

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

A.D., Appellant)	
)	
and)	Docket No. 22-1264
)	Issued: May 15, 2023
U.S. POSTAL SERVICE, ANAHEIM)	
PROCESSING & DISTRIBUTION CENTER,)	
Anaheim, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 28, 2022 appellant filed a timely appeal from a May 19, 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of total disability commencing October 24, 2018, causally related to her accepted employment injury; and (2) whether appellant has met her burden of proof to establish disability on June 8 and 9, 2019, causally related to her accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has been previously before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On November 18, 2014 appellant, then a 54-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she experienced left knee pain due to factors of her federal employment which required repetitive bending, reaching, pulling, pushing, grasping and standing. OWCP accepted the claim for left knee sprain, left knee meniscal tear, and bilateral knee primary osteoarthritis. It paid appellant wage-loss compensation on the supplemental rolls from October 9, 2014 and subsequently on the periodic rolls from May 1 through October 15, 2016. Appellant again received intermittent wage-loss compensation on the supplemental rolls as of October 16, 2016, including June 10 through 22, 2019. OWCP thereafter paid wage-loss compensation on the periodic rolls as of June 23, 2019.

On October 22, 2016 appellant returned to part-time limited-duty work, four hours per day. On February 20, 2017 she returned to full-time full-duty work. On October 25, 2018 appellant accepted the employing establishment's offer of a part-time modified assignment as a parcel post distribution machine clerk scanning small parcel bundles/hanging sacks.

Appellant subsequently filed claims for compensation (Form CA-7) for intermittent disability from work from October 24, 2018 through January 18, 2019.

In support of her claims, appellant submitted medical evidence.

OWCP, by decision dated January 28, 2019, denied appellant's claim for a recurrence of total disability commencing October 24, 2018, finding that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change/worsening of her accepted employment-related conditions.

Thereafter, OWCP received medical evidence.

On May 22, 2019 appellant requested reconsideration of the January 28, 2019 OWCP decision and submitted additional medical evidence.

Thereafter, appellant filed additional Form CA-7 claims for compensation for disability from work including from June 8 through 9, 2019. On a time analysis form (Form CA-7a) dated June 24, 2019, she claimed leave without pay (LWOP) used on June 8 and 9, 2019.³

Appellant submitted medical evidence in support of her claims.

² Docket No. 20-0179 (issued April 8, 2021).

³ OWCP paid appellant wage-loss compensation on the periodic rolls for the period June 10 through July 20, 2019.

In a development letter dated July 1, 2019, OWCP requested that appellant submit medical evidence to establish that she was temporarily totally disabled on June 8 and 9, 2019. It afforded her 30 days to submit the necessary evidence.

OWCP subsequently received medical evidence.

By decision dated August 1, 2019, OWCP denied appellant's claim for compensation for disability from work on June 8 and 9, 2019, finding that she had not submitted a rationalized medical opinion sufficient to establish total disability on the claimed dates due to her accepted employment injury.

OWCP received additional medical evidence.

OWCP, by decision dated August 20, 2019, denied modification of its January 28, 2019 recurrence decision, finding that the medical evidence submitted did not provide a rationalized medical opinion sufficient to establish that appellant's claimed recurrence of total disability commencing October 24, 2018, was causally related to her accepted employment injury.

OWCP continued to receive medical evidence.

On October 31, 2019 appellant appealed the August 1 and 20, 2019 decisions to the Board. By decision dated April 8, 2021, the Board affirmed the August 1 and 20, 2019 decisions.⁴ The Board found that appellant had not submitted medical evidence establishing a recurrence of total disability commencing October 24, 2018, causally related to her accepted employment injury. The Board further found that she had not submitted medical evidence establishing employment-related disability on June 8 and 9, 2019.

Thereafter, OWCP received medical evidence. In x-ray reports dated June 15, 2021, Dr. Ellen Y. Chang, a Board-certified neurologist, provided an impression of bilateral total knee arthroplasties in unchanged, near anatomic alignment and without definite radiographic evidence for interval complication.

