United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
	)	
and	)	**Docket No. 16-1290**
	)	**Issued: July 27, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Long Beach, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 2, 2016 appellant filed a timely appeal of a March 3, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP) and an April 4, 2016 nonmerit decision. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.[2]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish disability for the period June 22 through September 14, 2015 due to his accepted employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its April 4, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore the Board lacks jurisdiction to review this additional evidence on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On May 7, 2015 appellant, then a 45-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained dog bites to his right calf and knee. He reported that two dogs ran out of a house and one of the dogs bit him from behind on his right calf. In the midst of the attack, appellant twisted his right knee. He stopped work on May 7, 2015 and received continuation of pay.

Dr. Charles B. Tang, a physician Board-certified in occupational medicine, in his May 7, 2015 report, provided results on examination and diagnosed sprain/strain of the right knee and dog bite on the right calf. Appellant also submitted notes from physician assistants, diagnosing dog bites, as well as right knee pain and indicating that he was totally disabled for 45 days.

On May 22, 2014 Dr. Albert Tsai, an orthopedic surgeon, examined appellant and noted his history of dog bites on May 7, 2015. He reported that appellant twisted his right knee trying to dislodge the dog from his calf. Dr. Tsai reviewed a magnetic resonance imaging (MRI) scan dated May 13, 2015 and determined that appellant had a tear in the posterior horn of the medial meniscus. He recommended surgery and released appellant to return to modified sedentary work on that date.

By decision dated June 3, 2015, OWCP accepted appellant's claim for dog bite on the right leg and sprain of the medial collateral ligament in the right knee.

Appellant filed a claim for compensation (Form CA-7) and requested compensation for leave without pay from June 22 through July 10, 2015. On the reverse of the forms, the employing establishment indicated that appellant was temporarily totally disabled from May 7 through September 1, 2015. It advised that he received continuation of pay from May 8 to June 21, 2015. In a letter dated July 23, 2015, OWCP requested that appellant provide medical evidence supporting his disability for work during the period claimed by his Form CA-7. Appellant submitted an additional Form CA-7 for the period July 11 through August 21, 2015.

In a note dated June 13, 2015, Dr. Brandon Grove, a Board-certified family practitioner, extended appellant's disability until September 1, 2015 due to his meniscal tear. He indicated that appellant was totally disabled, but also provided work restrictions.

By decision dated August 25, 2015, OWCP denied appellant's claim for compensation for the period beginning on June 22, 2015. It found that there was insufficient medical evidence to establish total disability for the period claimed. OWCP noted that appellant's surgery was scheduled for September 15, 2015.

Appellant requested reconsideration of the August 25, 2015 decision through a form received by OWCP on September 9, 2015. He continued to submit Form CA-7s through September 2, 2015. Dr. Grove completed a duty status report (Form CA-17) on September 2, 2015 and checked a box marked "yes" indicating that appellant had been advised not to return to work. He noted that surgery had been scheduled for September 15, 2015. Dr. Grove provided work restrictions indicating that appellant could sit for eight hours a day, stand intermittently for

one to two hours a day, and walk for less than one hour a day. Appellant also provided reports from physician assistants.

On September 8, 2015 Dr. Tsai released appellant to return to sedentary work. He completed an attending physician's report (Form CA-20) on September 15, 2015 and finding appellant totally disabled for the period May 9 through October 27, 2015 due to appellant's twisting of the knee while being attacked by dogs which resulted in a medial meniscal tear in the right knee.

Appellant filed a Form CA-7 requesting compensation for leave without pay from September 5 through 18, 2015. Dr. Grove completed a Form CA-20 on September 14, 2015 and indicated that appellant was totally disabled awaiting surgery.

On September 15, 2015 Dr. Tsai performed a right knee arthroscopy with partial medial meniscectomy. OWCP authorized wage-loss compensation benefits from September 15 through October 2, 2015 associated with the surgery and recovery therefrom.

Appellant submitted an authorization for examination and/or treatment (Form CA-16) dated May 20, 2015 by the employing establishment and completed by Dr. Tsai on May 27, 2015. Dr. Tsai had released appellant to return to light work on May 22, 2015.

By letter dated September 22, 2015, OWCP referred appellant for nurse intervention to assist in his return to work.

In a field nurse report dated October 23, 2015, appellant's field nurse noted that appellant had periods of nonaccommodation based on his limitations. Appellant did work some days. Dr. Tsai released appellant to full-time limited duty on November 6, 2015, but the employing establishment was unable to accommodate him. Appellant returned to full-duty work on December 2, 2015.

By decision dated December 7, 2015, OWCP denied modification of the August 25, 2015 decision. It found that the medical evidence was not sufficient to establish that appellant was totally disabled for work during the period claimed. OWCP also found that there was no indication that the employing establishment was unable to accommodate appellant's work restrictions for the dates claimed.[3]

Appellant requested reconsideration on January 29, 2016. He submitted a note dated December 18, 2015 from Dr. Tsai reported that appellant was on sedentary duty only for the period June 22 through August 7, 2015. Dr. Tsai noted that appellant's employing establishment was unable to accommodate appellant's restrictions, so that appellant was off work for that period. Dr. Grove echoed these restrictions in a note dated January 20, 2016. In a November 23, 2015 Form CA-20, Dr. Tsai indicated that appellant was totally disabled from May 9 through

[3] On August 24, 2016 OWCP issued a merit decision vacating the December 7, 2015 decision. However, the Board acquired jurisdiction over this issued on June 2, 2016. Therefore, the August 24, 2016 decision is null and void. The Board and OWCP may not have concurrent jurisdiction over the same issue in a case. *See Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990); *see also* 20 C.F.R. § 501.2(c)(3).

