

FACTUAL HISTORY

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 her repetitive federal employment duties. 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 and subsequently on the periodic rolls.

Appellant returned to part-time limited-duty work on October 22, 2016 for four hours per day. She returned to full-time full-duty work on February 20, 2017. 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 periods of disability for the period October 24, 2018 through January 18, 2019. On time analysis forms (Form CA-7a) dated November 19 and 28, December 11 and 24, 2018, and January 7 and 22, 2019 she claimed eight hours of leave without pay (LWOP) used on October 24, 2018 and four hours of LWOP for each day thereafter because no work was available. On the reverse side of the Form CA-7, the employing establishment controverted appellant's claim, contending that she had not submitted documentation establishing that no work was available. It noted that she returned to work on October 25, 2018 based on an October 24, 2018 medical report.

In support of her claims, appellant submitted medical reports from Dr. Besimah Khulusi, an attending Board-certified physiatrist. In duty status reports (Form CA-17) and progress reports dated October 24 and 26, 2018, Dr. Khulusi diagnosed right knee degenerative joint disease (DJD) and acceleration of DJD of the left knee. She also diagnosed the accepted conditions of left knee medial meniscus tear and left knee sprain, and status post left knee total knee replacement performed on June 20, 2016. Dr. Khulusi noted that appellant could not perform her regular work, but she could work with restrictions, four hours per day. In the November 26, 2018 progress report, she advised that appellant's employment duties had caused a worsening of her accepted right knee osteoarthritis, which required additional work restrictions and a need for total right knee replacement.

An October 30, 2018 progress note by Dr. Paul K. Gilbert, a Board-certified orthopedic surgeon, provided examination findings. He diagnosed right knee unilateral primary osteoarthritis, status post total left knee replacement, and right knee pain.

A left knee x-ray was performed on October 30, 2018 by Dr. Jordan Gross, a Board-certified radiologist, provided impressions of stable left total knee arthroplasty, without evidence of interval complication, and tricompartmental osteoarthrosis of the right knee, most advanced at the medial tibiofemoral compartment. In a bilateral pelvis x-ray report of even date, Dr. Gross provided an impression of no significant osteoarthrosis of either hip.

By decision dated January 28, 2019, OWCP denied appellant's claim for a recurrence of total disability commencing October 24, 2018. It found 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.

OWCP received an additional Form CA-17 report and federal physician's progress report dated February 5, 2019 by Dr. Khulusi, who restated his diagnosis of right knee DJD and opinion that, while appellant could not perform her regular work, she could work with restrictions.

In an additional report dated October 30, 2018, Dr. Gross noted that a bilateral knee x-ray revealed stable left total knee arthroplasty, without evidence of interval complication, and tricompartmental osteoarthritis of the right knee, most advanced at the medial tibiofemoral compartment.

Dr. Gilbert, in additional progress notes dated April 5, 2019, reiterated his prior diagnoses of right knee unilateral primary osteoarthritis, status post total left knee replacement, and right knee pain. He also diagnosed a failure of conservative care and limitation of activity. Dr. Gilbert noted that a right total knee arthroplasty was planned.²

On May 22, 2019 appellant requested reconsideration of the January 28, 2019 decision. In support of her request, she submitted a May 22, 2019 letter from Dr. Khulusi. Dr. Khulusi noted that appellant's surgeon, Dr. Gilbert, allowed her to return to work without restrictions upon healing from her left knee replacement. She further noted that a prior impartial medical examiner of record, Dr. Stephen Wertheimer, a Board-certified orthopedic surgeon, advised OWCP that appellant would require significant modification of her job activities until both of her knees were replaced and thereafter the osteoarthritis in her knee would continue to deteriorate in the future, which occurred. Dr. Khulusi maintained that FECA provides that additional exposure to the same work factors, when the diagnosis remains the same and disability increases, constituted a recurrence of the condition.

In a May 8, 2019 Form CA-17 report, Dr. Khulusi continued to diagnose right knee DJD and note appellant's work restrictions.

Dr. Khulusi, in a Form CA-20 report dated May 22, 2019, diagnosed "M170, 8449, and 8360." She checked a box marked "Yes" to indicate that appellant's conditions were caused or aggravated by her federal employment. Dr. Khulusi noted that she was totally disabled from June 10 through October 25, 2019.

A February 11, 2019 right knee magnetic resonance imaging scan performed by Dr. Eric Chen, a diagnostic radiologist, provided impressions of diffuse tearing of the medial meniscus anterior horn and body with a very macerated appearance, advanced knee osteoarthritis, mild marrow edema at the inferior aspect of the patella, moderate-size joint effusion, and small Baker's cyst.