In a November 13, 2020 office/clinic note and a June 22, 2021 progress note, Dr. Paul K. Gilbert, an orthopedic surgeon, indicated that appellant presented for follow-up evaluation of her right knee. He noted that she was two years' status post right total knee arthroplasty and five years' status post left total knee arthroplasty. Dr. Gilbert reported his findings on physical and x-ray examination. He provided assessments of foot pain and status post right and left total knee arthroplasties.

OWCP also received hospital records dated May 23, 2019 through November 13, 2020, which were previously of record.

Appellant requested reconsideration before OWCP on October 28, 2021 and continued to submit medical evidence.

⁴ *Supra* note 2.

Dr. Basimah Khulusi, a Board-certified physiatrist, submitted right knee x-ray reports dated June 20, 2017 and June 19, 2018. She also submitted a July 28, 2021 addendum report from Dr. Eric Chen, a Board-certified internist, who compared the June 20, 2017 and June 19, 2018 x-rays on June 30, 2021 and provided his findings. Based on Dr. Chen's findings, Dr. Khulusi, in a July 27, 2021 report, determined that appellant had progressive loss of thickness of the cartilage in all three compartments of her right knee joint from 2017 until 2018, that was significant and measurable on the above-noted x-rays. Thus, she advised that appellant's right knee degeneration was worse on June 19, 2018 than June 20, 2017. Dr. Khulusi observed that the right knee degeneration continued to progress spontaneously with continuous wearing out of the protective cartilage and thinning of the protective cartilage in all three compartments of the knee joint which was an objective finding that undeniably determined that appellant's right knee condition had been deteriorating and explained the progression of her symptoms that became severe enough to necessitate right total knee replacement surgery. She referenced Chapter 2.1500.3c(5) of OWCP's procedures,⁵ and contended that it applied to appellant's case because her diagnosis remained the same, and her disability increased due to additional exposure to the same work factors prior to October 24, 2018 with the objective proof of worsening based on the above-described x-ray results with progressive wearing out of the cartilage in all three compartments of the right knee joint which was supposed to protect her knee.

Also submitted were June 20, 2017 and June 19, 2018 bilateral knee x-ray reports submitted by Dr. Khulusi which were previously of record.

X-ray reports dated October 30, 2018, and May 28 and June 19, 2019 from Dr. Jordan Gross, a Board-certified diagnostic radiologist, Dr. Dakshesh Patel, a diagnostic radiologist, and Dr. George Matcuk, a Board-certified diagnostic radiologist, respectively, addressed appellant's bilateral knee conditions and were also previously of record.

OWCP, by decision dated November 15, 2021, denied modification of its prior August 1, 2019 disability and August 20, 2019 recurrence decisions.

OWCP received a June 15, 2021 adult ambulatory intake report from Xiomara Rodriguez.⁶

On February 28, 2022 appellant requested reconsideration of the November 15, 2021 decision.

By decision dated May 19, 2022, OWCP denied modification of its November 15, 2021 decision.

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3c(5) (June 2013).

⁶ The Board notes that Ms. Rodriguez's professional qualifications are not contained in the case record.

LEGAL PRECEDENT -- ISSUE 1

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.⁷ 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 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.⁸

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. That 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.⁹

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.¹⁰ Where no such rationale is present, the medical evidence is of diminished probative value.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability, commencing October 24, 2018, causally related to her accepted employment injury.

Preliminarily, the Board notes that findings made in prior Board decision are *res judicata*, absent further review by OWCP under section 8128 of FECA. It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's

⁷ 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁸ *Id.*

⁹ *Supra* note 5 at Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁰ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

¹¹ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

August 1, 2019 recurrence decision as the Board considered that evidence in its April 8, 2021 decision.¹²

