U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT CAFARELLI and U.S. POSTAL SERVICE,
POST OFFICE, Manchester, NH

Docket No. 02-1569; Submitted on the Record;
Issued July 8, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of total disability; and (2) whether appellant sustained an emotional condition causally related to his federal employment.

On October 17, 1990 appellant, then a 42-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on September 25, 1990 he injured his right knee when he walked into a sharp edged table. In a November 13, 1990 report, Dr. James Shea, an orthopedist, diagnosed right knee derangement and recommended that appellant work a sedentary position.

In a November 23, 1990 decision, the Office of Workers' Compensation Programs accepted appellant's claim for right knee contusion. In a March 27, 1991 letter, the Office authorized arthroscopic surgery. On June 18, 1991 appellant returned to sedentary work, though he continued to experience pain in his knee. In a September 6, 1991 letter, the Office authorized a second surgery for a partial medial meniscus tear.

On October 21, 1992 appellant filed a recurrence claim alleging that his right knee continued to hurt and that he could no longer perform his sedentary truck driving position. In an October 21, 1992 report, Dr. Paul Harper a general surgeon, diagnosed internal derangement of the right knee secondary to an industrial accident and recommended that appellant have a desk job. In a March 29, 1993 report, Dr. William J. Kilgus, an orthopedic surgeon, diagnosed a chondromalacia of the right patella. On April 13, 1993 appellant stopped work due to severe pain in his right knee. He returned to work on April 22, 1993.

In a May 24, 1993 decision, the Office accepted internal derangement of the right knee. In an August 20, 1993 letter, the Office authorized a right knee debridement that was performed on September 14, 1993.

In a March 29, 1994 report, Dr. Kilgus diagnosed degenerative joint disease of appellant's right knee. In a July 25, 1994 report, Dr. Kilgus indicated that appellant continued to have pain in his right knee but could return to limited-duty work. His restrictions included sedentary work with no commute exceeding 15 minutes each way.

In reports dated January 15 and October 23, 1995, January 26 and August 2, 1996 Dr. Kilgus diagnosed severe pain of appellant's right knee due to degenerative joint disease. He recommended conservative treatment.

In an October 7, 1996 decision, the Office authorized arthroscopic debridement of the right knee and a partial medial meniscectomy that was performed on September 24, 1996. On December 9, 1996 appellant returned to work as a full-time clerk typist and back up receptionist.

In May 16, 1997 report, Dr. Kilgus diagnosed traumatic right knee degenerative arthritis that would worsen until a total knee replacement was required. He restricted appellant to working four hours a day. In an October 9, 1997 report, Dr. Kilgus allowed appellant to work six hours a day. In a December 16, 1997 report, Dr. Kilgus found that appellant has a 20 percent permanent impairment to his right knee.

Appellant received a schedule award for 20 percent permanent impairment to his right lower extremity covering the period April 24, 1997 through April 3, 1998. In a December 18, 1999 report, Dr. Kilgus wrote that he had been treating appellant conservatively for five years with physical therapy, home exercises and anti-inflammatory medications and work restrictions and that appellant had undergone three surgeries, yet the pain persisted. Periodic radiographic examinations revealed evidence of worsening degeneration of the knee joint, with limited range of motion and mild instability. He indicated that appellant's complaints of chronic intermittent joint swelling with joint fusions was consistent with severe degenerative arthritis of the right knee joint. He did not expect appellant's condition to improve and in his opinion appellant could no longer perform the duties required of him at the employing establishment and was permanently disabled.

On December 22, 1999 appellant stopped working and filed a notice of occupational disease and claim for compensation (Form CA-2) alleging stress caused by his knee condition. In a December 21, 1999 letter, appellant wrote that his knee pain was so severe that it "is on my mind all the time and does not allow me to concentrate on anything else … making it impossible to do my job."

In a January 27, 2000 letter, the Office requested more information. In a January 11, 2000 report, Dr. Elizabeth Blencowe,[1] a psychiatrist, diagnosed major depression, recurrent and anxiety disorder due to a painful arthritic right knee which has caused a loss of self-esteem, anxiety (and) made it difficult for appellant to concentrate at work. Dr. Blencowe also indicated that appellant's condition caused considerable stress in his marriage due to his inability to work actively.

[1] The signature on this letter is from Dr. Elizabeth Terry. Subsequent reports are from this physician are signed Dr. Elizabeth Blencowe.

