

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYUNG S. KIM and U.S. POSTAL SERVICE,
POST OFFICE, St. Paul, Minn.

*Docket No. 97-2196; Submitted on the Record;
Issued June 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant's disability from December 9 through 10, 1993, from February 22 through 23, 1994 and from April 20 through 22, 1994 is causally related to her employment injury of October 11, 1985; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's October 31, 1996 request for reconsideration.

On October 11, 1985 appellant, a city carrier, sustained an injury while in the performance of her duties when she pulled out a hamper and it fell down toward her knee. The Office accepted her claim for the conditions of left knee contusion and lateral ligament strain, and it approved a surgical lateral retinacular release. Appellant received compensation for periods of disability through August 5, 1988. She received schedule awards from November 21, 1986 to June 10, 1987 and from May 18 to August 26, 1990.¹

On March 15, 1995 appellant filed a claim for compensation for 32 hours of wage loss from December 9 through 10, 1993 and from February 22 through 23, 1994. On May 2, 1994 she filed a claim for compensation for 24 hours of wage loss from April 20 through 22, 1994.

On December 14, 1993 Dr. Richard C. Strand, appellant's attending orthopedic surgeon, reported that he saw appellant that date. He stated that appellant had injured her left knee when she fell in an icy parking lot on her way to work one morning.² He noted some swelling and ecchymosis. Appellant had identified the area of the blow as the medial femoral condyle, medial retinacular area. Dr. Strand stated that appellant was off work for two days but was back and doing fairly well. He felt that appellant had a contusion to her medial retinaculum, which would

¹ The record shows that appellant sustained other employment injuries on May 20, 1986 (she sprained her left knee and ankle when she slipped and fell) and on August 12, 1986 (she strained her left knee when a sack of mail struck her).

² Appellant clarified that she fell on December 2, 1993 when she "went out to AMF for the test that night."

resolve by itself with some time. He completed a work and activity release indicating that appellant could not work on December 9 and 10, 1993 “due to her left knee injury.”

On February 22, 1994 Dr. Strand reported that appellant was still complaining of some pain in her left knee on the anterolateral aspect of the proximal tibia “where she fell and bumped it.” He treated appellant with a shot of Cortisone and kept her off work through February 23, 1994.

On March 15, 1994 Dr. Strand diagnosed chondromalacia of the left patella.

On April 19, 1994 Dr. Strand reported that appellant was continuing to complain of pain in the medial aspect and on the superior lateral aspect of her patella. He diagnosed contusion to the medial retinaculum and pes anserine tendinitis, gave her another shot and kept her off work several days.

In a report dated June 24, 1994, Dr. Strand related appellant’s left knee condition to her employment injury of October 11, 1985 as follows:

“[Appellant] has been seen in our office for a long time for treatment of her knee. She has always been seen for a left knee injury which occurred October 11, 1985. She has not been seen for any subsequent injuries or problems other than that knee and it is my opinion that this treatment which has ultimately been very conservative is related to that original injury and is still causing her current disability problems.”

In a decision dated June 19, 1996, the Office denied appellant’s claims for compensation on the grounds that appellant had not submitted a detailed medical report discussing the causality of the claimed periods of disability to the employment injury of October 1985.

On July 25, 1996 Dr. Strand reiterated that the problems with appellant’s left knee (a known malalignment of the patella and subluxation) were still related to her original problems in 1985: “She has not had any new injury, she is having continuing problems from the original injury, and that it is directly related to that.” Dr. Strand stated that he disagreed with the Office’s decision denying appellant’s claims as the medical records outlined in his records since he had been seeing appellant certainly confirmed that “this is an ongoing problems and has been since the time of the original injury.”

On April 28, 1997 appellant advised the Office that she had requested reconsideration on October 30, 1996 and was wondering whether the Office was still considering it.

In a decision dated May 21, 1997, the Office denied a merit review of appellant’s claim on the grounds that her April 28, 1997 request neither raised substantive legal questions nor included relevant evidence. The Office advised that it could not locate the October 1996 request to which appellant referred in her April 28, 1997 letter.

On May 30, 1997 appellant again requested reconsideration and in support thereof resubmitted the evidence that she stated she originally submitted in October 1996.

Appellant filed an appeal with the Board on June 6, 1997.

In a decision dated June 20, 1997, the Office denied a merit review of appellant's claim on the grounds that the evidence submitted in support thereof was repetitious of evidence previously considered. Under the principles discussed in *Douglas E. Billings*,³ the Office's June 20, 1997 decision, issued while the Board had jurisdiction over the case, is null and void.⁴

The Board finds that the Office properly denied appellant's claims for compensation for wage loss from December 9 through 10, 1993, from February 22 through 23, 1994 and from April 20 through 22, 1994.

