

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

S.M., Appellant)	
)	
and)	Docket No. 24-0719
)	Issued: August 30, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Camden, NJ, Employer)	
)	

Appearances:
Russell T. Uliase, Esq., for the appellant¹
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 June 24, 2024 appellant, through counsel, filed a timely appeal from a January 17, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the January 17, 2024 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 his burden of proof to establish disability from work for the period June 1, 2020 through February 25, 2021 causally related to his accepted February 15, 2020 employment injury.

FACTUAL HISTORY

On February 15, 2020 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day his left knee became swollen and stiff when delivering mail while in the performance of duty. He stopped work that day.

On February 15, 2020 Dr. Paul Leibrandt, a Board-certified emergency medicine specialist, examined appellant and diagnosed left knee effusion with decreased range of motion. He released appellant to modified work with restrictions, indicating that appellant should follow up with an orthopedist for a return-to-work evaluation.

A February 26, 2020 left knee magnetic resonance imaging (MRI) scan showed lateral compartment predominant tricompartmental arthritis with degenerative tearing of the lateral meniscus, small joint effusion, and degeneration of the anterior cruciate ligament (ACL).

In a February 27, 2020 report, Dr. Sunny Gupta, an osteopathic physician Board-certified in sports and family medicine, reported that appellant was seen at urgent care 10 days earlier and had blood aspirated from his left knee. He reviewed appellant's February 26, 2020 left knee MRI scan and noted examination findings. Dr. Gupta diagnosed left knee unilateral primary osteoarthritis with advanced lateral compartment degenerative joint disease (DJD) with exacerbation. He recommended modified-duty restrictions to protect his knee. In March 30 and April 23, 2020 reports, Dr. Gupta indicated that appellant should be kept on the same modified-duty restrictions.

In a May 31, 2020 narrative report, Dr. Gupta outlined appellant's medical care since February 27, 2020. He indicated that diagnostic imaging showed that appellant had advanced lateral compartment DJD of the lateral meniscus. Dr. Gupta opined that appellant's job duties, including being on his feet for many hours and walking hills, will aggravate and exacerbate the preexisting DJD. He explained how such job duties could cause increased pain, swelling, decreased range of motion, and possible instability. Dr. Gupta also noted that appellant had presented to the urgent care two different times and each time had a significant amount of fluid aspirated.

In June 18, August 24, and September 24, 2020 reports, Dr. Gupta continued to treat appellant for osteoarthritis and pain, noting that examination of the left knee revealed functionally full range of motion, intact strength and no signs of instability. He opined that appellant should continue modified duty.

In a January 4, 2021 report, Dr. Gupta reported that he was no longer treating appellant, but would fill out paperwork for his job duties as needed. He noted that appellant was not in acute distress.

In a June 29, 2021 report, Dr. Gupta reported that appellant had returned to modified-duty work six months ago. He recommended that appellant continue his modified duties, noting that permanent restrictions could not be provided until the functional capacity evaluation he had ordered in August 2020 was completed.

On July 28, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Noubar Didizian, a Board-certified orthopedic surgeon, for a second opinion examination. In an August 23, 2022 report, Dr. Didizian noted appellant's February 15, 2020 employment injury, reviewed the SOAF and the medical record, and presented examination findings. He indicated that appellant was currently working modified duty, that he had undergone left hip total replacement in 2021, that he had rheumatoid arthritis, and that a 2017 left knee x-ray showed moderate-to-severe tricompartmental osteoarthritis. Dr. Didizian opined that it was conceivable that the February 15, 2020 work activity caused an exacerbation of his preexisting degenerative disease with swelling and necessitating aspiration of the fluid, noting that this was not unusual in patients with rheumatoid arthritis and advanced degenerative disease of the knee. He opined that the natural history of degenerative disease of the left knee would have intermittent exacerbations and remissions irrespective of any extrinsic trauma. Dr. Didizian further opined that the exacerbation was temporary, and would have resolved within six weeks. He noted that appellant went back to work for modified duty on April 2, 2020, about two months after the February 15, 2020 incident, and Dr. Gupta's record indicate that appellant has stable knees, and maintained him on modified duty. Dr. Didizian further opined that any ongoing issues were due to the underlying rheumatoid arthritis and degenerative disease. He opined that appellant could return to his usual job without restrictions. Dr. Didizian also completed a work capacity evaluation form (Form OWCP-5c).

On November 9, 2022 OWCP accepted the claim for sprain of left knee (temporary aggravation) and unilateral primary osteoarthritis of left knee (temporary aggravation). Based on Dr. Didizian's August 23, 2022 report, it found that the temporary aggravations had resolved within six weeks.⁴

On March 24, 2023 OWCP requested a supplemental report from Dr. Didizian which discussed appellant's ongoing symptoms and his underlying condition, as well as residuals of the accepted conditions.

In a May 7, 2023 supplemental report, Dr. Didizian reported that appellant had not experienced a specific employment incident on February 15, 2020, but that he noted left knee swelling while working. In relevant part, he indicated that Dr. Gupta's reports described improvement within two months of the February 15, 2020 incident and that appellant was under medical care for rheumatoid arthritis. Dr. Didizian opined that there was no evidence of any residuals from the accepted condition, and his ongoing symptomology was on the basis of the primary disease of rheumatoid arthritis. He explained that the natural history of rheumatoid arthritis was one of acute exacerbations and remissions of large joints of the body including knees, the exacerbation would have resolved within a short period of time of four to six weeks, and

⁴ By decision dated March 10, 2023, an OWCP hearing representative set aside OWCP's November 8, 2022 termination decision, finding that Dr. Didizian's report was not sufficient to support a termination of compensation benefits for the aggravation of the underlying conditions. In relevant part, OWCP requested that appellant complete any CA-7 forms prior to reinstatement of any benefits.

