

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHERYL D. EDWARDS and U.S. POSTAL SERVICE,  
POST OFFICE, Bellmawr, NJ

*Docket No. 99-2124; Submitted on the Record;  
Issued December 4, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether the Office of Workers' Compensation Programs properly rescinded its acceptance of appellant's claim for torn medial meniscus as resulting from the June 1, 1992 employment injury; and (2) whether appellant is entitled to a schedule award for an injury to her left knee.

On June 1, 1992 appellant, then a 28-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on that date she fell over a small piece of trash onto concrete and sustained a left knee fracture.

In a June 19, 1992 magnetic resonance imaging (MRI) of appellant's left knee, Dr. John Dooley, a radiologist, determined that appellant had a grade three tear of the posterior horn of the medial meniscus. On February 4, 1993 the Office accepted the claim for an employment-related torn meniscus based on the June 19, 1992 MRI report. Appellant underwent an approved diagnostic arthroscopy and chondroplasty of the left medial femoral condyle on June 26, 1993. This arthroscopy did not show a medial meniscus tear, but rather showed a chondral lesion, left medial femoral condyle.

On December 8, 1993 appellant filed a claim for a recurrence (Form CA-2a) commencing on November 29, 1993. Appellant's claim for recurrence was accepted as a "no lost time recurrence."

In a medical report dated February 26, 1995, Dr. David Weiss, an osteopath, opined that appellant still suffered "residuals of her traumatically-induced injuries including left knee pain and stiffness, daily; weakness left knee; instability; swelling left knee...." He then determined that, as a result of her work-related injury of June 1, 1992, appellant had a permanent partial disability according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993), based on arthritis in her left knee of 5 percent, plus IV and V muscle weakness in her left knee of 12 percent, for a total of 17 percent.

On April 10, 1995 appellant filed a claim for a schedule award. The employing establishment controverted this claim.

On June 14, 1995 Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, after examining appellant and reviewing her medical history, opined that appellant had a “laxity of her knee joints, consisting of involvement of the medial, lateral and collateral ligaments, as well as the anterior/posterior capsule of her knee joints, with beginning degenerative changes of the knee joint proper, affecting the posterior horn of the medial meniscus as stated in the MRI reports.” However, Dr. Mattei found that this was due to a congenital condition, which was not related to the injury, although he noted that her fall might have caused a temporary exacerbation of her preexisting condition. Dr. Mattei found that, according to the A.M.A., *Guides*, appellant had a 17 percent impairment of the lower extremity but again noted that this was not due to the injury.

In a medical opinion dated November 9, 1995, Dr. Weiss noted that appellant was having ongoing pain in her left knee and that “she has some abnormality of the meniscus, evident on the MRI, which at the time of arthroscopy was not a complete tear. It is possible that she may have degeneration in the substance of the meniscus which has subsequently torn through.” He recommended a repeat arthroscopy.

In a medical report dated February 15, 1996, Dr. Weiss recommended that appellant “be relieved of responsibilities for letter carrying and stair climbing based on her ongoing problems with her left knee.” He also opined that appellant’s condition was “permanent and indefinite.” In a medical report dated February 26, 1995, Dr. Weiss diagnosed post-traumatic chondromalacia left knee, status post arthroscopy left knee, status post chondroplasty left femoral condyle and post-traumatic osteoarthritis left knee. He opined that appellant still suffered residuals of her traumatically-induced injuries including left knee pain and stiffness, weakness in her left knee, instability, and swelling in the left knee. Applying the A.M.A., *Guides*, Dr. Weiss found that appellant suffered from arthritis in her left knee (5 percent) and IV and V muscle weakness, left knee, (12) for a total left lower extremity impairment of 17 percent.

On February 23, 1996 at the suggestion of the Office medical adviser, the Office referred appellant to Dr. Marc Kahn, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated March 21, 1996, Dr. Kahn opined that appellant had no real objective findings other than generalized ligamentous laxity, which was not caused by the work-related injury. He questioned whether there was a work injury, as appellant gave “absolutely no reason for her knee giving out on her.” However, the Office medical adviser noted that this opinion failed to indicate whether a schedule award was warranted and if any percentage of impairment was indicated. The record reflects that Dr. Kahn failed to respond to a request by the Office for further information.

