United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 23-0173**
	)	**Issued: December 13, 2023**
U.S. POSTAL SERVICE, CORTESE STATION, San Jose, CA, Employer	)	

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2022 appellant filed a timely appeal from July 21 and October 12, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP).[1] 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period September 16 through 29, 2017 causally related to his accepted employment injury.

[1] The Board notes that, following the October 12, 2022 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*.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 24, 2015 appellant, then a 67-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that, following an accepted December 2, 2014 traumatic injury,[4] he further injured his right knee due to factors of his federal employment, including prolonged walking and carrying a satchel weighing 30 pounds. He alleged that he developed pain in his right knee, right hip, and left leg, as well as difficulty walking at a normal pace and without a limp. Appellant noted that he first became aware of his condition on December 2, 2014 and realized its relation to his federal employment on March 16, 2015. On March 25, 2015 he underwent a right total knee replacement surgery. Appellant stopped work on that date. On June 19, 2015 OWCP accepted his claim for aggravation of preexisting localized primary osteoarthritis of the right leg.

OWCP paid wage-loss compensation on the supplemental rolls beginning July 18, 2015. On August 19, 2015 appellant returned to light-duty work for one hour per day. He began working four hours a day on December 5, 2015. OWCP paid wage-loss compensation on the supplemental rolls for four hours of disability per workday through September 15, 2017.

On February 8, 2017 OWCP referred appellant, a statement of accepted facts, and a list of questions to Dr. Bruce Huffer, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Huffer completed a report on March 3, 2017 and described appellant's history of injury and medical history. He diagnosed continued pain after appellant's total knee replacement. Dr. Huffer opined that, due to the accepted employment injury, appellant could not return to his date-of-injury position, but could work eight hours a day with restrictions. He advised that appellant could not walk more than 30 minutes at a time and had restrictions on standing, lifting, squatting, and kneeling. Dr. Huffer also completed a work capacity evaluation (Form OWCP-5c), which indicated that appellant could walk and stand for 30 minutes at a time, should avoid squatting and kneeling, and that he could push, pull, and lift up to 10 pounds.

In March 8 through July 6, 2017 reports, Dr. Fulton S. Chen, a Board-certified physiatrist, recounted appellant's history of injury, diagnosed acute pain of the right knee following knee replacement surgery and limited lifting to 10 pounds. He also opined that appellant should perform desk work only with the ability to sit, stand, and walk as needed to keep comfortable.

On August 31 and September 7, 2017 the employing establishment offered appellant a full-time modified city carrier position. The duties entailed assisting customers while sitting in a chair for up to five hours and delivering express mail for up to two hours. The physical requirements included sitting for up to 8 hours; occasional simple grasping for up to 4 hours; walking and

[3] Docket No. 20-0772 (issued April 27, 2022).

[4] OWCP previously accepted a December 2, 2014 traumatic injury claim for right knee strain and contusion under OWCP File No. xxxxxx647. Appellant's claims have not been administratively combined by OWCP.

standing for 30 minutes at a time for up to 8 hours; and pushing, pulling, and lifting up to 10 pounds. Appellant refused this offer on August 31 and September 7, 2017.

In a letter dated September 7, 2017, appellant asserted that Dr. Chen had limited appellant to desk work only. Dr. Chen also alleged that delivering Express Mail required kneeling, bending, stooping, and twisting with appellant's right knee, which violated the work restrictions provided by Dr. Huffer. In a note and form report of even date, he repeated his diagnosis and added the work restriction that appellant could drive no more than 1 hour a day for 15 minutes at a time.

On September 29, 2017 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for four hours a day during the period September 16 through 29, 2017.

On October 10, 2017 the employing establishment notified OWCP that the August 31, 2017 job offer was permanent.

In an October 25, 2017 letter, OWCP informed appellant that the August 31, 2017 "temporary light-duty assignment" appropriately accommodated his work restrictions as determined by Dr. Huffer. It advised appellant of his obligation to work in accordance with 20 C.F.R. § 10.500(a) as he had medical work restrictions, light duty was available within those restrictions, and he was notified in writing that the light duty was available. OWCP further noted that any claimant who declines a temporary light-duty assignment deemed appropriate by OWCP was not entitled to compensation for total wage loss for the duration of the assignment. It directed appellant to accept the assignment and report to work. OWCP afforded him 30 days to provide a written explanation of his reasons for refusing the assignment and to submit evidence that the assignment was no longer available or no longer accommodated his medical work restrictions.

On November 6, 2017 Dr. Chen continued to recommend desk work with the ability to sit, stand, and walk as needed, and a functional capacity evaluation.

