United States Department of Labor
Employees' Compensation Appeals Board

G.P., Appellant	)	
and	)	**Docket No. 21-0112**
	)	**Issued: July 14, 2021**
U.S. POSTAL SERVICE, DALEVILLE POST OFFICE, Daleville, AL, Employer	)	

Appearances:
Joanne Wright, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2020 appellant, through his representative, filed a timely appeal from a July 20, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability for the periods April 9 through 15, 2016 and April 23 through May 20, 2016 causally related to his accepted November 23, 2015 employment injury.

FACTUAL HISTORY

On December 4, 2015 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2015 he suffered a right knee injury when slipping on acorns while in the performance of duty. He initially stopped work on December 3, 2015 and returned to modified-duty work on December 4, 2015. OWCP accepted the claim for right knee sprain.

In a letter dated May 17, 2016, Dr. Chris Robinson, a Board-certified orthopedic surgeon, noted that he had treated appellant for bilateral arthritic knees since 2012. He indicated that appellant could return to work with the restriction of not walking on uneven terrain. Dr. Robinson advised that uneven terrain would put undue stress on appellant's right knee prosthesis and noted that appellant should work on even, predictable sidewalks, and walkways.

On March 11, 2019 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for disability during the period April 9 through May 20, 2016. In corresponding time analysis forms (Form CA-7a), dated March 5, 2019, he claimed that he used 8 hours of LWOP on April 9, 2016, 40 hours of LWOP from April 12 through 15, 2016, 8 hours of LWOP on April 23, 2016, 16 hours of LWOP from April 25 and 26, 2016, 24 hours of LWOP from April 28 through 30, 2016, 40 hours of LWOP from May 2 through 7, 2016, 32 hours of LWOP from May 9 through 12, 2016, and 40 hours of LWOP from May 16 through 20, 2016.

In a development letter dated March 19, 2019, OWCP requested that appellant provide additional medical information supporting that he was disabled from work for the periods claimed on the CA-7 forms.

OWCP subsequently received a December 17, 2015 attending physician's report (Form CA-20) wherein Dr. Robinson diagnosed knee sprain due to a hyperextended right knee. Dr. Robinson checked a box marked "Yes," indicating that appellant's condition was caused or aggravated by an employment activity. He noted that appellant could resume work with the restriction of not walking on uneven terrain.

In a January 22, 2016 work excuse note, Dr. Robinson advised that appellant should only walk on sidewalks while at work.

In a letter dated January 29, 2016, Dr. Robinson again noted that it was medically necessary for appellant to walk on leveled surfaces to physically recover from his recent right total knee arthroplasty.[3]

Dr. Robinson, in a letter dated July 3, 2018, opined that appellant's right knee sprain was caused by the hyperextension of appellant's knee when he slipped while delivering mail.

In an April 15, 2019 narrative statement, appellant noted that on March 30, 2016 his supervisor informed him that he could no longer perform the essential functions of his job. He indicated that the employing establishment management did not let him work and he was forced to use his annual and sick leave. Appellant attached a note from his supervisor who informed him that the District Reasonable Accommodation Committee (DRAC) would not accommodate him and that he could not work.

By decision dated May 30, 2019, OWCP denied appellant's claim for compensation for intermittent dates of disability during the period April 9 through 15, 2016 and April 23 through May 20, 2016. It found that the medical evidence of record was insufficient to establish disability from work during the claimed periods.

On April 23, 2020 appellant requested reconsideration.

In a letter dated February 19, 2016, the DRAC noted that it would review appellant's request for accommodation on March 3, 2016. In a letter dated March 23, 2016, it indicated that he was restricted to walking on even sidewalks and paved surfaces. The DRAC advised that the employing establishment was not required to lower productivity by removing part of appellant's route. It further reported that an auxiliary route was not feasible because of issues with processing and sorting mail correctly. The DRAC noted that a 90-mile search had been conducted to identify any vacant funded positions, but none were found. It concluded that there were no reasonable accommodations that could be provided to enable appellant to perform the essential functions of his job.

