

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

S.D., Appellant)	
)	
and)	Docket No. 22-1138
)	Issued: January 9, 2024
U.S. POSTAL SERVICE, MILAN POST)	
OFFICE, Norfolk, VA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 18, 2022 appellant filed a timely appeal from a June 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 14, 2022 decision, appellant submitted additional evidence to OWCP. 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 intermittent disability from work for the period November 6, 2021 through February 25, 2022 causally related to the accepted employment injury.

FACTUAL HISTORY

On June 21, 2021 appellant, then a 30-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right knee pain due to factors of her federal employment, including wearing a boot on her left foot due to a separate work-related injury, which caused her to place greater stress on the right knee, resulting in swelling and pain.³ She noted that she first became aware of her condition on September 9, 2020 and realized its relation to her federal employment on February 19, 2021. Appellant did not immediately stop work. OWCP paid her wage-loss compensation on the supplemental rolls for the period March 12 through September 10, 2022. It accepted appellant's claim for strain of patellofemoral muscle and tendon at right lower leg and patellofemoral disorders of the right knee.

In support of her claim, appellant submitted reports from Dr. Arthur W. Wardell, a Board-certified orthopedist. On October 13 and 27, 2021 Dr. Wardell treated appellant for symptomatic right knee pain. He indicated that due to her previous left foot injury she placed greater stress on her right lower extremity causing progressive pain in the right knee. Appellant reported improvement with physical therapy. Dr. Wardell diagnosed patellofemoral pain syndrome of the right knee, consequential to left foot injury, and strain of unspecified muscles and tendons at lower right leg and released appellant to light-duty work. In an attending physician's report (Form CA-20) dated October 27, 2021, Dr. Wardell opined that appellant sustained a consequential injury to the right knee from standing and applying pressure on the left foot while in boot. He diagnosed right knee patellofemoral syndrome and right knee patellofemoral strain consequential to left foot injury. Dr. Wardell checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment injury. He noted that appellant was partially disabled from October 13 through November 23, 2021. In a duty status report (Form CA-17) of the same date, Dr. Wardell diagnosed right knee patellofemoral syndrome and right knee patellofemoral strain. He noted that appellant was partially disabled from October 13 through November 23, 2021.

Appellant was again seen by Dr. Wardell on January 18, and February 15 and 23 2022 for persistent right knee pain and swelling that increased with prolonged standing and walking. Dr. Wardell diagnosed patellofemoral pain syndrome of the right knee, consequential to left foot injury, and strain of muscles and tendons of lower right leg and recommended arthroscopic patella chondroplasty of the right knee. He continued light-duty work restrictions from October 27, 2021 through February 28, 2022 and noted that appellant was totally disabled beginning March 1, 2022. On February 15, 2022 Dr. Wardell diagnosed right knee patellofemoral pain syndrome and right lower leg muscle and tendon strain and advised that appellant was scheduled for arthroscopic

³ Appellant previously filed a Form CA-2 for an injury occurring on June 13, 2019 due to factors of her federal employment, OWCP File No. xxxxxx399. Appellant's claims have not been administratively combined.

surgery on March 1, 2022. In Forms CA-20 dated February 15 and 23, 2022, he noted that appellant sustained a consequential injury to the right knee from standing and applying pressure on the left foot while wearing the boot. Dr. Wardell diagnosed right knee patellofemoral syndrome and right knee patellofemoral strain consequential to left foot injury. He checked a box marked “Yes,” indicating that the diagnosed conditions were caused or aggravated by the described employment injury. Dr. Wardell noted that appellant was partially disabled from October 13 through February 28, 2022 and totally disabled from March 1 through 3, 2022. In Forms CA-17 dated February 15 and 23, 2022, he diagnosed right knee patellofemoral syndrome and right knee patellofemoral strain. Dr. Wardell noted that appellant was partially disabled from October 13 through February 23, 2022 and totally disabled from March 1 through 3, 2022.