Appellant, in a November 21, 2017 statement, asserted that both Dr. Chen and Dr. Jan Eric Henstorf, a Board-certified orthopedic surgeon, found that appellant could only perform desk work. He noted that the employing establishment offered him a limited-duty position in February 2017, which he accepted. Appellant asserted that the September 7, 2017 job offer neither included an eight-hour shift, nor described the specific physical requirements of delivering express mail. He also alleged that delivering Express Mail would require driving, squatting, and kneeling.

In a December 15, 2017 note, Dr. Henstorf diagnosed primary osteoarthritis of the right knee and status post total right knee replacement surgery and opined that appellant should be able to work in a sitting, standing, or walking position, with the ability to change his position periodically throughout the day to control pain. He further found that appellant should not be required to stand or walk for long periods. Dr. Henstorf determined that appellant could not drive for five consecutive hours as he could not modify appellant's position from sitting to standing or walking.[5]

[5] Appellant retired from the employing establishment on December 31, 2017.

On July 10, 2018 Dr. Chen repeated his diagnosis of status post right knee arthroplasty and found that appellant could perform sedentary work lifting no more than 10 pounds; sitting, standing, and walking as needed to keep comfortable; and driving a maximum of 15 minutes at a time for 1 hour a day.

By decision dated July 20, 2018, OWCP denied appellant's claim for compensation for the period September 16 through 29, 2017 as he had refused a temporary light-duty assignment that appropriately accommodated his work restrictions.

In notes dated July 31, 2018 through May 2, 2019, Dr. Chen continued to provide diagnoses and work restrictions consistent with those noted in his prior reports.

On June 27, 2019 appellant requested reconsideration of the July 20, 2018 decision. He asserted that the light-duty position offered by the employing establishment was not a full-time position, as the duties included totaled seven hours. Appellant contended that the physical activities involved in delivery of Express Mail exceeded the restrictions provided by Dr. Huffer as they included walking up and down a ramp while carrying packages and twisting, bending, kneeling, squatting, and driving.

By decision dated October 22, 2019, OWCP denied modification of its July 20, 2018 decision.

Appellant appealed this decision to the Board. By decision dated April 27, 2022,[6] the Board found the case not in posture for a decision as the record contained conflicting evidence with regard to whether the offered position was temporary or permanent. The Board, therefore, found that it was unable to determine from the record whether OWCP's denial of appellant's claims was proper under 20 C.F.R. § 10.500. The Board directed OWCP to undertake further development of the factual evidence and to issue a *de novo* decision.

In notes dated November 4 through December 12, 2019, Dr. Chen repeated his diagnosis and advised that appellant had retired, but found that he was capable of performing sedentary work with no lifting greater than 10 pounds, and the ability to sit, stand, and walk was needed to keep comfortable. He determined that appellant could drive no more than 15 minutes at a time for a total of 1 hour a day.

Dr. Robert Bruce Miller, a Board-certified physiatrist, completed notes dated March 26, 2020 through May 24, 2022 and diagnosed chronic right knee pain following right knee replacement and paresthesias. He noted that appellant had retired in 2017. Dr. Miller reviewed and continued Dr. Chen's work restrictions.

In a June 28, 2022 development letter, OWCP requested that the employing establishment explain whether the August 31, 2017 job offer was temporary or a permanent modified position, whether the position was still available to appellant, and his current work status. It afforded 14 days for a response.

[6] *Supra* note 3.

On July 9, 2022 the employing establishment noted that appellant had voluntarily retired effective December 31, 2017. It reported that the August 31, 2017 job offer was temporary depending on medical documentation and that it was still available for him.

By decision dated July 21, 2022, OWCP denied modification of its July 20, 2018 decision.

On August 25, 2022 appellant requested reconsideration of the July 21, 2022 decision. In support of this request, he resubmitted reports from Dr. Huffer dated March 4, 2017 and Dr. Henstorf dated February 24, 2017, and a copy of the August 31, 2017 job offer. Appellant also provided e-mails from the employing establishment dated April 17, 2017 through January 4, 2018 asserting that he desired to work only four hours a day and requesting clarification of his medical restrictions.

By decision dated October 12, 2022, OWCP denied modification of its July 21, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[7] In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.[8] This meaning, for brevity, is expressed as disability from work.[9]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[10] The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.[11]

Section 10.500(a) of OWCP's regulations provides that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for wage-loss claimed on a Form CA-7 to the extent that

[7] *B.M.*, Docket No. 20-1293 (issued May 27, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] 20 C.F.R. § 10.5(f); *William H. Kong*, 53 ECAB 394 (2002).

