

³ The Board notes that, following the January 18, 2023 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing September 10, 2022, causally related to her accepted July 27, 2022 employment injury.

FACTUAL HISTORY

On August 23, 2022 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2022 she sustained a sprained left knee and sprained back as a result of stepping out of a truck into a hole while in the performance of duty. Appellant's supervisor indicated on the claim form that appellant stopped work on July 27, 2022 and returned the next day.

On July 28, 2022 Dr. Christopher D. Dooley, Board-certified in vascular and interventional radiology, diagnosed left knee sprain and related that appellant could not return to work until recheck.

In a report dated August 1, 2022, Dr. Daniel Miller, an emergency medicine specialist, examined appellant for left knee sprain. He noted no further back pain. On physical examination of the left knee, Dr. Miller observed diffuse tenderness to palpation of the left knee joint, greatest over the patellar tendon and lateral joint line and moderate pain with medial and lateral stress of the joint. He diagnosed left knee sprain and recommended use of crutches and an immobilizer. Dr. Miller noted that appellant was disabled through August 5, 2022.

On August 5, 2022 Dr. Miller diagnosed left knee sprain and recommended that appellant continue her current work status as disabled until August 12, 2022.

Appellant submitted a report dated August 12, 2022 from a certified family nurse practitioner dated August 12, 2022. The nurse practitioner noted a diagnosis of left knee sprain and continued appellant's disability status from work until she was seen by an orthopedic surgeon.

In a report dated September 12, 2022, Dr. Thomas Sasser, Jr., a Board-certified orthopedic surgeon, examined appellant for complaints of left knee pain. He noted that prior x-ray evaluation of the knee had not revealed a fracture, dislocation or osseous abnormality of the knee, however, a magnetic resonance imaging scan of the left knee performed that day had revealed a tear of the lateral meniscus of the left knee. Dr. Sasser diagnosed a tear of the lateral meniscus of the left knee and left knee sprain. He recommended work restrictions of sedentary work only.

On December 6, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period September 10 through December 6, 2022.

In a development letter dated December 14, 2022, OWCP informed appellant of the deficiencies of her disability claim. It advised her that the evidence of record indicated that she had stopped work on September 10, 2022 and that she was claiming a worsening of her condition as of September 10, 2022. OWCP related that therefore appellant should submit a comprehensive narrative report from her treating physician, with objective findings, as to how her condition

worsened such that she was no longer able to perform the duties of her position when she stopped work on September 10, 2022. It afforded her 30 days to submit the necessary evidence.

On December 14, 2022 OWCP accepted appellant's claim for tear of the lateral meniscus of the left knee and sprain of other specified parts of the left knee.

In a note dated December 28, 2022, Dr. Sasser diagnosed left knee sprain and lateral meniscus tear and recommended work restrictions of sedentary work only.

On January 2, 2023 appellant filed a Form CA-7 for disability from work for the period December 2 through 30, 2022. She also submitted a Form CA-7 for dated January 13, 2023, claiming disability from work for the period December 31, 2022 through January 13, 2023.

On January 2, 2023 appellant filed another Form CA-1 alleging injury to her left knee on July 17, 2022. On this form appellant's supervisor noted that appellant had stopped work on July 28, 2022 and had received 45 days of continuation of pay from July 28 until September 10, 2022.

By decision dated January 18, 2023, OWCP denied appellant's wage-loss compensation claim for disability from work commencing September 10, 2022, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵ 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.⁶

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.⁷ 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

⁴ See *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.*

⁶ 20 C.F.R. § 10.5(f); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

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.⁸

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 an employee to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing September 10, 2022, causally related to her accepted July 27, 2022 employment injury.

OWCP accepted appellant's claim for tear of the lateral meniscus of the left knee and sprain of other specified parts of the left knee. Appellant filed CA-7 forms for disability from work commencing September 10, 2022.

OWCP received a report dated September 12, 2022 from Dr. Sasser, wherein he diagnosed a tear of the lateral meniscus of the left knee and left knee sprain. Dr. Sasser recommended work restrictions of sedentary work only. He reiterated his findings in a report dated December 28, 2022.

However, while Dr. Sasser provided an opinion relating that appellant could only perform sedentary work, he did not provide an opinion regarding whether appellant was disabled from work during the claimed period due to the accepted employment-related conditions. Therefore, this evidence is of no probative value and is insufficient to establish appellant's claim for compensation.¹⁰

As the medical evidence of record is insufficient to establish disability commencing September 10, 2022 causally related to the accepted 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.

⁸ *Id.*

⁹ *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *See F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work commencing September 10, 2022, causally related to her accepted July 27, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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