On March 1, 2022 Dr. Wardell performed an arthroscopic microfracture chondroplasty of the right patella and arthroscopic lateral retinacular release and diagnosed articular cartilage fracture of the right patella and lateral subluxation of the patella. On March 3, 2022 he noted that appellant was status post right knee arthroscopy and diagnosed patellofemoral pain syndrome of the right knee, consequential to left foot injury.

On March 25, 2022 appellant filed claims for compensation (Form CA-7) for intermittent disability for the period November 6, 2021 through February 25, 2022.

In development letters dated April 12 and 18, 2022, OWCP informed appellant of the deficiencies of her claims for wage-loss compensation. It advised her of the type of additional evidence needed and afforded her 30 days to respond. Appellant submitted additional evidence.

By decision dated June 14, 2022, OWCP denied appellant’s claim for intermittent disability from work for the period November 6, 2021 through February 25, 2022. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period due to her accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶ Whether a particular injury causes an employee to be disabled from work and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁷

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

⁷ *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

The term “disability” is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹

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 appellant, 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 accepted employment injury.¹⁰

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is 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 intermittent disability from work for the period November 6, 2021 through February 25, 2022 causally related to the accepted employment injury.

In progress notes dated October 13 and 27, 2021, Dr. Wardell diagnosed patellofemoral pain syndrome of the right knee, consequential to left foot injury and strain of unspecified muscles and tendons at lower right leg and placed appellant on light duty. He reevaluated appellant on November 23, 2021 for marked pain over the medial joint line and medial patellar facet of the right knee and recommended a right knee joint injection and continued her current restrictions. Appellant was again seen by Dr. Wardell on January 18, February 15, and 23 2022, who diagnosed patellofemoral pain syndrome of the right knee, consequential to left foot injury, and strain of muscles and tendons of lower right leg. He continued light-duty work restrictions for the period October 27, 2021 through February 28, 2022 and noted that appellant was totally disabled beginning March 1, 2022. However, Dr. Wardell did not provide an opinion that appellant was disabled from work during the claimed period, causally related to the accepted September 9, 2020 work injury. The Board has held that medical evidence that does not offer an opinion on causal relationship is of no probative value.¹² Therefore, this evidence is insufficient to establish the claim.

⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ *See D.W.*, Docket No. 20-1363 (issued 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹¹ *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 7; *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

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

In Forms CA-20 dated October 27, 2021, and February 15 and 23, 2022, Dr. Wardell diagnosed right knee patellofemoral syndrome and right knee patellofemoral strain consequential to left foot injury. He noted that appellant was partially disabled from work for the period October 13 through February 28, 2022; however, he did not provide an opinion on causal relationship in any of these reports. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ These reports are therefore insufficient to establish appellant's claim. As such, this evidence is insufficient to establish the claimed period of disability.

In Forms CA-17, dated October 27, 2021, and February 15 and 23, 2022, Dr. Wardell diagnosed right knee patellofemoral syndrome and right knee patellofemoral strain. He opined that appellant was partially disabled for the period October 13, 2021 through February 23, 2022. However, these reports are of no probative value because the physician did not provide an opinion that appellant was disabled from work during the claimed period causally related to the accepted September 9, 2020 work injury¹⁴ Therefore, this evidence is also insufficient to establish the claim.

On February 15, 2022 Dr. Wardell diagnosed right knee patellofemoral pain syndrome, right lower leg muscle and tendon strain, and advised that appellant was scheduled for arthroscopic surgery on March 1, 2022. He, however, did not provide an opinion on appellant's claimed disability from work during the claimed period. Thus, this report is of no probative value and is insufficient to establish the claim.¹⁵

As the medical evidence of record is insufficient to establish intermittent disability from work during the period November 6, 2021 through February 25, 2022, causally related to the accepted September 9, 2020 employment injury, the Board finds that 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(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 intermittent disability from work for the period November 6, 2021 through February 25, 2022 causally related to the accepted employment injury.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board