[9] *E.B.*, Docket No. 20-0477 (issued January 3, 2023); *S.W.*, *supra* note 7; *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[10] *D.D.*, Docket No. 20-0772 (issued April 27, 2022); *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

[11] *Id*.

evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.[12]

OWCP's procedures provide that, when a claimant is not on the periodic rolls, a claim for wage-loss compensation may be received on a Form CA-7 when a temporary light-duty assignment has been provided by the employing establishment. These procedures further provide that, when a formal loss of wage-earning capacity has not been issued, OWCP's claims examiner should follow certain specified procedures. If the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions was available, and that the employee was notified in writing that, such light duty was available, then wage-loss benefits (effective the date of the written notification of light-duty availability) are not payable for the period covered by the available light-duty assignment. Such benefits are payable only for periods during which an employee's work-related medical condition prevent him or her from earning the wages earned before the work-related injury.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period September 16 through 29, 2017 causally related to his accepted employment injury.

On March 7, 2017 Dr. Huffer found that appellant could perform limited-duty work including the restrictions that he could walk and stand for 30 minutes at a time, avoid squatting and kneeling, and push, pull, and lift up to 10 pounds. Based on his report, on September 7, 2017 the employing establishment offered appellant a city carrier position. The physical requirements included sitting for up to 8 hours; occasional simple grasping for up to 4 hours; walking and standing for 30 minutes at a time for up to 8 hours; and pushing, pulling, and lifting up to 10 pounds. Appellant declined this position.

The Board finds that Dr. Huffer's September 7, 2017 report provides the best assessment of appellant's ability to work contemporaneous with the offered limited-duty assignment by the employing establishment, and that the restrictions provided in this report would allow him to perform the duties of the offered assignment. Thus, the evidence establishes that appellant's medical work restrictions demonstrated his ability to perform light duty, that light duty within those work restrictions was available, and that he was notified in writing that such light duty was available.[14]

The Board finds that appellant has not submitted any rationalized medical evidence supporting that he was disabled due to his accepted March 16, 2015 employment injury thereby

[12] 20 C.F.R. § 10.500(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.814.9a-b. (June 2013).

[13] *Id*. at Chapter 2.814.9b (June 2013).

[14] *See D.M.*, Docket No. 22-0115 (issued January 4, 2023); *L.M.*, Docket No. 20-0888 (issued May 14, 2021); *S.W.*, *supra* note 7.

preventing him from working in the temporary light-duty assignment offered by the employing establishment for the period September 16 through 29, 2017. There is further no evidence showing that the temporary modified light-duty assignment was not available during this period.

Appellant contended that the physical requirements of the offered position were outside his work restrictions set forth by Drs. Chen, Henstorf, and Miller. Beginning on March 8, 2017 Dr. Chen diagnosed residuals of the accepted total knee replacement and concurred with Dr. Huffer's lifting limitation of 10 pounds. He also opined that appellant should perform desk work only, with the ability to sit, stand, and walk as needed to keep comfortable. In reports dated September 7, 2017 through December 12, 2019, Dr. Chen added the restriction that appellant could drive no more than 1 hour a day for 15 minutes at a time. Dr. Miller agreed with Dr. Chen's restrictions in notes dated March 26, 2020 through May 24, 2022. Neither Drs. Chen nor Miller offered any medical rationale explaining why appellant could not perform the duties of the modified position. These opinions are, therefore, of limited probative value.[15]

In his December 15, 2017 note, Dr. Henstorf found that appellant needed to change his position periodically throughout the day to control pain and that he should not be required to stand or walk for long period or drive for five hours. The Board finds that this note is insufficient to establish that appellant was incapable of performing the offered position. While Dr. Henstorf opined that appellant could not drive for five hours and explained that he required the ability to change positions, he did not address the specific physical requirements of the job offer or provide any medical rationale to explain why appellant could not perform the duties of the modified position. His opinion is, therefore, of limited probative value.[16]

Therefore, based on the above-described principles, OWCP properly invoked 20 C.F.R. § 10.500(a) as justification for its denial of appellant's disability claim for the period September 16 through 29, 2017.

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 his burden of proof to establish disability from work for the period September 16 through 29, 2017 causally related to his accepted employment injury.

[15] *See C.T.*, Docket No. 21-0543 (issued August 22, 2022); *R.C.*, Docket No. 20-0269 (issued December 23, 2021); *R.S.*, Docket No. 19-1131 (issued April 2, 2020).

[16] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the July 21 and October 12, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 13, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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