November 30, 2015. Dr. Grove completed a note dated February 2, 2016 and contended that Dr. Tsai provided work restrictions from June 22 through August 7, 2015 which the employing establishment could not accommodate. He asserted that appellant was unable to work during that time.

Dr. Tsai completed a report on February 15, 2016 and found that appellant had reached maximum medical improvement.

By decision dated March 3, 2016, OWCP denied modification of the December 7, 2015 decision. It found that appellant failed to submit evidence from the employing establishment substantiating that there was no work available for appellant within his restrictions for the periods claimed.

Appellant requested reconsideration on March 23, 2016. Dr. Tsai completed a report on March 16, 2016 and noted that he had treated appellant due to the May 7, 2015 employment injury. He further noted that appellant was denied compensation benefits for wage loss for the period June 22 through August 7, 2015. Dr. Tsai concluded, "During that period I was treating [appellant] for a medial meniscus tear and had put him on modified duty (sedentary only). His employing establishment was unable to accommodate those restrictions and he was therefore put off work by his employer. [Appellant] was not made (temporarily totally disabled) by me."

By decision dated April 4, 2016, OWCP declined to reopen appellant's claim for consideration of the merits.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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.[4] The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[5]

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[6] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a

[4] *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

[6] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

basis for payment of compensation.[7] The Board will not require OWCP to pay compensation for disability in the absence of any 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.[8]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[9] Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 diagnosed condition and the specific employment factors identified by the claimant.[10] Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet his burden of proof to establish that he was disabled due to his accepted employment injury from June 22 through September 14, 2015.

OWCP accepted appellant's May 7, 2015 claim for dog bite on the right leg and sprain of the medial collateral ligament in the right knee on June 3, 2015. It authorized arthroscopic surgery to repair appellant's right medial meniscus scheduled on September 15, 2015. Appellant filed a series of Form CA-7s requesting wage-loss compensation from June 22 through September 14, 2015.

Appellant submitted evidence from physician assistants. Healthcare providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.[12]

The medical evidence submitted by Drs. Tsai and Grove beginning on May 22, 2015 provided work restrictions supporting that appellant could return to sedentary work. Appellant informed OWCP that the employing establishment had no light-duty available for him.

[7] *Id.*

[8] *Id.*

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerré R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

Appellant's field nurse completed a report dated October 23, 2015 and indicated that appellant had periods of nonaccommodation by the employing establishment based on his limitations. On the reverse of the forms the employing establishment indicated that appellant was temporarily totally disabled from May 7 through September 1, 2015. It advised that he received continuation of pay from May 8 to June 21, 2015. In a letter dated July 23, 2015, OWCP requested that appellant provide medical evidence supporting his disability for work during the period claimed by his Form CA-7. Appellant, however, has failed to substantiate that the employing establishment had failed to provide him with light-duty work. He has the burden of proof to establish that he was totally disabled for the period claimed. The medical evidence does not establish that appellant was totally disabled and appellant failed to submit any additional evidence supporting his claim. For these reasons, the Board finds that appellant failed to meet his burden of proof to establish that he was totally disabled from June 21 through September 1, 2015.

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.

LEGAL PRECEDENT -- ISSUE 2

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.[13] Section 10.606(b)(3) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or constitutes relevant and pertinent new evidence not previously considered by OWCP.[14] Section 10.608 of OWCP's regulations provides that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.[15] Section 10.607(a) of OWCP's regulations provides that to be considered timely an application for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought.[16]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of OWCP's March 3, 2016 decision on March 16, 2016. In support of his timely request for reconsideration, he submitted additional medical evidence from Dr. Tsai. In his March 16, 2016 report, Dr. Tsai noted that he treated

[13] 5 U.S.C. §§ 8101-8193, 8128(a).

[14] *Id.* at. § 10.606(b)(3).

[15] *Id.* at. § 10.608.

[16] 20 C.F.R. § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*¸ Chapter 2.1602.4 (February 2016).

appellant due to the May 7, 2015 employment injury. He indicated that he released appellant to return to modified duty, but that the employing establishment failed to provide appellant a position within his work restrictions. Dr. Tsai concluded that appellant was not totally disabled from June 22 through August 7, 2015.

The Board finds that this report is irrelevant to the issue for which OWCP denied appellant's claim,[17] the failure to establish that he was totally disabled due either to his accepted injury-related condition or to the failure of the employing establishment to offer him appropriate light-duty work. Dr. Tsai's report does not represent independent knowledge that the employing establishment failed to supply appellant with light-duty work and as such is merely repetitive of appellant's previous claims and assertions[18] that he was not provided with appropriate light-duty work and hence was totally disabled on and after June 22, 2015.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was totally disabled on or after June 22, 2015. The Board further finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on April 4, 2016.

[17] The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a claim. *See S.D.*, Docket No. 17-0469 (issued June 16, 2017); *Daniel Deparini*, 44 ECAB 657, 659 (1993).

[18] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *See L.F.*, Docket No. 17-0243 (issued June 20, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

ORDER

IT IS HEREBY ORDERED THAT April 4 and March 3, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 27, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board