

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

_____)	
R.W., Appellant)	
)	
and)	Docket No. 19-1733
)	Issued: April 13, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Atlanta, GA, Employer)	
_____)	

Appearances:
Appellant, pro se
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 August 15, 2019 appellant filed a timely appeal from March 1, May 23, and August 7, 2019 merit decisions 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period July 31, 2018 and continuing, causally related to his accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.² The facts and circumstances as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On August 18, 2011 appellant, then a 60-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he aggravated his degenerative joint disease of the hips and knees due to factors of his federal employment, including constant walking and traversing stairs. He noted that he first became aware of his condition on March 29, 2000 and first realized its relation to his federal employment on March 29, 2011. On April 24, 2014 OWCP accepted appellant's claim for osteoarthritis of the bilateral hips and knees. He stopped work on April 12, 2015.

In a letter dated March 28, 2018, appellant informed OWCP that he was scheduled for surgery on July 30, 2018. He requested that OWCP reopen his claim and authorize his surgery.

In a letter dated April 13, 2018, OWCP advised appellant that his case had been closed in 2017 after two years of inactivity, as the last medical documentation of record was dated October 12, 2015. It informed him that he could file a notice of recurrence (Form CA-2a) if there had been a material change/worsening of his accepted work-related condition. OWCP provided a definition of a recurrence of disability and further advised that appellant should submit medical evidence from a qualified physician explaining how his disability was causally related to his accepted employment injury.

In a May 23, 2018 development letter, OWCP advised appellant that it had reopened his claim as it appeared his condition had not resolved. It requested additional medical evidence supporting his request for authorization of the surgery scheduled for July 30, 2018 which explained how the need for surgery was causally related to appellant's accepted conditions. OWCP afforded appellant 30 days to respond.

Beginning on October 1, 2018 appellant filed claims for compensation (Form CA-7) for disability from work from July 31, 2018 and continuing. In an October 5, 2018 development letter, OWCP requested medical evidence addressing causal relationship between appellant's claimed disability and his accepted employment injuries. It afforded him 30 days to respond.

OWCP subsequently received a January 9, 2017 report from Dr. Fred Barry Hodges, III, a Board-certified orthopedic surgeon, who examined appellant due to right knee osteoarthritis. Dr. Hodges noted that appellant underwent a left total knee replacement in 2005 and a right total hip replacement in 2006. He indicated that appellant wanted to schedule a right total knee replacement.

On July 20, 2018 appellant underwent right knee x-rays which demonstrated moderate tricompartmental degenerative joint disease with tibial spine spurring, joint space narrowing, and osteophytosis.

² Docket No. 12-1747 (issued March 5, 2013).

On September 13, 2018 Deborah Wilson, a nurse practitioner, completed a form report and diagnosed status post right total knee arthroplasty. She checked a box marked “No” indicating that appellant’s condition was not caused or aggravated by an employment activity.

Appellant provided a series of knee x-rays dated May 29 and September 17, 2009, January 6, 2012, December 12, 2016, January 9 and June 30, 2017, July 31, August 7, and September 10, 2018.

By decision dated November 15, 2018, OWCP denied appellant’s claims for disability for the period July 31, 2018 and continuing.

On November 6, 2018 Ms. Wilson completed an additional form report and found that appellant underwent a right total knee arthroplasty for a degenerative joint resulting from age and wear and tear.

On December 3, 2018 appellant requested reconsideration of the November 15, 2018 decision and submitted additional medical evidence.

In a July 31, 2018 report, Dr. Hodges noted that he performed a right knee arthroplasty due to right knee primary osteoarthritis.

Appellant also provided extensive medical records from a Department of Veterans Affairs Hospital including notes from Dr. Cedrelle Jones-Taylor, a Board-certified internist.

In a November 6, 2018 form report, Ms. Wilson noted that appellant had undergone a total knee arthroplasty. She indicated that it was “unknown” whether appellant’s condition was related to his employment. Ms. Wilson concluded that appellant had a total knee replacement due to a degenerative joint which was the result of age, wear, and tear.

By decision dated March 1, 2019, OWCP denied modification of its prior decisions.

On March 19, 2019 appellant requested reconsideration of the March 1, 2019 decision.