In a note from the Office medical adviser dated April 14, 1997, he stated that the reports of Drs. Kahn and Mattei indicate that appellant’s symptoms were not related to her work injury and accordingly, she was entitled to a schedule award of zero percent.

In a decision dated April 23, 1997, the Office noted that appellant’s accepted condition was for torn medial meniscus of the left knee due to the June 1, 1992 employment injury. However, the Office found that appellant was not entitled to a schedule award of compensation

under the Federal Employees' Compensation Act as no permanent impairment of the left knee resulted from the work-related injury.

By letter dated April 29, 1997, received by the Office's Branch of Hearings and Review on May 9, 1997, appellant, through her attorney, requested an oral hearing before an Office hearing representative.

In a medical report dated August 28, 1997, Dr. Weiss noted that appellant's "arthroscopic examination did not demonstrate a meniscal tear," but that appellant had "symptoms of patello-femoral joint dysfunction, associated with generally ligamentous laxity. He believed that this condition was permanent "but for the time being stationary."

In a decision dated October 27, 1997, the Office hearing representative found that the April 23, 1997 decision was premature in that inasmuch as the opinions of Drs. Weiss and Kahn conflict on the issue of whether appellant had any permanent impairment to her left lower extremity as a result of the accepted injury, this case should be referred to an impartial medical examiner.

Upon remand, the Office referred appellant to Dr. David A. Bundens, a Board-certified orthopedic surgeon, for an impartial medical examination. In a medical report dated January 28, 1998, Dr. Bundens opined that appellant had ligamentous laxity and degenerative arthritis of the left knee. With regard to causation, Dr. Bundens stated:

"Currently I do n[o]t think this is a result of an injury at work. There really was no injury persae [sic]. It did happen during work but it was not an injury. For this reason I do n[o]t think you can blame her occupation for her current knee condition. Currently her condition I believe is arthritis of the knee. I believe she is an honest person and her capabilities are as she stated above, *i.e.*, she could walk or stand without a break for a period of two hours. She could stand total during the day approximately five hours and she is able to work an eight-hour day with a combination of sitting and standing and walking. I do feel she has reached maximum medical improvement. I think she is disabled for occupations that involve stresses beyond what are delineated above. I do n[o]t think she is able return as a letter carrier. As far as the level of her disability of her left knee, I think her problem is the arthritis. I would go to Table 62, page 83 and in view of the fact that she is functioning quite well compared to many patient's with arthritis I would go to the 2mm counm although I do n[o]t have a current x-ray. This would give her 8 percent whole person, 20 percent knee."

In a decision dated March 5, 1998, the Office denied appellant's claim for a schedule award as the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or disability. The Office also rescinded acceptance that appellant sustained a torn medial meniscus, but accepted that appellant sustained a compensable knee injury on June 1, 1992 that required arthroscopic surgery to remove articular cartilage in the knee.

By letter dated March 9, 1998, received by the Office on March 12, 1998, appellant, through her attorney, requested a hearing before an Office hearing representative.

In a hearing held on October 28, 1998, appellant testified that she began employment with the employing establishment around March 1988, that at that time she had no problem with her left knee, that as a letter carrier she had to lift over 70 pounds and that she had to climb stairs carrying her mailbag. She stated that her injury occurred when she fell over some rubbish and fell forward onto her left knee. She further described the medical care she received and indicated that she continued to suffer from the injury.

In a decision dated March 23, 1999, the Office hearing representative affirmed the March 5, 1998 decision, noting that the weight of the medical evidence established appellant had not sustained a torn medial meniscus on June 1, 1992, or that she had any work-related permanent impairment of the left knee that would entitle her to a schedule award.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed this appeal with the Board on June 16, 1999, the only decision properly before the Board was issued by the Office on March 23, 1999.

The Board finds that the Office properly rescinded its acceptance of appellant's claim for a torn medial meniscus of the left knee.