Dr. Gupta's records supported that appellant had clinically improved in two months following the natural history of rheumatoid arthritis. Dr. Didizian indicated that he gave the benefit of the doubt to the patient for that diagnosis, noting that appellant did not require any further diagnostic tests related to the present illness. He concluded that appellant's ongoing problems with the left knee were related to his primary condition of rheumatoid arthritis.

On June 15, 2023 appellant filed claims for compensation (Form CA-7) for disability from work during the period February 15, 2020 through February 15, 2021. The employing establishment indicated that appellant returned to full-time regular-duty work on January 18, 2022.

By decision dated June 30, 2023, OWCP denied the claim for compensation for disability from work for the period March 14, 2020 through February 15, 2021. It accorded the weight of the medical evidence to the August 23, 2022 and May 7, 2023 reports of Dr. Didizian, who opined that any exacerbation without any injury on February 15, 2020 was based on appellant's rheumatoid arthritis and preexisting tri-compartmental disease, that there was no evidence of residuals from the accepted conditions, and that appellant did not require any further diagnostic tests related to the present illness. OWCP also found that there was no conflict in medical evidence between Dr. Didizian and Dr. Gupta.

On July 6, 2023 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on November 3, 2023.

By decision dated January 17, 2024, an OWCP hearing representative affirmed the denial of appellant's claim for compensation for disability from work modified to the period June 1, 2020 through February 25, 2021. She remanded the case for further development of the wage-loss compensation claim for the period February 15 through May 31, 2020.⁵

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷

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.⁸ Whether a particular injury causes an employee to become disabled from work, and the duration of that

⁵ By decision dated January 23, 2024, OWCP determined that appellant was entitled to wage-loss compensation for the period February 15 through May 31, 2020.

⁶ *Supra* note 1.

⁷ *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1980).

⁸ *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁹

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.¹⁰ 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.¹¹

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 the claimant, 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.¹²

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.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period June 1, 2020 through February 25, 2021 causally related to his accepted February 15, 2020 employment injury.

Appellant was evaluated by OWCP’s second opinion physician, Dr. Didizian, on August 23, 2022. Dr. Didizian opined that it was conceivable that appellant’s February 15, 2020 work activity caused an exacerbation of his preexisting degenerative disease with swelling and necessitating aspiration of the fluid, noting that this was not unusual in patients with rheumatoid arthritis and advanced degenerative disease of the knee. Dr. Didizian explained that the natural history of degenerative disease of the left knee would have intermittent exacerbations and remissions irrespective of any extrinsic trauma. OWCP accepted the conditions of sprain of left knee (temporary aggravation) and unilateral primary osteoarthritis of left knee (temporary aggravation) based on his opinion. In his August 23, 2022 report and May 7, 2023 supplemental report, Dr. Didizian further opined that the exacerbation of appellant’s underlying left knee conditions was temporary, and would have resolved within six weeks. He opined appellant could return to his usual job without restrictions. In support of his opinion that appellant’s temporary exacerbation of his underlying left knee conditions had resolved, he noted that appellant went back

⁹ 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

¹⁰ *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹¹ *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹³ *D.M.*, Docket No. 21-0930 (issued February 8, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

to work for modified duty on April 2, 2020, about two months after the February 15, 2020 injury, Dr. Gupta's record indicated that appellant's knees were stable, and he maintained him on modified duty. Dr. Didizian explained that appellant was under care for his underlying rheumatoid arthritis and degenerative joint disease. The Board finds that his reports were well rationalized, were based on examination findings, and an accurate history of injury.¹⁴ Accordingly, the Board finds that Dr. Didizian's second opinion reports constitute the weight of the medical evidence.

Although the reports from Dr. Gupta provided work restrictions, his reports were of no probative value in establishing appellant's claim for the period June 1, 2020 through February 25, 2021, as he did not address whether and how appellant's disability during the claimed period was caused by the accepted employment conditions.¹⁵ Further, Dr. Gupta's work restrictions appear to be prophylactic in nature. He offered no supporting medical rationale in any of his reports to establish that appellant's modified work restrictions continued to be related to his accepted temporary aggravations of left knee sprain and left knee unilateral primary osteoarthritis. There is no other medical evidence of record which addresses disability during the claimed period.

The record contains results of diagnostic testing. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment injury caused appellant to be disabled during the claimed period.¹⁶ This evidence is therefore insufficient to establish appellant's claim.

The Board therefore finds that appellant has not met his burden of proof to establish disability from work for the period June 1, 2020 through February 25, 2021 causally related to his accepted February 15, 2020 employment injury.

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 June 1, 2020 through February 25, 2021 causally related to his accepted February 15, 2020 employment injury.

¹⁴ See *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *C.J.*, Docket No. 18-0148 (issued August 20, 2018).

¹⁵ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship); see also *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ See *L.B.*, Docket No. 24-0381 (issued May 20, 2024); *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 30, 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