United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant **and** **DEPARTMENT OF THE NAVY, HUMAN RESOURCES OFFICE, Camp Pendleton, CA, Employer**	)))))))))	**Docket No. 14-1739** **Issued: May 15, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 12, 2014 appellant filed a timely appeal from a July 2, 2014 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant established a recurrence of disability on March 25, 2014 due to the accepted February 23, 2010 occupational injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted evidence after the issuance of the July 2, 2014 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On February 23, 2010 appellant, then a 59-year-old military pay technician, filed a traumatic injury claim (Form CA-1) alleging a right knee fracture as a result of tripping over a parking divider in a parking lot at the employing establishment. On August 11, 2010 OWCP accepted her claim for a contusion of the right knee.

In a report dated October 26, 2010, Dr. Norman Kane, a Board-certified orthopedic surgeon, diagnosed appellant with right knee advanced medial compartment osteoarthritis with tearing and extrusion of the medial meniscus; a vertical tear of the posterior horn of the medial meniscus; and moderate patellofemoral chondromalacia. He noted that she was working and that she wanted to wait for another steroid injection to her right knee. Dr. Kane released appellant to work without restrictions in a form dated August 24, 2010. On December 21, 2010 appellant underwent a steroid injection.

In a diagnostic report dated May 8, 2010, Dr. Gregory Nicpon, a Board-certified radiologist, interpreted the results of a magnetic resonance imaging (MRI) scan of appellant's right knee. He stated an impression of advanced medial compartment osteoarthritis with tearing and medial extrusion of the medial meniscus, with a vertical tear running through the posterior horn; moderate patellofemoral chondromalacia; a one centimeter calcified body in the anterior notch; and a small joint effusion.

On January 21, 2011 Dr. Kane stated that steroid injection created a good response in the right knee, but that appellant's symptoms had increased. Appellant had developed enough pain and discomfort to proceed with an arthroscopic surgical procedure, which he recommended.

By letter dated February 3, 2011, OWCP denied appellant's request for authorization for right knee arthroscopic surgery, finding that the evidence on file did not establish that her right knee condition was causally related to the employment incident of February 23, 2010.

In a report dated February 18, 2011, Dr. Kane stated:

> "I did receive a report indicating that arthroscopic evaluation was not certified.
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> "As you recall, when I began evaluating this [appellant], which was over one year ago, on May 28, 2010 she had an MRI scan, which reveals tearing and extrusion of the medial meniscus with a vertical tear running through the posterior horn. For over one year I have been encouraging [her] to have a surgical procedure but she declined this offer. However, [appellant's] symptoms have now reached the point that she can no longer live with them, and for this reason she has elected to undergo surgery of this nature....
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> "It is essentially medical malpractice to deny [appellant] the option of undergoing an arthroscopic meniscectomy and chondroplasty. Hopefully, authorization will be received expeditiously for [her] to undergo treatment of this nature. [Appellant] will continue her regular duties."

He again requested authorization for an arthroscopic procedure in a note dated April 8, 2011.

By letter dated April 15, 2011, OWCP rejected appellant's request for an arthroscopic meniscectomy. It stated that it had examined the MRI scan results dated May 8, 2010, but that it required medical evidence explaining the relationship between appellant's preexisting osteoarthritic and degenerate meniscus conditions and the February 23, 2010 employment injury.

On April 19, 2011 Dr. Kane responded to OWCP's April 15, 2011 letter. He stated that appellant did have preexisting degenerate osteoarthritic changes of the joint, but that her meniscal tear was caused by the injury of February 23, 2010. Dr. Kane noted that the need for surgical intervention was the accepted injury and the resulting condition.

On May 19, 2011 OWCP authorized a right knee arthroscopy.

In a statement of accepted facts dated June 9, 2011 prepared for a nurse intervention, OWCP stated that appellant's accepted conditions included a right knee contusion and a medial meniscus tear.

On June 14, 2011 Dr. Kane stated that appellant would be temporarily totally disabled from June 24 through July 1, 2011, but could perform her usual duties from June 14 through 23, 2011.

In an operative report dated June 24, 2011, Dr. Kane described the procedures of a right knee examination under anesthesia, an athrthoscopic patellar chondroplasty, a resection of the tear of the midsubstance of the medial meniscus, a resection of the tear and fraying of the midsubstance of the lateral meniscus, and a reactive synovectomy. There were no complications.

