

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of OLGA NUCIGLIO and DEPARTMENT OF THE TREASURY,  
BUREAU OF CUSTOMS, Philadelphia, Penn

*Docket No. 97-474; Submitted on the Record;  
Issued October 22, 1998*

---

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the appellant sustained a recurrence of disability as of April 8, 1988 causally related to her accepted July 28, 1987 hand and knee injury.

The present case was before the Board on prior appeal. By decision dated April 29, 1991, the Board found that appellant failed to meet her burden of establishing that her disability commencing April 8, 1988 was causally related to her July 28, 1987 employment injury, and that the Office of Workers' Compensation Programs met its burden of proof in rescinding its acceptance of neuroma and patellar tendinitis of the left knee as conditions caused by the July 28, 1987 employment injury.

Appellant, a 35-year-old customs inspector, injured both knees and the palms of her hands on July 28, 1987. Appellant filed a claim for compensation based on loss of wages from April 8 through April 29, 1988, which the Office ultimately accepted on September 11, 1989 for multiple lacerations and contusions to both knees and the palms of her hands, neuroma of the left knee, and jumper's patellar tendinitis, left knee. The Office noted, however, that the injury resulted in no lost time or medical expenses, and advised appellant that additional medical evidence was required to support periods of disability. Although appellant submitted additional medical reports, the Office denied her claim by decision dated March 1, 1990, finding that the weight of the medical evidence failed to establish that her April 8, 1988 recurrence was causally related to her July 28, 1987 employment injury. The Office also rescinded its prior acceptance of neuroma and patellar tendinitis of the left knee as work-related conditions. The Office reaffirmed this determination in decisions dated June 8 and October 2, 1990, and, as discussed above, the Board affirmed the Office's decisions in its April 29, 1991 decision and order.

In decisions dated November 10, 1992, April 26, 1994 and August 1, 1995, the Office denied appellant's requests for reconsideration, finding that the evidence submitted was not sufficient to warrant modification of its June 8, 1990 decision.

By letter dated July 9, 1996, appellant's attorney requested reconsideration of the Office's most recent decision. Accompanying the letter were medical reports from Dr. Mario J. Arena, a Board-certified orthopedic surgeon, dated February 2 and December 15, 1995 and January 11, 25, 29 and March 13, 1996, plus hospital reports dated April 11, 1988 and February 23, 1989.

In a decision dated October 8, 1996, the Office denied reconsideration of its previous decision, finding that the evidence appellant submitted in support of her request was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has not sustained a recurrence of disability as of April 8, 1988 causally related to her accepted July 28, 1987 hand and knee injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>1</sup>

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her disability for work as of April 8, 1988 to her July 28, 1987 employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only new medical evidence which appellant submitted were the medical reports from Dr. Arena, which described appellant's complaints of knee pain and related appellant's history of injury, but did not include a rationalized, probative medical opinion indicating that her claimed back condition or disability as of April 8, 1988 was caused or aggravated by the accepted July 28, 1987 employment injury.<sup>2</sup>

As there is no medical evidence addressing and explaining why the claimed condition and disability as of April 8, 1988 was caused or aggravated by her July 28, 1987 employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.

---

<sup>1</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>2</sup> *William C. Thomas*, 45 ECAB 591 (1994).

The October 8, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
October 22, 1998

David S. Gerson  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member