On July 17, 2020 the employing establishment controverted appellant's claim, asserting that the medical evidence of record did not establish disability from April 9 through May 20, 2016.

By decision dated July 20, 2020, OWCP denied modification of the May 30, 2019 decision.

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.[4] 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

[3] In a July 18, 2016 work excuse note, Dr. Robinson advised that appellant could return to full-duty work without restrictions.

[4] 20 C.F.R. § 10.5(x); *see A.A.*, Docket No. 20-1399 (issued March 10, 2021).

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.[5]

OWCP's 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. The 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.[6]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature of extent of the limited-duty job requirements.[7]

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 evidence that the disability for which he or she claims compensation is causally related to the accepted injury. 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.[8] Where no such rationale is present, the medical evidence is of diminished probative value.[9]

ANALYSIS

The Board finds that this case is not in posture for decision.

The record reflects that on March 23, 2016 the DRAC noted that appellant was restricted to walking on even sidewalks and paved surfaces. It advised that the employing establishment was not required to lower productivity by removing part of appellant's route. The DRAC further indicated that an auxiliary route was not feasible because of issues with processing and sorting mail correctly. It noted that a 90-mile search had been conducted to identify any vacant funded

[5] *Id.*

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *I.G.*, Docket No. 20-0034 (issued April 23, 2021); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

[7] *I.G.*, *id.*; *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

[8] *C.M.*, Docket No. 19-0902 (issued April 16, 2021); *K.E.*, Docket No. 19-1922 (issued July 10, 2020); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

[9] *Id.*

positions, but none were found. The DRAC concluded that there were no reasonable accommodations that could be provided to enable appellant to perform the essential functions of his job as a letter carrier. Following the DRAC's assessment, the employing establishment neither confirmed nor denied that work was available for appellant within his restrictions at that time.

The Board finds that the factual evidence of record is insufficient to determine whether appellant sustained a recurrence of disability due to a withdrawal of his light-duty position.[10] The employing establishment has not provided information regarding whether work was available within appellant's work restrictions during the claimed periods of disability. Accordingly, the evidence of record must be fully developed so that it contains accurate information regarding his claim in order to determine whether he was disabled from work, during the periods April 9 through 15, 2016 and April 23 through May 20, 2016, because of a change or withdrawal of his limited-duty assignment due to the accepted November 23, 2015 employment injury.[11]

In a March 9, 2019 development letter, OWCP requested that appellant provide additional medical information supporting that he was disabled from work for the claimed periods of disability. The Board notes, however, that the employing establishment was not instructed to provide information regarding whether limited-duty work was available for him within his restrictions during the claimed periods of disability.[12]

Is it well established that proceedings under FECA are not adversarial in nature and, while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13]

Accurate information regarding whether a limited-duty assignment was available during the claimed periods of disability is essential to determine whether appellant sustained a recurrence of disability.[14] This evidence is of the character normally obtained from the employing establishment and is more readily accessible to OWCP than to him.[15] On remand OWCP shall request that the employing establishment furnish documentation clarifying whether modified-duty work was available to appellant for the periods April 9 through 15, 2016 and April 23 through May 20, 2016. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

[10] *See I.G.*, *supra* note 6; *M.W.*, Docket No. 20-0881 (issued January 13, 2021); *L.F.*, Docket No. 19-0519 (issued October 24, 2019).

[11] *See P.H.*, Docket No. 20-0039 (issued April 23, 2020); *D.M.*, Docket No. 18-0527 (issued July 29, 2019); *J.G.*, Docket No. 17-0910 (issued August 28, 2017); *M.A.*, Docket No. 16-1602 (issued May 22, 2017).

[12] *P.H.*, *id.*

[13] *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

[14] *See K.T.*, Docket No. 17-0009 (issued October 8, 2019); *Y.R.*, Docket No. 10-1589 (issued May 19, 2011).

[15] *J.T.*, Docket No. 15-1133 (issued December 21, 2015); *J.S.*, Docket No. 15-1006 (issued October 9, 2015).

CONCLUSION

The Board finds that this case is not in posture for decision.[16]

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 14, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

[16] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).