In a May 28, 2019 bilateral knee x-ray report, Dr. Dakshesh Patel, a Board-certified diagnostic radiologist, noted impressions of right knee osteoarthritis with severe medial compartment joint space narrowing and grossly uncomplicated appearing left total knee arthroplasty, unchanged from prior study.

² OWCP authorized the proposed right knee total replacement based on the opinion of its district medical adviser.

On June 10, 2019 appellant filed a Form CA-7 claim for compensation for disability from June 10 through October 25, 2019.

In support of her claim, appellant submitted a May 28, 2019 adult ambulatory patient history report from Marisela Ponce.³

Dr. Gilbert, in a June 10, 2019 report, performed a presurgical physical examination and reiterated his prior right and left knee diagnoses. In a June 10, 2019 operative report, Dr. Gilbert described the procedure for right total knee arthroplasty with computer navigation. He noted preoperative and postoperative diagnoses of unilateral, primary osteoarthritis of the right knee.

On June 24, 2019 appellant filed a Form CA-7 claiming disability from work from June 8 through 21, 2019. In a Form CA-7a of even date, she claimed four hours of LWOP used on June 8 and 9, 2019. Appellant also claimed eight hours of LWOP used from June 12 through 21, 2019 because she was totally disabled from work.⁴

In support of her claim, appellant submitted a June 11, 2019 report from Dr. Bryce Turner, a Board-certified internist. Dr. Turner noted that appellant was one day status post right total knee replacement. He discussed physical examination and findings and laboratory test results. Dr. Turner provided impressions of past medical history of hypertension and osteoarthritis a status post right total knee replacement.

In a June 11, 2019 consult note, Dr. Farid Nikbin, an anesthesiologist, evaluated appellant and noted her pain medication.

OWCP, in a development letter dated July 1, 2019, 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.

In a May 28, 2019 report, Dr. Michael Karp, a Board-certified internist, discussed examination findings and provided an assessment of appellant's preoperative cardiovascular condition for knee replacement for severe osteoarthritis. He also provided an assessment of well-controlled hypertension.

On June 10, 2019 Dr. Cindy Xiao Res, an anesthesiologist, reported examination findings and laboratory test results. She noted assessments of right knee pain, status post total left knee replacement, and right knee unilateral primary osteoarthritis.

In a June 10, 2019 right knee x-ray, Dr. George Matcuk, a diagnostic radiologist, noted an impression of limited postoperative study demonstrating interval placement of a right total knee arthroplasty without gross evidence of complication or retained surgical instrument.

³ Ms. Ponce's professional qualifications are not contained in the case record.

⁴ OWCP paid appellant wage-loss compensation on the periodic rolls for the period June 10 through July 20, 2019.

Dr. Gilbert, in a June 25, 2019 report, noted findings on physical examination. He reported that appellant was status post right total knee arthroplasty. Dr. Gilbert addressed her medication.

A June 25, 2019 report signed by a physician assistant provided a diagnosis of status post right total knee replacement and ordered physical therapy.

By decision dated August 1, 2019, OWCP denied appellant's claim for compensation for June 8 and 9, 2019, finding that she had not submitted a rationalized medical opinion sufficient to establish that she was totally disabled on the claimed dates.

In a July 24, 2019 report, Dr. Gilbert evaluated appellant and again provided an assessment of status post total right knee replacement.

Dr. Khulusi, in an August 12, 2019 Form CA-17 report, advised that appellant was temporarily totally disabled from work.

By decision dated August 20, 2019, OWCP denied modification of its January 28, 2019 decision.

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.⁵ 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.⁶

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.⁷

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence

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

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

of total disability and to show that he or she cannot perform such limited-duty work.⁸ As part of this burden, the employee must show a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.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.

Appellant claimed that she sustained a recurrence of disability commencing October 24, 2018 because the employing establishment had no work available within her work restrictions. She did not submit any evidence to support this allegation and the employing establishment refuted her contention. The employing establishment maintained that appellant had not submitted evidence to establish that no work was available on October 24, 2018. It indicated that she performed part-time limited-duty work. The Board notes that the employing establishment's part-time limited-duty job offer was based on the October 24, 2018 Form CA-17 report of appellant's own physician, Dr. Khulusi, who opined that, while appellant could not perform her regular work, she could perform part-time work with restrictions. As appellant has provided no independent evidence to support her allegation, the Board finds that the limited-duty position was available commencing October 24, 2018.¹²

The Board further finds that the remaining medical evidence submitted by appellant is also insufficient to establish a worsening of her work-related conditions resulting in her disability commencing October 24 2018. Appellant submitted a series of reports from Dr. Khulusi. In a progress report dated November 26, 2018, Dr. Khulusi opined that appellant's employment duties worsened her accepted right knee osteoarthritis and required additional work restrictions and need for right total knee replacement. She advised that she could return to modified work with restrictions. Dr. Khulusi reiterated her opinion on causal relationship in a May 22, 2019 report.