In support of her claim, appellant submitted Dr. Khulusi's July 27, 2021 report wherein she maintained that Dr. Chen's July 28, 2021 report, in which he compared x-rays taken on June 20, 2017 to x-rays taken on June 19, 2018, established that appellant's right knee condition had progressively worsened after June 20, 2017. Dr. Khulusi maintained that Dr. Chen's findings revealed a progressive loss of thickness of the cartilage in all three compartments of the right knee joint from 2017 until 2018. She further maintained that the right knee degeneration continued to progress spontaneously with continuous wearing out of the protective cartilage, and thinning of the protective cartilage in all three compartments of the knee joint which was an objective finding that undeniably indicated the deterioration and progression of her right knee condition that necessitated total right knee replacement. While Dr. Khulusi found that appellant's right knee condition had worsened based on objective evidence, she failed to address appellant's total disability beginning October 24, 2018. The Board has held that medical evidence that does not provide an opinion as to whether a condition or period of disability is due to an accepted employment-related condition is of no probative value.¹³ Thus, the Board finds that this evidence is insufficient to establish appellant's recurrence claim.

Likewise, Dr. Chen's July 28, 2021 report is also insufficient to establish appellant's recurrence claim. While Dr. Chen compared the June 20, 2017 and June 19, 2018 x-rays, he did not provide an opinion addressing appellant's total disability beginning October 24, 2018.¹⁴

Dr. Gilbert's November 13, 2020 and June 22, 2021 notes provided assessments of foot pain and status post right and left total knee arthroplasties. However, he did not provide an opinion on causal relationship.¹⁵

Appellant also submitted Dr. Chang's June 15, 2021 diagnostic test report which addressed appellant's bilateral knee conditions. However, the Board has held that reports of diagnostic testing, standing alone, lack probative value as they do not address whether a given medical condition or period of disability was caused by the employment.¹⁶

¹² *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹³ *J.M.*, Docket No. 22-0280 (issued June 29, 2022); *C.M.*, Docket No. 21-0004 (issued May 24, 2021); *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See J.M.*, *supra* note 13; *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *T.G.*, Docket No. 20-0032 (issued November 10, 2020); *R.N.*, Docket No. 19-1685 (issued February 26, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

Additionally, appellant submitted the June 15, 2021 adult ambulatory intake report from Ms. Rodriguez whose professional qualifications are not contained in the case record. The Board has held that a medical report may not be considered probative medical evidence if there is no indication that the person completing the report qualifies as a physician under FECA.¹⁷ Therefore, this report is insufficient to establish appellant's recurrence claim.

As appellant has not submitted medical evidence establishing a recurrence of disability commencing October 24, 2018, causally related to her accepted employment injury, the Board finds that she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁸ 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.¹⁹

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.²⁰ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.²¹

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.²² 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 between the diagnosed condition and the specific employment factors identified by the employee.²³

¹⁷ *A.D.*, Docket No. 20-0179 (issued April 8, 2021); *C.S.*, Docket No. 19-1377 (issued February 26, 2020); *R.M.*, 59 ECAB 690 (2008).

¹⁸ *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁹ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

²⁰ *Id.* at § 10.5(f); *see, e.g., G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²¹ *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

²² *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

²³ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish disability on June 8 and 9, 2019, causally related to her accepted employment injury.

The Board again notes that findings made in prior Board decisions are *res judicata*, absent further review by OWCP under section 8128 of FECA. It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's August 20, 2019 disability decision as the Board considered that evidence in its April 8, 2021 decision.²⁴

For the claimed wage loss on June 8 and 9, 2019, the Board finds that the record is devoid of medical evidence supporting that appellant was disabled due to the accepted employment injury.²⁵ 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 employees to self-certify their disability and entitlement to compensation.²⁶

As there is no medical evidence of record establishing employment-related disability on June 8 and 9, 2019, appellant has failed to meet 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 a recurrence of total disability, commencing October 24, 2018, causally related to her accepted employment injury. The Board further finds that she has not met her burden of proof to establish disability on June 8 and 9, 2019, causally related to her accepted employment injury.

²⁴ *Supra* note 12.

²⁵ *See A.B.*, Docket No. 19-0185 (issued July 24, 2020).

²⁶ *Id.*; *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *Fereidoon Kharabi*, *supra* note 18.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2023
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