On July 1, 2011 Dr. Kane noted that appellant would be temporarily totally disabled from that date until July 15, 2011. On July 15, 2011 he extended the period she would be temporarily totally disabled until July 29, 2011. Dr. Kane noted that appellant still had a mild antalgic gait pattern, but that the wound on her right knee was well healed. He diagnosed her with a status post right knee partial medial and partial lateral meniscectomy.

On July 29, 2011 Dr. Kane again extended appellant's temporary total disability from July 27 through August 7, 2011. He noted that she could return to her usual duties on August 8 through 26, 2011.

In a report dated July 29, 2011, Dr. Kane noted that it had been five weeks since appellant's surgery and that she did not have the "spring back" in her leg yet. He noted that she was walking with a mild antalgic gait pattern and had completed her therapy program.

On August 26, 2011 Dr. Kane stated that appellant was still having some pain and discomfort along the medial joint line of her right knee and that she was having a hard time working. He further noted that she could perform her usual duties from August 26 through September 15, 2011.

In a report dated September 16, 2011, Dr. Kane stated that appellant was still having pain and discomfort with significant loss of articular cartilage in the medial compartment of her right knee. He stated that he would request authorization for a leg brace. Dr. Kane further noted that appellant could perform her usual duties from September 16 through October 7, 2011.

On October 7, 2011 Dr. Kane noted that appellant still had pain and discomfort in her right knee. He stated that she could walk, but not for long distances, and that she could not kneel or squat. On October 28, 2011 Dr. Kane injected appellant's right knee with Synvisc One, which had previously been approved by OWCP. He further noted that she could perform her usual duties from October 28 through November 18, 2011.

In a report dated November 18, 2011, Dr. Kane stated that appellant had a good response to the injection on October 28, 2011. He noted that she was still limping slightly, but that her range of motion had increased.

On December 23, 2011 Dr. Kane noted that appellant was walking reasonably well, but that there was some tenderness in the medial joint line.

In a report dated February 2, 2012, Dr. Kane stated that appellant told him her right knee condition was doing well because she was not working. Appellant explained that when she was at work, she had to get up and down regularly, and that she has not had to do that recently. Dr. Kane continued to state that she could perform her regular duties.

On March 15, 2012 Dr. Kane noted that appellant's range of motion had increased and that she was doing reasonably well. He stated that she was a candidate for a medial unicompartment arthroplasty, but that she did not want to have surgery at the moment.

In a report dated July 16, 2012, Dr. Kane noted that appellant was aware that she had significant degenerative changes of the medial joint line of her right knee and was postponing further treatment until her condition worsened. He stated that she was walking and working. Dr. Kane noted that appellant was temporarily partially disabled from July 16 through 17, 2012, with restrictions of lifting no more than 20 pounds. In another report dated September 18, 2012, he stated that she could result her usual and customary duties on that date.

On March 1, 2013 Dr. Kane stated that appellant still had pain and discomfort in her right knee and wished to undergo a medial unicompartmental arthroplasty.

By letter dated March 11, 2013, OWCP denied appellant's request for authorization for medial unicompartmental arthroplasty. It stated that the medical reports of record did not contain significant findings or diagnostic test results to demonstrate a change in her condition such as to warrant surgery.

In a report dated April 12, 2013, Dr. Kane stated that appellant's symptoms had progressed such that she was having difficulty with any weight bearing, kneeling, squatting, or climbing. He reported that her range of motion had decreased.

On May 20, 2013 Dr. Kane responded to OWCP's denial of March 11, 2013. He noted:

> "[Appellant] has complete loss of articular cartilage of the medial surface of the tibial plateau. She has continued with a conservative approach, but she has reached the point that she can no longer live with the pain and discomfort in her right knee, so authorization was requested to perform a medial unicompartmental

> arthroplasty. [Appellant] has failed an arthroscopic evaluation, steroid injections, Synvisc injections, and extensive physical therapy."

He continued to submit reports in support of authorization of this procedure through March 4, 2014.

In a note dated March 25, 2014, Dr. Kane stated that appellant was temporarily totally disabled from March 25 through April 22, 2014 pending authorization for surgery. Appellant submitted claims for compensation for leave without pay from March 25 through April 18, 2014.

