appellant requested a telephonic hearing before an OWCP hearing representative. The postmark indicated that the request was mailed on July 31, 2017, and it was received by OWCP's Branch of Hearings and Review on August 4, 2017.

By decision dated October 30, 2017, OWCP's hearing representative denied appellant's request for a telephonic hearing as untimely. She also denied a discretionary hearing, noting that appellant could request reconsideration before OWCP.

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

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>2</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>3</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 proven by a preponderance of probative and reliable medical opinion evidence.<sup>4</sup>

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. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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.<sup>5</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. 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 diagnosed condition and the claimed period of disability.<sup>7</sup>

---

<sup>2</sup> See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

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

<sup>4</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 2; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

<sup>7</sup> *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish intermittent disability during the period April 30 through November 8, 2013 causally related to her accepted March 14, 2013 employment injury.

In support of her claim for wage-loss compensation, appellant submitted numerous reports from her treating physician, Dr. Strudwick. In his initial report of April 17, 2013, Dr. Strudwick diagnosed probable post-traumatic chondromalacia of the left knee and a possible medial meniscal tear. He indicated that appellant was temporarily totally disabled and could return to work on June 1, 2013. The Board notes that Dr. Strudwick did not initially offer a firm diagnosis,<sup>8</sup> further more while he related that appellant was temporarily totally disabled, he did not relate appellant's disability to her accepted condition of bilateral knee contusion.<sup>9</sup> Dr. Strudwick did not explain how appellant's accepted bilateral knee contusions caused disability during the period alleged.

In his May 6, 2013 report, Dr. Strudwick advised that appellant's MRI scan revealed grade 3 lateral facet chondromalacia, and he noted her physical restrictions. While he offered a firm diagnosis,<sup>10</sup> he did not address whether she was disabled causally related to the accepted employment conditions or otherwise provide medical reasoning explaining why her current condition or disability was due to the accepted March 14, 2013 employment injury.<sup>11</sup> Thus his report is of no probative value and is insufficient to establish appellant's claim for compensation.<sup>12</sup>

In his June 3, 2013 reports, Dr. Strudwick advised that appellant had returned to work and had continued pain in the knee exacerbated by work. He diagnosed left knee chondromalacia and a medial meniscus tear. Dr. Strudwick related that appellant could continue to work on a full-time, full-duty basis, with self-limitations regarding sitting and standing. As previously noted, the conditions of left knee chondromalacia and medial meniscus tear are not accepted conditions. If an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>13</sup> However, Dr. Strudwick did not provide an opinion as to whether these conditions were causally related to the accepted employment injury. These reports are therefore insufficient to establish appellant's claim.

In a July 1, 2013 treatment note, Dr. Strudwick indicated that ultimately appellant would require surgery. He advised that he would recommend that she be off work until August 1, 2013.

---

<sup>8</sup> See *J.A.*, Docket No. 15-0421 (issued June 1, 2015).

<sup>9</sup> *V.G.*, Docket No. 18-0936 (issued February 6, 2019).

<sup>10</sup> *Supra* note 8.

<sup>11</sup> *J.M.*, Docket No. 18-0847 (issued December 5, 2019).

<sup>12</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *S.H.*, Docket No. 19-1128 (issued December 2 2019).

However, Dr. Strudwick again did not relate appellant's disability to her accepted conditions of bilateral knee contusions.<sup>14</sup>

Dr. Strudwick continued to treat appellant. His August 9, 2013 reports provided diagnoses of tricompartmental degenerative joint disease of the knee. Dr. Strudwick indicated by checkmark on a form that this condition was caused or aggravated by an employment activity. However, the checking of a box marked "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>15</sup> This report does not provide an opinion on whether the claimed disability is causally related to the accepted employment injury.<sup>16</sup>

The Board notes that Dr. Strudwick saw appellant on September 20 and November 18, 2013 and indicated that appellant could continue to work on a full-time full-duty basis. Dr. Strudwick also saw appellant on December 30, 2013, February 12, April 25, and June 11, 2014. He continued to diagnose knee pain and related that her condition was permanent and stationary. The Board finds that these reports do not support work-related disability during the claimed period of April 30 to November 8, 2013. 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 employees to self-certify their disability and entitlement to compensation.<sup>17</sup>

As noted appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which she claims compensation.<sup>18</sup> She did not provide medical evidence containing a rationalized opinion establishing that she could not work from April 30 through November 8, 2013 causally related to her March 14, 2013 employment injury, and thus appellant has not met her burden of proof.

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 1**

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before a hearing representative, provides: before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.<sup>19</sup> A hearing is a review of an adverse

---

<sup>14</sup> *Supra* note 11.

<sup>15</sup> *M.D.*, Docket No. 18-0195 (issued September 13, 2018).

<sup>16</sup> *Supra* note 12.

<sup>17</sup> *See E.B.*, Docket No. 17-0875 (issued December 13, 2018); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>18</sup> *See K.A.*, Docket No. 16-0592 (issued October 26, 2016).

<sup>19</sup> 5 U.S.C. § 8124(b)(1).

decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.<sup>20</sup> The Branch of Hearings and Review, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and must exercise this discretionary authority in deciding whether to grant a hearing.<sup>21</sup> The Board has held that it must exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>22</sup>

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

The Board finds that OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124(b).

A request for a hearing or review of the written record must, as noted above, be made within 30 days after the date of the issuance of an OWCP final decision. Appellant's request for a review of the written record was postmarked July 31, 2017. As the request was submitted more than 30 days following issuance of the June 28, 2017 decision, the Board finds that it was untimely filed.

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its October 30, 2017 decision, properly exercised its discretion by relating that it had considered the matter in relation to the issue of intermittent disability and determined that the issue could be equally well addressed through a reconsideration application. The Board has held that as the only limitation on OWCP's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>23</sup> In the present case, the evidence of record does not indicate that OWCP committed any abuse of discretion in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish intermittent disability during the period April 30 through November 8, 2013 causally related to her March 14,

---

<sup>20</sup> 20 C.F.R. § 10.615.

<sup>21</sup> *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>22</sup> *Id.*

<sup>23</sup> The only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and deductions from known facts. *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *see also Daniel J. Perea*, 42 ECAB 214 (1990).

2013 employment injury. The Board also finds that OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 30 and June 28, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 2020  
Washington, DC

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

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

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