

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ANGELO R. BERARDI, Appellant**

**and**

**U.S. POSTAL SERVICE, RED HOOK  
STATION, Brooklyn, NY, Employer**

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**Docket No. 05-921  
Issued: August 17, 2005**

*Appearances:*  
*Thomas S. Harkin, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 11, 2005 appellant, through counsel, timely filed an appeal from a December 23, 2004 decision by the Office of Workers' Compensation Programs which denied modification of a December 1, 2003 decision, which denied his claim for a recurrence of total disability for the period August 5 to September 6, 2003. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether appellant has established that he sustained a recurrence of total disability for the period August 5 to September 6, 2003 due to his accepted August 12, 2002 employment injury.

**FACTUAL HISTORY**

On August 12, 2002 appellant, a 35-year-old truck driver, filed a traumatic injury claim alleging that he injured his right leg and knee that day when his foot got stuck and he fell backwards. The Office accepted the claim for right knee sprain and paid compensation for total

disability for the period September 27, 2002 to February 7, 2003. Appellant was placed on the periodic rolls for temporary total disability effective February 8, 2003. The Office authorized right knee arthroscopy and partial medial meniscectomy, which was performed on March 11, 2003. He also received physical therapy for the right knee. Appellant accepted a limited-duty job offer working eight hours per day and returned to work on April 14, 2003.

In an August 4, 2003 progress note, Dr. Joseph Giovinazzo, a treating Board-certified orthopedic surgeon, reported that appellant stated that he continued to have “a lot of pain along the medial aspect of the right knee.” A physical examination revealed that appellant was “very tender over the medial aspect of his knee.” Appellant related that he fell and injured his left calf area when his knee gave way on him.

Dr. Giovinazzo reported that appellant continued to have pain in his right knee in an August 18, 2003 progress note. He observed that appellant requested that a note be sent to the employing establishment regarding his job.

On September 16, 2003 the Office received appellant’s claim for a recurrence of total disability for the period August 5 to September 6, 2003.<sup>1</sup> The Office also received appellant’s acceptance on September 6, 2003 of a new limited-duty position working four hours per day.

On September 29, 2003 the Office received a September 22, 2003 duty status report (Form CA-17) by Dr. Stephen J. Pollack, a treating Board-certified orthopedic surgeon, who diagnosed chondromalacia and indicated that appellant was unable to work.

By decision dated December 1, 2003, the Office denied appellant’s claim of a recurrence of total disability from August 5 to September 6, 2003.

Appellant, through counsel, requested reconsideration of the denial of his claim and submitted an October 7, 2004 report by Dr. David A. Drucker, a treating physician, who related the history of appellant’s August 12, 2002 employment injury and subsequent medical treatment and surgery. Dr. Drucker noted that appellant was seen by Dr. Giovinazzo on August 4, 2003 for complaints “of severe pain along the medial aspect of the knee.” Dr. Drucker diagnosed post-traumatic lateral and medial meniscal tears and chondromalacia of the knee due to the August 12, 2002 employment injury. With regard to appellant’s claim of disability, Dr. Drucker stated that appellant’s disability beginning on approximately August 5, 2003 was a result of injuries and conditions sustained on August 12, 2002. He provided no further explanation.

By decision dated December 23, 2004, the Office denied modification of the December 1, 2003 decision on the grounds that the medical evidence failed to establish that his disability was due to the August 12, 2002 employment injury. The Office found the evidence insufficient to establish that his condition had worsened such that he was unable to perform the duties of his limited-duty job.

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<sup>1</sup> On November 3, 2003 the Office received a recurrence claim for disability beginning October 28, 2003, which the Office accepted. Appellant subsequently filed a claim for a recurrence of disability beginning January 8, 2004, which the Office accepted.

## LEGAL PRECEDENT

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 establishes that the employee 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 to show that he 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.<sup>2</sup>

## ANALYSIS

In this case, the Office accepted that appellant sustained an employment-related right knee sprain on August 12, 2002 and authorized right knee arthroscopy and partial medial meniscectomy, which was performed on March 11, 2003. Following the March 11, 2003 surgery appellant returned to limited-duty work on April 14, 2003. He claimed compensation for total disability for the period August 5 to September 6, 2003.

The relevant medical evidence of record which addressed appellant's disability for the period August 5 to September 6, 2003 consists of progress notes dated August 4 and 18, 2003 by Dr. Giovinazzo, a September 22, 2003 duty status report by Dr. Pollack and an October 7, 2004 report by Dr. Drucker.

Dr. Giovinazzo reported that appellant complained of pain in his right knee. On August 4, 2003 a physical examination revealed that appellant was "very tender over the medial aspect of his knee." Appellant also related that he fell and injured his left calf area when his knee gave way on him. On August 18, 2003 the physician noted that appellant requested that a note be sent to the employing establishment regarding his job. The progress notes by Dr. Giovanni are not probative with regard to appellant's alleged disability as they do not address the issue of whether appellant became totally disabled during the claimed period.

Dr. Drucker related the history of appellant's August 12, 2002 employment injury and subsequent medical treatment and surgery. He diagnosed post-traumatic lateral and medial meniscal tears and chondromalacia of the knee due to the August 12, 2002 employment injury. However, he provided no rationale for relating appellant's newly diagnosed conditions of chondromalacia and lateral medial meniscal tear to the injury of August 12, 2002. Rather, he made conclusory statements that they were due to the August 12, 2002 employment injury. When a physician diagnoses new conditions arising from the accepted employment injury, he must explain how appellant's newly diagnosed conditions are physiologically related to the employment injury and provide medical evidence of bridging symptoms between appellant's present condition and the accepted injury which support the conclusion of a causal relationship.<sup>3</sup> Dr. Drucker provided insufficient rationale to explain the causal relationship between appellant's

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<sup>2</sup> *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); see also *Terry R. Hedman*, 38 ECAB 222 (1986). The term "recurrence of disability" is defined at 20 C.F.R. § 10.5(x).

<sup>3</sup> *Mary A. Ceglia*, 55 ECAB \_\_\_\_ (Docket No. 04-113, issued July 22, 2004).

current conditions and the original injury. Therefore, his opinion is of diminished probative value. Dr. Drucker provides a conclusory statement with regards to appellant's disability for the period in question. The Board has found that a conclusory statement without supporting rationale is of limited probative value and is insufficient to discharge appellant's burden of proof.<sup>4</sup>

Appellant returned to a light-duty position after an accepted employment injury. He has the burden to establish by the reliable, probative and substantial evidence a recurrence of the total disability and to show that he could not perform that light duty. Appellant is required to show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the job requirements. No evidence was presented with regard to a change in appellant's job requirements or that he was required to perform duties outside of his job restrictions. The medical record in this case lacks a well-reasoned narrative from appellant's physicians relating appellant's claimed recurrent condition to the August 12, 2002 employment injury.

The Board finds that appellant failed to sustain his burden of proof in establishing that he was totally disabled due to his accepted employment condition from August 5 to September 6, 2003.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of disability from August 5 to September 6, 2003 causally related to his accepted August 12, 2002 employment injury.

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<sup>4</sup> *Marilyn D. Polk*, 44 ECAB 673 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 23, 2004 is affirmed.

Issued: August 17, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board