

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CALVIN E. JENKINS and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Newark, NJ

*Docket No. 01-2043; Submitted on the Record;  
Issued January 9, 2003*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant established that his left knee condition was causally related to his employment; and (2) whether he sustained a recurrence of disability due to his accepted right knee condition.

On September 3, 1993 appellant, then a 41-year-old letter carrier, filed an occupational disease claim, alleging that on that date he first realized his right knee osteoarthritis was aggravated by his employment.<sup>1</sup> The Office of Workers' Compensation Programs accepted the claim for internal derangement of the knee and subsequently authorized surgical intervention to correct appellant's knee problems.<sup>2</sup>

On December 20, 1996 appellant filed a recurrence of disability claim, which the Office denied on May 19, 1997.

On March 17, 1999 appellant filed an occupational disease claim, alleging that on March 15, 1999 he first realized his total left knee replacement and severe left knee arthritis were aggravated by factors of his employment.

On March 17, 1999 appellant filed a second occupational disease claim<sup>3</sup> alleging that on March 15, 1999 he first realized that his deranged right knee was due to long-standing and stress on his legs from his employment.<sup>4</sup>

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<sup>1</sup> This was assigned claim number A2-668470.

<sup>2</sup> The record shows the Office had previously accepted a right knee sprain on June 19, 1982, which was assigned claim number A2-497039. Appellant subsequently filed recurrence claims on October 17, 1988 and July 30, 1990 which the Office denied.

<sup>3</sup> This was assigned claim number 02-756330.

<sup>4</sup> Appellant retired on disability effective June 2, 1999.

In a letter dated May 28, 1999, appellant was advised that he had 30 days to submit medical evidence to support his claim and if no medical evidence was submitted within the 30-day period, his claims would be denied.

By decision dated July 9, 1999, the Office denied appellant's claim that his employment duties had aggravated his right and left knee conditions. In support of this decision, the Office noted that appellant had been advised as to the type of evidence required and failed to submit any medical evidence showing that his employment duties had aggravated his knee conditions.

In a report dated July 16, 1999, Dr. Mariano F. Lombardy, an attending Board-certified orthopedic surgeon, diagnosed "advanced traumatic osteoarthritis of the right knee," which required a total knee replacement. On July 26, 1999 the Office authorized a total right knee replacement.

Dr. Lombardy diagnosed severe degenerative arthritis in both appellant's knees in a September 30, 1999 report. He concluded that appellant was totally disabled due to "the traumatic osteoarthritis of his right and left knees." The physician also opined that appellant required a left knee replacement.

In a letter dated September 10, 1999, appellant's counsel requested reconsideration of the May 19, 1997 decision, denying appellant's recurrence claim and submitted a May 27, 1997 report by Dr. Lombardy in support of his request. In his May 27, 1997 report, Dr. Lombardy diagnosed traumatic arthritis in both knees, which the physician attributed to appellant's injuries.

By decision dated October 18, 1999, the Office denied appellant's September 19, 1999 reconsideration request on the basis that it was untimely filed and failed to show clear evidence of error. In the attached memorandum, the Office noted that it had approved total right knee replacement on July 26, 1999.

In a letter dated June 22, 2000, appellant's counsel requested reconsideration of the Office's July 9, 1999 denial and submitted a June 15, 2000 report by Dr. Lombardy in support of his request. He opined that appellant's knee conditions had been aggravated by his employment. In support of this conclusion, the physician stated:

"Over the years, having to do this type of work, standing, bending, climbing stairs, in and out of the truck, lifting heavy boxes and heavy sacks of mail, the knees deteriorated to the point where [appellant] developed severe osteoarthritis which necessitated total knee replacements on both the right and left side. It is clear that [appellant] developed osteoarthritis in his right and left knees. The left knee was predisposed because of an injury in the military services, however, again, the job as a letter carrier and a mailhandler, the day in and day out work of standing and bending and out in foul weather, in and out of a truck caused him, over the years to develop weakness in his knees, ligamentous injuries to the knees, meniscal tears and eventually severe osteoarthritis."

On April 30, 2000 appellant filed a claim for a recurrence of disability starting February 1999 due to his accepted 1981, employment injury. The employing establishment noted that appellant was retired and receiving benefits from Office of Personnel Management (OPM). The

Office accepted the recurrence claim with a date of April 18, 2000, the date his total right knee replacement surgery was performed. In a letter dated October 11, 2000, appellant's counsel requested retroactive pay from April or May 1999 as appellant was informed that the employing establishment could no longer provide him with his light-duty job.

By decision dated September 7, 2000, the Office modified the July 9, 1999 decision.<sup>5</sup> The Office found the evidence insufficient to establish that his left knee condition had been aggravated by his employment duties. However, in terms of the right knee, the Office found that the occupational claim was a duplicate of his claim filed under case file 020668470 and modified the July 9, 1999 decision to show it was a duplicate of the 020668470.<sup>6</sup>

In a letter dated October 31, 2000, appellant's counsel requested reconsideration of the September 7, 2000 decision and that the claim be expanded to include appellant's right elbow injury. Appellant noted that the medical evidence established that his fall at home was due to his knees giving out and consequently suffering a right elbow fracture.

On January 31, 2001 the Office denied appellant's request for a merit review.

Appellant's counsel requested reconsideration by letter dated February 20, 2001.

