

ISSUE

The issue is whether appellant has met her burden of proof to establish partial disability from work for the period May 14 through 25, 2018 due to her accepted March 29, 2017 employment injury.

FACTUAL HISTORY

On March 29, 2017 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left knee and both wrists while in the performance of duty. She stopped work on March 29, 2017. On May 23, 2017 OWCP accepted appellant's claim for left wrist sprain, left wrist contusion, right wrist sprain, right wrist contusion, left knee sprain, left knee contusion, left elbow sprain, and left elbow contusion.⁴

On May 25, 2018 appellant filed a claim for compensation (Form CA-7) for the period May 14 through 25, 2018. Her time analysis form (Form CA-7a) indicated that she worked approximately four hours per day during this period and used approximately four hours of leave without pay (LWOP).

In a June 7, 2018 development letter, OWCP noted that it had received no evidence in support of the claimed period of disability. It requested additional evidence to establish disability from work during the period claimed. OWCP afforded appellant 30 days for response.⁵

On March 5, 2018 Dr. Alan J. Dayan, a Board-certified orthopedic surgeon, diagnosed left knee internal derangement and left hip osteoarthritis. He recommended a left knee arthroscopy and left hip replacement. Dr. Dayan found that appellant was totally disabled, but noted that she would like to work in an indoor light-duty position. In notes dated May 30, June 29, and August 1, 2018, he diagnosed left knee internal derangement. Dr. Dayan indicated that appellant was working part time with restrictions.

By decision dated September 18, 2018, OWCP denied appellant's claim for disability for the period May 14 through 25, 2018. It found that the medical evidence of record was insufficient to establish that her partial disability for work was due to the accepted employment injury.

⁴ Appellant had requested that her claim be accepted for additional conditions. By decision dated June 9, 2017, OWCP denied her March 29, 2017 traumatic injury claim for the diagnosed conditions of left hip strain, exacerbation of left hip osteoarthritis, left elbow lateral epicondylitis, and left knee internal derangement finding that she had not established causal relationship between these conditions and her accepted March 29, 2017 employment injury. On November 29, 2017 appellant, through counsel, requested reconsideration of the June 9, 2017 decision. By decision dated February 26, 2018, OWCP denied modification of the June 9, 2017 decision. Beginning on June 15, 2017 appellant filed claims for compensation (Form CA-7) requesting wage-loss compensation from May 14 through September 1, 2017. By decision dated September 15, 2017, OWCP denied her claims for wage-loss compensation beginning May 14, 2017.

⁵ Appellant filed an additional Form CA-7 for the period May 25 through June 8, 2018. The accompanying Form CA-7a indicated that she worked approximately four hours per day during this period and used approximately four hours of LWOP. OWCP has not issued a final decision regarding this period of claimed partial disability and the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

On September 26, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a September 28, 2018 note, Dr. Dayan examined appellant due to her left knee and left hip pain. He diagnosed left knee torn meniscus as demonstrated on July 3, 2017 magnetic resonance imaging (MRI) scan and joint space narrowing of the left hip with subchondral sclerotic and cystic changes as demonstrated by x-ray. Dr. Dayan recommended left knee arthroscopy. OWCP continued to receive progress reports from him.

In a letter dated December 14, 2018, OWCP's Branch of Hearings and Review informed appellant that oral hearing was scheduled for January 28, 2019 at 9:00 a.m. On January 28, 2019 appellant, through counsel, requested that the oral hearing be changed to a review of the written record. In a letter dated January 28, 2019, OWCP allowed appellant an additional 15 days to submit evidence and noted that the employing establishment then had 20 days to comment prior to issuance of the review of the written record.

OWCP received January 28, and February 28, 2019 progress reports from Dr. Dayan noting the March 29, 2017 employment injury and that she was unable to return to full-duty work due to her torn meniscus in the left knee. Dr. Dayan noted that he had requested authorization for her left knee surgery beginning on April 21, 2017.

By decision dated March 19, 2019, OWCP's hearing representative affirmed the September 18, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim.⁷ Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ 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.⁹ Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by the preponderance of the reliable probative and substantial medical evidence.¹⁰

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

⁶ *Supra* note 2.

⁷ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁸ *A.S.*, Docket No. 17-2010 (issued October 12, 2018); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁹ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish partial disability from work for the period May 14 through 25, 2018 due to her accepted March 29, 2017 employment injury.

Appellant filed a Form CA-7 requesting wage-loss compensation for four hours of LWOP per day for the period May 14 through 25, 2018.

In support of her claimed period of partial disability, appellant submitted a series of medical reports from Dr. Dayan. In notes dated March 5, 2018 through February 28, 2019, Dr. Dayan diagnosed left knee internal derangement, bilateral wrist internal derangement, and left hip osteoarthritis. On January 28, 2019 he noted that appellant had a torn meniscus in the left knee, which he had first reported required surgical treatment on April 21, 2017. However, none of the conditions diagnosed by Dr. Dayan have been accepted by OWCP as causally related to the March 29, 2017 employment injury.¹²

Whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹³ The record does not contain a medical opinion addressing appellant's disability from work for the period May 14 through 25, 2018 due to the accepted conditions. As the medical evidence addressing the claimed period of disability only references diagnosed conditions which have not been accepted as employment related, the Board finds that she has not met her burden of proof to establish employment-related disability for the period claimed.

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 partial disability from work for the period May 14 through 25, 2018 due to her accepted March 29, 2017 employment injury.

¹¹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

¹² Where 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. *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹³ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *R.C.*, 59 ECAB 546 (2008).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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