Once the Office accepts a claim and pays compensation, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim. In order to rescind prior acceptance of a claim, the Office must establish that its prior acceptance was erroneous through new and different evidence.<sup>2</sup> This evidence must be substantial and probative evidence confirming the fact that the injury did not occur as appellant alleged.<sup>3</sup> The Office does not meet its burden of proof to rescind by merely showing that its acceptance may have been erroneous.

In the case, at hand, the MRI of appellant's left knee of June 19, 1992 showed that she suffered a grade three tear of the posterial horn of the medial meniscus and on February 4, 1993, the Office accepted that appellant sustained an employment-related torn meniscus. When the arthroscopy was performed, however, Dr. Weiss instead found chondral lesion, left medial femoral condyle. In his medical opinion dated November 9, 1995, Dr. Weiss explained that, although appellant had some abnormality of the meniscus, at the time of the arthroscopy this was not a complete tear. The findings of Dr. Weiss in the arthroscopy and his November 9, 1995 report both contradicted the earlier assumption that appellant had a torn medial meniscus. Furthermore, in a medical report dated June 14, 1995, Dr. Mattei found that appellant suffered from congenital changes affecting the posterior horn of the medial meniscus. On March 31, 1996 Dr. Kahn, the second opinion specialist, found that appellant had no objective findings in her left knee resulting from the employment-related injury. These reports constituted new and

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1997); 20 C.F.R. §§ 501.3(d)(2).

<sup>2</sup> *Michael W. Hicks*, 50 ECAB \_\_\_\_ (Docket No. 97-2902, issued April 12, 1999); *George E. Riley*, 44 ECAB 458 (1993).

<sup>3</sup> *Beatrice Meir*, 40 ECAB 796, 801 (1989).

probative evidence sufficient to allow the Office to rescind its prior acceptance of a torn medial meniscus in its March 5, 1998 decision.

With regard to whether appellant is entitled to a schedule award for impairment to her left knee, the Board finds that this case is not in posture for decision.

Section 8107 of the Act provides that if there is permanent disability involving the loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of specific members, functions, or organs of the body.<sup>4</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>6</sup>

In the instant case, Dr. Weiss opined that appellant's disability in her left knee was causally related to her work injury. Dr. Mattei disagreed, finding that although appellant's fall may have temporarily exacerbated her preexisting condition, the disability in her left knee was due to a congenital condition affecting the knee joints. As a conflict existed, the Office properly referred this case to Dr. Bundens to resolve the conflict. Dr. Bundens believed that appellant's ligamentous laxity and degenerative arthritis of the left knee was not causally related to her work injury, but was rather caused by arthritis in the knee. Dr. Bundens based his opinion on the fact that appellant did not suffer an injury "persae" at work, rather the knee just gave way.

Although the Office properly rescinded its acceptance of appellant's claim for a torn medial meniscus, the Office specifically stated that it continued to accept the fact that claimant sustained a compensable knee injury which required arthroscopic surgery to remove articular cartilage in the knee. Accordingly, Dr. Bundens' conclusion that appellant did not suffer a work-related injury is contrary to the Office's finding. Therefore, the Office should request a supplemental opinion from Dr. Bundens. The Office should issue a new statement of accepted facts, wherein it notes that it has accepted the fact that appellant sustained a compensable knee injury which required arthroscopic surgery to remove cartilage from the knee. The Office should request Dr. Bundens to determine whether appellant sustained a permanent impairment to her left knee in light of the new statement of accepted facts and the authorized surgery to the left knee.

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<sup>4</sup> 5 U.S.C. § 8107(a).

<sup>5</sup> *Ray H. Dewsnap*, 46 ECAB 907 (1995).

<sup>6</sup> *Juanita H. Christoph*, 40 ECAB 354, 360 (1988).

The decision of the Office of Workers' Compensation Programs dated March 23, 1999 is hereby affirmed in part and vacated in part and this case is remanded to the Office for further consideration consistent with this opinion.

Dated, Washington, DC  
December 4, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member