By decision dated May 29, 2001, the Office denied modification of the prior decisions. The Office found the prior decision, which found the right knee claim to be a duplicate claim contradicted the policy set forth in the procedure manual. Thus, the Office stated "since [appellant] has asserted that the continuing effects of his employment after the 1993 claim affected his condition, the decision of the Office dated September 7, 2000 represents clear evidence of error on the part of the Office and it is vacated in favor of the previous decision of the Office issued July 7, 1999." Regarding the left knee claim, the Office found it timely filed and further noted:

"Although [appellant's] assertions in item's 11, 12 & 15 of the CA-2, dated March 17, 1999 are not credible and are clearly contradicted in the evidence of file from the 1993 claim, that file also contains [appellant's] statements with a red date stamp of 'January 19, 1994' relating [his] left knee conditions to factors of his employment. There had, therefore, been an unadjudicated left knee condition pending since at least 1999 at the time the July 7, 1999 decision was issued."

Furthermore, in denying modification, the Office also noted that the "lack of accurate and complete medical history" as represented by Dr. Lombardy's June 15, 2000 report prevented "any determination as to the probative value of the claim and indeed would prevent the Office in assisting via preparation of an accurate second opinion examination."

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<sup>5</sup> The Office recommended doubling appellant's claim numbers 02-688470 and 02-756330. The Office noted that appellant's June 19, 1982 injury with claim number 02-0497039 had been retired.

<sup>6</sup> The Office advised appellant to file a recurrence claim if he wished to pursue his claim for work stoppage on March 28, 1998 for his right knee.

The Board finds that this case is not in posture for a decision on the issue of whether appellant's left knee condition was causally related to his employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>7</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>8</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease claim.<sup>9</sup>

The medical evidence required to establish causation, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>10</sup> 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.<sup>11</sup>

The Board finds that the evidence from Dr. Lombardy is sufficient to require further development of the evidence. While Dr. Lombardy did not fully address the issue of causal relationship, he did specifically state that appellant's left knee condition was aggravated by standing, bending and walking on the job. Thus, although his opinion is not sufficiently rationalized to carry appellant's burden of proof in establishing his claim, it stands uncontroverted in the record and is, therefore, sufficient to require further development by the Office.<sup>12</sup>

Proceedings under the Act are not adversarial, nor is the Office a disinterested arbiter.<sup>13</sup> Although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>14</sup> Once the claimant has made a *prima facie* case, the Office has the responsibility to

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<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Allen C. Hundley*, 53 ECAB \_\_\_\_ (Docket No. 02-107, issued May 17, 2002); *Duane B. Harris*, 49 ECAB 170 (1997); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *Richard O'Brien*, 53 ECAB \_\_\_\_ (Docket No. 00-1665, issued November 21, 2001).

<sup>11</sup> *Patricia J. Glenn*, 53 ECAB \_\_\_\_ (Docket No. 01-65, issued October 12, 2001).

<sup>12</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>13</sup> *Ann Buckmaster*, 53 ECAB \_\_\_\_ (Docket No. 00-2480, issued March 15, 2002); *Norman M. Perras*, 49 ECAB 191 (1997).

<sup>14</sup> *Mark A. Cacchione*, 46 ECAB 148 (1994).

take the next step, either of notifying the claimant what additional evidence is needed to fully establish the claim or of developing evidence in order to reach a decision.

The Board finds that this case is not in posture for a decision on whether appellant sustained a recurrence of disability due to his accepted right knee condition.

Initially, the Board notes that it is unclear what the status of appellant's recurrence claim for his right knee condition in the Office's May 29, 2001 decision. In addition, the Office stated that "since [appellant] has asserted that the continuing effects of his employment after the 1993 claim affected his condition, the decision of the Office dated September 7, 2000 represents clear evidence of error on the part of the Office and it is vacated in favor of the previous decision of the Office issued July 7, 1999." However, in concluding the Office stated that it denied appellant's request for modification and fails to mention that the September 7, 2000 decision was vacated regarding the right knee condition. It is also unclear whether the Office was rescinding acceptance of the right knee claim when it vacated the prior decision. As the claimant's attorney correctly contends, the Office has failed to adjudicate appellant's recurrence claims as well as whether he sustained any consequential injury to his right elbow due to his accepted condition. The Office also did not adjudicate, as appellant's attorney contends on appeal, whether appellant sustained a recurrence of disability in April 1999 when his limited-duty job was taken away when he attempted to return to work.

On remand, the Office should consolidate claim numbers 02-0668470, 02-0756330 and retrieve the retired June 19, 1982 claim no. 02-0497039 and place these claims under the master claim of 02-756330.<sup>15</sup> Once the claims have all been consolidated, the Office should refer the case for a second opinion as to whether appellant sustained a recurrence of disability due to his accepted condition and whether he sustained a consequential injury.

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<sup>15</sup> The Board notes that the Office accepted a neck sprain due to an injury sustained on June 11, 1993 and assigned it claim number 02-0664236. The record also indicates appellant sustained injuries dating from September 15, 1980. Appellant's prior claims number 02-0465283 with a date of injury as September 15, 1980; claim number 02-0497039 with a date of injury as June 19, 1982; claim number 02-0505057 with a date of injury as December 3, 1982; and claim number 02-0509577 with a date of injury of March 9, 1983.

The May 29, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further development consistent with the above decision.

Dated, Washington, DC  
January 9, 2003

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member