In a March 14, 2000 report, Dr. Blencowe wrote that appellant has been struggling with chronic pain due to his knee problems that have caused him considerable mental stress. He has been assigned desk duty, which has little actual work to do on a daily basis. She wrote that appellant has been unable to work as a letter carrier due to his physical disability and has been severely stressed by not only his chronic pain problem from his knee but also the lack of productive structure to his day due to a lack of actual work assignments in his current status with the employing establishment. This situation has caused him more depression and anxiety. She further indicated that appellant had previously received treatment for depression and anxiety at her clinic in 1992 when he was having problems with a supervisor at work.

In an April 13, 2000 decision, the Office denied appellant's stress claim finding the medical evidence insufficient to establish that his emotional condition was causally related to his accepted condition.

Appellant requested a hearing. At the hearing appellant testified that he quit working due to the pain in his knee and the mental stress that accompanied living with the constant pain. He said that the pain was constantly on his mind, impairing his ability to concentrate. He emphasized that he did not quit work because he was unhappy with his job assignment, but that too contributed to his stress.

Appellant said he was underutilized at work as he was the back up receptionist, that his schedule was changed from starting his six-hour day at 6:00 a.m. to starting at 11:00 a.m., resulting in more time spent on his knee as the pain worsened throughout the day. He also said that his later schedule prevented him from participating in family activities because he had to ice his knee after work. Appellant also indicated that he was stressed by how his claim was being handled and the financial burden resulting from it. He further indicated that he was not comfortable with the receptionist he was backing up, including the fact that he had to sit a few feet from her when she had indicated that she wanted to get rid of him. The hearing representative indicated that he would rule on both appellant's stress claim and make an initial finding on a recurrence claim effective December 22, 1999.

In a May 5, 2000 report, Dr. Kilgus wrote that until December 22, 1999 appellant was working four hours a day in a sedentary position, which appellant was unaccustomed to and found it extremely difficult to get used to, and that he was in extreme knee pain when he tried to do other things. He further indicated that a change in mental status often occurs when a life altering injury occurs. He wrote that appellant had four surgical procedures on his right knee, yet his condition continued to deteriorate. He added that appellant could no longer carry out activities he used to perform with ease, causing a loss in self-esteem, depression and anxiety. He further noted that appellant's knee condition had clearly worsened, due to work activities such as climbing stairs and prolonged standing. When he examined appellant on May 1, 2000 he demonstrated significant changes from prior examination of two years before. His range of motion had significantly decreased from a -10 degrees of full extension to only 100 degrees of flexion. Pain was noted on extremes of motion, with tenderness both anteriorly and medially. Joint swelling was present. Three quarters atrophy was noted on the right quadriceps muscle group with crepitation on flexion and extension. He indicated that appellant walked with a limp, which he had not done previously. In conclusion, Dr. Kilgus wrote that in his opinion appellant's emotional disorder was clearly the result of the injury that began on September 25,

1990 and there is a clear causal relationship between his symptoms and that accident. He added that appellant is clearly unable to perform the duties required of him at the employing establishment and is permanently disabled from them. He indicated that there would be no improvement and no recovery and that a gradual deterioration would occur.

In a February 28, 2001 decision, the hearing representative denied both appellant's stress claim and that a recurrence occurred on December 22, 1999. The stress claim was denied because the medical evidence did not show with objective evidence that appellant's condition was a result of his right knee condition and not other factors. The recurrence claim was denied because Dr. Kilgus' report did not demonstrate that he knew appellant's job duties; nor did he explain why appellant could not perform these duties.

Appellant requested reconsideration and submitted a report from Dr. Blencowe. In his request appellant argued that the hearing representative had made some factual errors regarding the record and that he had never filed a recurrence claim.

In her July 26, 2001 report, Dr. Blencowe wrote that she supported appellant's total disability claim. She diagnosed major depression, recurrent and anxiety disorder. She indicated that appellant has been struggling with chronic pain due to his knee problem which specifically caused him considerable mental stress. The chronic pain and disability from the injury to his right knee had specifically caused his psychiatric problems. She attributed his emotional condition to his inability to function physically, or work, as well as the ongoing stress associated with being in chronic pain. "The pain and disability of his right leg caused his inability to work or function and that is very injurious to his self-esteem and has caused depression and anxiety."

