

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTY JEAN LEWIS and U.S. POSTAL SERVICE,  
WORLDWAY POSTAL CENTER, Los Angeles, CA

*Docket No. 02-1775; Submitted on the Record;  
Issued December 6, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained a bilateral knee condition in the performance of duty.

On October 1, 2001 appellant, a 55-year-old clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained injuries to her right shoulder and both knees as a result of her federal employment. Appellant identified July 8, 2001 as the date she first became aware of her condition. Additionally, appellant identified September 11, 2001 as the date she realized her condition was caused or aggravated by her employment.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated December 26, 2001. The Office found that appellant failed to establish that she sustained an injury as alleged.

On January 3, 2002 appellant requested reconsideration and submitted additional medical evidence. In a report dated December 10, 2001, Dr. Stuart M. Gold, a Board-certified orthopedic surgeon, diagnosed right rotator cuff tear and bilateral knee degenerative joint disease, right greater than left. He attributed both conditions to appellant's employment.

The Office subsequently referred appellant for examination by Dr. William C. Boeck, Jr., a Board-certified orthopedic surgeon. In a report dated March 5, 2002, Dr. Boeck diagnosed right shoulder impingement syndrome and bilateral degenerative joint disease of the knees. He attributed appellant's right shoulder condition to her employment, but found that her bilateral knee condition was likely a preexisting problem.

In a decision dated March 20, 2002, the Office accepted appellant's claim for right shoulder impingement syndrome and authorized arthroscopic surgery. With respect to appellant's claimed bilateral knee condition, the Office found that the weight of the medical evidence did not support that this condition was employment related.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.<sup>1</sup> A simple disagreement between two physicians does not, of itself, establish a conflict. To constitute a true conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.<sup>2</sup>

Whereas Drs. Gold and Boeck agreed that appellant's right shoulder condition was causally related to her employment, the doctors disagreed regarding the etiology of appellant's bilateral knee condition. Dr. Boeck, the Office referral physician, explained: "It is likely that [appellant] had preexisting problems with both knees leading to the degenerative joint changes." He further stated, "I do not see documented evidence relating the causation of the arthritic difficulties in the knees to specific work activities." In contrast, Dr. Gold explained that "in the absence of any specific injury outside of the work and since [appellant's] job as a clerk involved walking and standing, her bilateral knee complaints have progressed and led to the degenerative condition in her knees."

In this instance, neither physician's opinion clearly outweighs the other's opinion concerning the etiology of appellant's bilateral knee condition.<sup>3</sup> As there remains an unresolved conflict in medical opinion between Drs. Gold and Boeck, the case is remanded to the Office for further development of the record.

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<sup>1</sup> 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>2</sup> 20 C.F.R. §§ 10.321(a), 10.502 (1999); *see Robert D. Reynolds*, 49 ECAB 561, 565-66 (1998).

<sup>3</sup> The Office stated that, although neither physician's medical rationale was "compelling," Dr. Boeck had access to the statement of accepted facts and also reviewed magnetic resonance imaging (MRI) scans, while Dr. Gold did not. As the Office correctly noted, Dr. Gold did not review the Office's February 5, 2002 statement of accepted facts and his report merely mentioned the existence of appellant's September 11, 2001 MRI scan. Dr. Boeck reviewed both documents; however, he did not specifically reference either document as support for his opinion regarding causation. He suggested that appellant "likely" had a preexisting problem, but cited no evidence to support this assessment. The stated basis for Dr. Boeck's opinion was the absence of "documented evidence relating the causation of the arthritic difficulties in the knees to specific work activities." As Dr. Boeck did not place any particular emphasis on either the statement of accepted facts or appellant's MRI, the distinction drawn by the Office is irrelevant for purposes of determining the relative probative value of the reports of Drs. Gold and Boeck.

The March 20, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC  
December 6, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member