On April 18, 2019 Dr. John Louis-Ugbo, a Board-certified orthopedic surgeon, completed a form report and diagnosed bilateral knee degenerative joint disease. He checked a box marked “Yes” indicating that appellant’s condition was caused or aggravated by an employment activity. Dr. Louis-Ugbo indicated that appellant was hospitalized from July 31 through September 13, 2018 and that he could resume light-duty work on April 22, 2019.

By decision dated May 23, 2019, OWCP denied modification of its prior decisions.

On July 29, 2019 appellant requested reconsideration. In a July 19, 2019 report, Dr. Jones-Taylor reviewed appellant’s employment duties and summarized his medical history, including left knee replacement in 2000, right hip replacement in 2006, and right knee replacement on July 30, 2018. She opined that years of walking while carrying heavy loads contributed to appellant’s degenerative joint disease. Dr. Jones-Taylor requested approval of wage-loss compensation during the 10-month period that appellant was recovering from his right knee

surgery. She noted that appellant underwent physical therapy for five months and home therapy until April 2019. On April 22, 2019 appellant was released to light-duty work.

By decision dated August 7, 2019, OWCP denied modification of the May 23, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim,³ 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 The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.⁸ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought. 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.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

³ *Supra* note 1.

⁴ *See 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 *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty and Elaine Pendleton*, *id.*

⁶ 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

⁷ *Id.*; *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *R.C.*, *supra* note 6.

⁹ *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

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 his or her disability and entitlement to compensation.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period July 31, 2018 and continuing causally related to his accepted employment injury.

In support of his claims for compensation, appellant provided a July 19, 2019 report from Dr. Jones-Taylor who reviewed his employment duties and summarized his medical history, including left knee replacement in 2000, right hip replacement in 2006, and right knee replacement on July 30, 2018. Dr. Jones-Taylor opined that years of walking while carrying heavy loads contributed to appellant's degenerative joint disease. She requested approval of wage-loss compensation during the 10-month period that appellant was recovering from his right knee surgery. Dr. Jones-Taylor, however, did not explain how the accepted employment injury was competent to cause the need for surgery and the resulting disability during the claimed period. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹³ This report contains a mere conclusory opinion without the necessary rationale explaining how and why the employment injury caused disability for work.¹⁴ It is, therefore, insufficient to establish appellant's disability claim.

Dr. Louis-Ugbo completed a form report on April 18, 2019 and diagnosed bilateral knee degenerative joint disease. However, he did not provide a period of total disability due to appellant's employment injury, indicating that he could return to light-duty work on April 22, 2019. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁵ This report, therefore, is insufficient to establish appellant's claim for a period of disability causally related to his accepted employment injury.

¹¹ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹³ *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁴ *M.N.*, *id.*; *C.E.*, Docket No. 19-0192 (issued July 16, 2019).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant also submitted notes and a surgical report from Dr. Hodges. Dr. Hodges, however, did not address causal relationship between the right knee arthroplasty he performed on July 31, 2018 and appellant's accepted employment injury. He also did not address any period of disability due to appellant's previously accepted right knee conditions. Accordingly these reports are of no probative value and are insufficient to establish appellant's claim for disability compensation.¹⁶

Right knee x-ray reports were also received. However, diagnostic studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused appellant to be disabled from work during the claimed periods.¹⁷

Appellant also provided a series of form reports from Ms. Wilson, a nurse practitioner. Nurse practitioners, however, are not considered physicians as defined under FECA.¹⁸ Therefore, these reports do not constitute medical evidence and are insufficient to establish disability causally related to the accepted employment conditions.

As appellant has not submitted rationalized medical opinion evidence to establish disability from work for the period July 31, 2018 and continuing as a result of his accepted employment injury, the Board finds that he has not met his 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 his burden of proof to establish disability from work for the period July 31, 2018 and continuing, causally related to his accepted employment injury.

¹⁶ *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

¹⁷ *M.M.*, *id.*; *M.J.*, *id.*; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁸ Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (neither a nurse practitioner nor a physical therapist is a physician under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.

ORDER

IT IS HEREBY ORDERED THAT the August 7, May 23, and March 1, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 13, 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