A claimant seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁶ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁷

Because the Office accepts that appellant sustained an injury in the performance of duty on October 11, 1985, appellant has the burden of proof to establish that the periods for which she claims compensation are causally related to that employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition or disability and the accepted employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition or disability is related to the injury.⁸

Prior to the Office's June 19, 1996 decision denying her claims for compensation, the only medical opinion evidence that discussed the issue of causal relationship was Dr. Strand's report of June 24, 1994. In that report, Dr. Strand noted that he had seen appellant for a long time for treatment of her knee, that she had always been seen for a left knee injury that occurred on October 11, 1985 and that she had not been seen for any subsequent injury or problems other than for that knee. Appellant's treatment, Dr. Strand reported, was related to that original injury and was still causing her disability problems.

³ 41 ECAB 880 (1990).

⁴ *Oren E. Beck*, 33 ECAB 1551 (1982) (holding that while the appeal was pending before the Board, the Office had no jurisdiction to deny review of the decision appealed).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

This opinion unequivocally supports appellant's claims, but it is of diminished probative value and is insufficient to establish her entitlement to compensation for the periods claimed. The reported continuity of appellant's treatment since the original injury of October 11, 1985 tends to support Dr. Strand's conclusion, but the record contradicts his assertion that appellant had never been seen for any subsequent injury or problems. In his report of December 14, 1993, Dr. Strand himself stated that appellant injured her left knee when she fell in an icy parking lot. Appellant acknowledged this fall and clarified its circumstances. It appears that she sought medical care from Dr. Strand after falling in an icy parking lot on December 2, 1993 and that she missed work on December 9 and 10, 1993 as a result. Dr. Strand failed to account for this injury when he rendered his opinion on June 24, 1994. Because he did not base his opinion on an accurate history, the Board finds that his opinion is of diminished probative value.⁹

Further, Dr. Strand did not fully explain from a medical standpoint how the incident of October 11, 1985 caused appellant to miss work on December 9 and 10, 1993, on February 22 and 23, 1994 and from April 20 to 23, 1994. He did not discuss the nature of the medical conditions caused by the incident of October 11, 1985 (left knee contusion and lateral ligament strain with subsequent lateral retinacular release) or how such conditions, more than eight years after the incident, caused the seven days of disability for which appellant seeks compensation. It is not necessary that Dr. Strand's explanation be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.¹⁰ Without such an explanation, Dr. Strand's conclusion, although supportive of appellant's claim, is of diminished probative value and is insufficient to establish her entitlement to compensation for the periods claimed. The Board will affirm the Office's June 19, 1996 decision denying appellant's claims for compensation.

Although the Office lacked jurisdiction to issue its June 20, 1997 decision denying reconsideration, it properly exercised jurisdiction in denying reconsideration on May 21, 1997. In that decision, the Office advised that it could not locate the October 1996 request for reconsideration to which appellant referred in her letter of April 28, 1997. The Office denied a merit review of appellant's claim on the grounds that her April 28, 1997 request neither raised substantive legal questions nor included relevant evidence.

A careful review of the record discloses, however, that appellant did in fact request reconsideration in October 1996 and that she submitted copies of medical reports and disability slips from Dr. Strand to support that she was disabled for work for the periods claimed on her claim forms. The Office date stamped this request and supporting evidence as received on October 31, 1996. The request and supporting evidence appear early in the case record at pages 17 through 24, which in a chronological record of nearly 600 pages is not where one would expect to find such evidence and which may account for the Office's failure to locate the request.

⁹ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); see generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹⁰ *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

Regardless, the request and supporting evidence were in the record and before the Office when it issued its May 21, 1997 decision. The Board finds that the Office abused its discretion in denying appellant's request because the basis of its denial rested on the faulty premise that the October 1996 request was not a part of the case record, causing the Office mistakenly to apply the legal standard of review to appellant's April 28, 1997 letter of inquiry, which was not itself a request for reconsideration. As the Office did not properly review appellant's October 1996 request for reconsideration, the Board will set aside the Office's May 21, 1997 decision and remand the case for a proper exercise of discretion and an appropriate final decision on whether to grant a merit review of appellant's claim.

The June 19, 1996 decision of the Office of Workers' Compensation Programs is affirmed. The Office's May 21, 1997 decision is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
June 14, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member