⁸ *I.M.*, Docket No. 20-0980 (issued February 2, 2021); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁹ *Id.*

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).

¹² *See L.T.*, Docket No. 15-0136 (issued September 28, 2016).

Although she suggested that appellant's worsening condition and continuing disability were due to her federal employment, she did not provide medical rationale explaining how her work duties worsened her accepted left knee condition and resulted in her disability from work during the claimed period. The Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition/period of disability and employment factors.¹³ Additionally, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain adequate medical rationale explaining the relationship between a given condition/period of disability and the claimant's employment.¹⁴ Therefore, Dr. Khulusi's reports are insufficient to establish appellant's recurrence claim.

In a May 22, 2019 Form CA-20, Dr. Khulusi diagnosed "M170, 8449, and 8360." She checked a box marked "Yes" indicating that appellant's conditions were caused or aggravated by her employment injury. Dr. Khulusi also opined that she was totally disabled from work from June 10 through October 25, 2019. The Board has held that to establish a period of disability the medical evidence must provide a discussion of how objective medical findings, attributable to the accepted conditions, support a finding that a claimant could not perform his or her job duties.¹⁵ As such, this report is insufficient to discharge appellant's burden of proof with respect to her recurrence of disability claim.

Dr. Khulusi's August 12, 2019 Form CA-17 report found that appellant was totally disabled from work. However, she did offer an opinion on whether the accepted employment injury caused disability from employment due to a worsening of the work-related conditions consequently. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition is insufficient to meet a claimant's burden of proof.¹⁶ 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.¹⁷ Thus, Dr. Khulusi's report is insufficient to establish appellant's recurrence claim.

Dr. Khulusi's remaining Form CA-17 reports, including her October 24, 2018 Form CA-17 report, diagnosed right knee DJD and found that appellant could work part time with restrictions for hours per day. However, she did not address whether the accepted right knee DJD worsened

¹³ See *J.K.*, Docket No. 18-0854 (issued June 5, 2020); *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

¹⁴ See *J.K.*, *id.*; *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁵ See *R.A.*, Docket No. 19-1595 (issued August 13, 2020); *S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁶ See *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).

¹⁷ See *R.J.*, *id.*; *D.P.*, Docket No. 18-1439 (issued April 20, 2020); *William A. Archer*, 55 ECAB 674 (2004).

spontaneously, such that appellant was disabled from performing her limited-duty position. In the absence of such an opinion, Dr. Khulusi's reports are of no probative value and thus insufficient to meet appellant's burden of proof.¹⁸

Similarly, the reports of Drs. Gilbert, Turner, Nikbin, Karp, and Res, which addressed appellant's right knee condition of unilateral primary osteoarthritis, authorized bilateral total knee replacement arthroplasties, and pain treatment, are of no probative value as none of these physicians provided an opinion regarding whether appellant was totally disabled from work during the claimed period due to the accepted employment injury.¹⁹

The October 30, 2018 and February 11, May 28, and June 10, 2019 diagnostic test results of Drs. Gross, Chen, Patel, and Matcuk addressed appellant's bilateral knee and bilateral pelvis conditions. However, the Board has held that reports of diagnostic tests, standing alone, lack probative value as they fail to provide an opinion on the causal relationship between his employment duties and the diagnosed conditions.²⁰

The June 25, 2019 report signed by a physician assistant diagnosed status post right total knee replacement and ordered physical therapy. However, the Board has held that physician assistants are not considered physicians as defined under FECA, and thus, the report is of no probative value.²¹

Appellant also submitted the May 28, 2019 report by Ms. Ponce 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.²² Therefore, this report is insufficient to establish the claim.

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

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

¹⁹ *Id.*

²⁰ *J.M.*, Docket No. 19-1517 (issued January 29, 2020); *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

²¹ Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not considered a physician as defined under FECA).

²² *C.S.*, Docket No. 19-1377 (issued February 26, 2020); *R.M.*, 59 ECAB 690 (2008).

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.²³ 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.²⁴

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.²⁵ 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.²⁶

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.²⁷ 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.²⁸

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.

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.²⁹ 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

²³ 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).

²⁴ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

²⁵ *Id.* at § 10.5(f); see, e.g., *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²⁶ *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

²⁷ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

²⁸ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

²⁹ See *A.B.*, Docket No. 19-0185 (issued July 24, 2020).

claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.³⁰

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

ORDER

IT IS HEREBY ORDERED THAT the August 20 and 1, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 8, 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

³⁰ *Id.*; *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *Fereidoon Kharabi*, *supra* note 23.