In a March 7, 2002 decision, the Office denied modification of its previous decisions finding that the medical evidence lacks a rationalized explanation of how appellant's medical conditions prevented him from performing his restricted job duties.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of total disability on December 22, 1999.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

In support of his recurrence claim, appellant submitted a December 17, 1999 report from Dr. Kilgus in which he summarizes appellant's medical history and opines that appellant is totally disabled. Although the report was near the time appellant stopped working, Dr. Kilgus had last seen appellant on March 31, 1998; more than a year before he stopped working.

[2] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

In his May 5, 2000 report Dr. Kilgus indicated that appellant demonstrated significant changes from prior examination of two years before. He indicated that appellant's range of motion had significantly decreased from a –10 degrees of full extension to only 100 degrees of flexion. Pain was noted on extremes of motion, with tenderness both anteriorly and medially. Joint swelling was present. Three quarters atrophy was noted on the right quadriceps muscle group with crepitation on flexion and extension. He further indicated that as a result of such work activities as climbing stairs appellant walked with a limp, which he had not done previously and that he felt appellant was totally disabled.

A critical issue is whether appellant sustained a recurrence of total disability effective December 22, 1999. While Dr. Kilgus' reports are clear that he believed appellant was totally disabled and that opinion is supported by objective evidence that appellant's knee condition had worsened, his opinion is based on March 31, 1998 and May 1, 2000 examinations; they do not clearly address appellant's condition as of December 22, 1999. As his May 1, 2000 report was more than five months after the date appellant stopped working and does not specifically address appellant's condition at the time he stopped work, it does not establish a recurrence of disability as of December 27, 1999. Additionally, Dr. Kilgus' May 1, 2000 report does not clearly explain how the worsening of appellant's condition was causally related to the employment injury. Finally, Dr. Kilgus indicates that appellant's knee worsened due to activities such as climbing stairs, suggesting a new injury and not a recurrence. As a result of these defects, appellant has not met his burden of proof to establish a recurrence of total disability.

The Board further finds the case is not in posture for decision on the issue of whether appellant sustained an emotional condition as a consequence of his accepted knee injury.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[6]

The basic rule respecting consequential injuries, as expressed by Larson is, "when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment."[7] The subsequent injury " is compensable if it is the direct and natural result of a compensable primary injury."[8]

With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.[9]

Appellant alleged that chronic pain due to his accepted right knee condition caused him stress which resulted in his disability for work. Appellant submitted medical evidence condition as a consequence of his accepted knee injury. In a January 11, 2000 report, Dr. Blencowe, a psychiatrist, diagnosed appellant with major depression, recurrent and anxiety disorder due to a painful arthritic right knee which has caused a loss of self-esteem, anxiety and made it difficult to concentrate at work. In a March 14, 2000 report, Dr. Blencowe wrote that appellant has been struggling with chronic pain due to his knee problems that have caused him considerable mental stress.

In a July 26, 2001 report, Dr. Blencowe wrote that she supported appellant's total disability claim. She diagnosed major depression, recurrent and anxiety disorder. Dr. Blencowe indicated that appellant has been struggling with chronic pain due to his knee problem which specifically caused him considerable mental stress. The chronic pain and disability from the injury to his right knee has specifically caused his psychiatric problems. The pain and disability of his right leg, caused his inability to work or function and has been very injurious to his self-esteem and caused depression and anxiety.

The Office found that these reports did not provide a statement of objective findings on examination and testing that would prove that appellant's anxiety and depression exist, are causally related to the accepted injury and not his left knee injury or dissatisfaction with his work assignment and that it disabled him from his limited-duty job assignment.

The fact that these reports contain deficiencies preventing appellant from discharging his burden of proof by the weight of the reliable, probative and substantive evidence that he sustained an emotional condition does not mean that they may be completely disregarded by the

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] Larson, *The Law of Workers' Compensation* § 13.00.

[8] *Id.* at § 13.11.

[9] *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

Office; it merely means that their probative value is diminished.[10] Under such circumstances, the reports are sufficient to require further development of the record.[11]

On remand, the Office should develop the medical record as to whether appellant's accepted injury contributed to his emotional condition and whether that condition has caused him to be disabled from his modified-job assignment on December 22, 1999.

The decision of the Office of Workers' Compensation Programs dated March 7, 2002 is affirmed, in part, and remanded, in part, for development consistent with these findings.

Dated, Washington, DC
July 8, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *See Joseph R. Guay*, 35 ECAB 455, 460 (1983).

[11] *See Horace Langhorne*, 29 ECAB 820 (1978).