By letter dated April 22, 2014, OWCP informed appellant that it considered her claims for compensation for leave without pay as a claim for recurrence due to her employment-related condition. It stated that the evidence received in support of her continuing disability, the note dated March 25, 2014, was insufficient to support her claim for recurrence because it lacked sufficient objective findings and rationale that would support temporary total disability. OWCP asked that appellant submit additional medical evidence and to respond to its inquiries.

On April 28, 2014 appellant responded to OWCP's inquiries. She stated that it was an ongoing recurrence due to walking up and down at work. Appellant noted that she never had any trouble with her knee until she fell and that her knee continued to worsen.

Appellant submitted progress reports from Dr. Kane dated March 25 and April 22, 2014, which noted that her symptoms were getting worse. Dr. Kane stated in his report of March 25, 2014 that he was going to take her out of work and noted that her range of motion had decreased. In his report of April 22, 2014, he noted that appellant remained temporarily totally disabled and that when surgery was performed she could return to her normal vocation. Dr. Kane submitted a form noting that she was temporarily totally disabled from April 22 through May 20, 2014, without elaboration.

By decision dated July 2, 2014, OWCP denied appellant's claim for recurrence. It found that she had not submitted a rationalized medical opinion providing objective findings and rationale that would support a material worsening of her claim. OWCP further noted that appellant had not provided a response to the question of whether she had sustained any injuries on or off duty since her original injury. It listed her accepted conditions as a contusion of the right knee, a tear of the medial meniscus of the right knee, and an old bucket handle tear of the medial meniscus of the right knee.

LEGAL PRECEDENT

Under FECA,[3] the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[4] Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment

[3] *Supra* note 1.

[4] *See Prince E. Wallace*, 52 ECAB 357, 358 (2001).

injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.[5]

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.[6] 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.[7]

OWCP's procedures correspondingly state 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.[8]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing 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.[9] Where no such rationale is present, the medical evidence is of diminished probative value.[10]

ANALYSIS

OWCP accepted appellant's claim for a contusion of the right knee, a tear of the medial meniscus of the right knee, and an old bucket handle tear of the medial meniscus of the right knee. Appellant returned to full duty on August 8, 2011 and continued working until March 25, 2014, when she claimed to be temporarily totally disabled from work. The Board finds that she did not submit sufficient rationalized medical evidence, supported by objective findings and

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[5] *Cheryl L. Decavitch*, 50 ECAB 397, 401 n.5 (1999); *Maxine J. Sanders*, 46 ECAB 835, 840 (1995).

[6] 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525, 531 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

[7] *Id.*

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (October 2009).

[9] *Ronald A. Eldridge*, 53 ECAB 218, 221 (2001).

[10] *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

rationale, to establish that her present disability was causally related to her accepted injury.[11] For this reason, appellant has not met her burden of proof.

Appellant did not allege a change in the nature and extent of light-duty job requirements, because she had returned to full duty. She attributed her recurrence of disability to a change in the nature and extent of her employment-related condition. Appellant must provide medical evidence to establish that she became disabled due to an exacerbation of her accepted work-related conditions.[12]

In support of her claim for recurrence on March 25, 2014, appellant submitted reports from Dr. Kane. In a note dated March 25, 2014, Dr. Kane stated that she was temporarily totally disabled from March 25 through April 22, 2014 pending authorization for surgery. He stated in his report of March 25, 2014, that he was going to take appellant out of work and noted that her range of motion had decreased. In his report of April 22, 2014, Dr. Kane noted that she remained temporarily totally disabled and that when surgery was performed she could return to her normal work. He submitted a form noting that she was temporarily totally disabled from April 22 through May 20, 2014, without elaboration. These reports did not provide a rationalized medical opinion addressing specific dates of disability, explaining how the progression of appellant's condition was causally related to the original work injury of 2010, or why it was now totally disabling.

A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached.[13] Without medical reasoning showing that the conclusion reached is sound, logical, and rational, the opinion of Dr. Kane is of diminished probative value.[14]

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing 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.[15]

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.

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[11] *See T.M.*, Docket No. 06-440 (issued August 7, 2006).

[12] *See Jackie D. West*, 54 ECAB 158, 160-61 (2002).

[13] *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

[14] *See E.A.*, 58 ECAB 677 (2007).

[15] *See Ronald C. Hand*, 49 ECAB 113 (1997).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability on March 25, 2014 causally related to the accepted work injury of February 23, 2010.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2014 decision of the Office of Workers' Compensation programs is affirmed.

Issued: May 15, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board