

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL E. CROWDUS and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, Ind.

*Docket No. 97-2678; Submitted on the Record;
Issued June 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are whether appellant was disabled after August 25, 1992 due to his April 21, 1992 employment injury and whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to medical benefits.

The Office accepted that appellant's April 21, 1992 employment injury, in which he slipped on wet grass while performing his duties as a letter carrier, resulted in a right knee strain, internal derangement of the right knee, and surgery on the right knee. Appellant received continuation of pay during his absences from work from April 22 to 26 and May 5 to June 13, 1992, followed by compensation for temporary total disability from June 14, 1992 until he returned to work performing sedentary duty on June 30, 1992. This return to work was consistent with the June 30, 1992 report of his attending physician, Dr. Kevin Scheid, stating that appellant could perform sit-down work only and must use crutches.

In reports dated July 24 and 29, 1992, Dr. Scheid stated that appellant could return to his regular work on August 21, 1992. Appellant returned to his duties as a letter carrier on August 21, 1992 but resigned his position effective August 25, 1992, for the stated reason of "could [not] do work." In a report dated September 28, 1992, Dr. Scheid stated:

"[Appellant] was back today for follow-up and he is getting along okay. I understand since he was here last he returned to his full duty on August 21, 1992 but was having trouble tolerating a full day's work with a full mail load. Apparently, his knee was aching quite a bit under these conditions, although he did not let me know about this. I think I would have recommended a reduction in hours until his stamina had increased or, perhaps, a more gradual return to full duties. He tells me today that he has since lost his job, but it was unclear whether he initiated this or whether the [employing establishment] did. Anyway, with regard to his knee, he has full range of motion today. His strength is still slightly less than the other side but coming along. He has some mild patellofemoral

complaints, which are improving. He has a very mild limp in the office today. If he definitely is not returning to his previous position and needs a permanent partial impairment rating, he is to let me know.”

Based on an Office medical adviser’s review of a December 28, 1992 report from Dr. Scheid, the Office issued appellant a schedule award on June 30, 1993 for a 14 percent permanent loss of use of the right leg. This award was paid from December 28, 1992 to October 6, 1993.

In a letter dated November 15, 1994, appellant asked whether he qualified for compensation for loss of wage-earning capacity. Appellant submitted a November 8, 1993 determination from the employing establishment that he was medically unable to perform the duties of a laborer-custodian due to his right knee condition. By letter dated December 27, 1996, appellant requested that his case be reopened and that he be awarded compensation for disability. He reiterated this request in a February 4, 1997 letter.

By decision dated April 10, 1997, the Office found that the evidence failed to demonstrate a causal relation between appellant’s April 21, 1992 employment injury and his claim for continuing compensation for wage loss. The Office also found that further exploration was needed on the issue of whether appellant was entitled to continuing medical care.

Appellant requested a review of the record, and stated that he resigned both because of his knee condition and because of the way he was treated by the employing establishment on August 21, 1992, with supervisors following him, telling him he was carrying the mail too slowly, and taking mail out of his postal vehicle and putting it in another one.

By decision dated July 23, 1997, an Office hearing representative found that there was no evidence showing that appellant was incapable of performing his job at the time he resigned.

The Board finds that the evidence does not establish that appellant was disabled after August 25, 1992 due to his April 21, 1992 employment injury.

In reports dated July 24 and 29, 1992, appellant’s attending physician, Dr. Scheid, indicated appellant could return to his regular work as a letter carrier on August 21, 1992. Appellant did so, but worked only one day in this capacity before resigning his position. Appellant then did not seek medical treatment until September 28, 1992, when he was again seen by Dr. Scheid. Appellant’s resignation, which he indicated was related to his employment injury and to pressure from the employing establishment, and his failure to seek medical care for over a month following his resignation, make it difficult to definitively determine whether he was disabled after August 25, 1992 due to his April 21, 1992 employment injury. Dr. Scheid’s statement that he would have recommended a reduction in hours or duties, and the employing establishment’s statement that it would have accommodated increased restrictions do not make this determination easier.

Nonetheless, appellant had the burden of proof to show that he could no longer perform the duties he was performing at the time of his resignation.¹ This burden of proof was not met by resigning and contending he could not do his work. Whether an employment injury causes an employee to be disabled for work is a medical issue which must be resolved by competent medical evidence.² Dr. Scheid's September 28, 1992 report is speculative regarding what the doctor would have done had appellant come to him at the time he resigned his position. Even if Dr. Scheid's statement that he would have reduced appellant's hours or duties if he had known appellant's knee was aching while carrying mail on August 21, 1992 is read as a statement that appellant was disabled for carrying mail at that time, it amounts to a repetition of appellant's complaint that he hurt too much to work, which is not a basis for payment of compensation in the absence of objective signs of disability.³ Neither Dr. Scheid's September 28, 1992 report nor his later reports indicating appellant's knee condition had worsened state that appellant was disabled for work. Appellant has not established that he was disabled after August 25, 1992 due to his April 21, 1992 employment injury.

The Board further finds that the Office did not meet its burden of proof to terminate appellant's medical benefits.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.⁵

There is no medical evidence that establishes that appellant no longer has residuals of an employment-related condition which require further treatment. In the most recent medical report in the case record, Dr. Scheid stated in an April 25, 1994 report that appellant's suprapatellar and patellar symptoms at that time were "likely due to significant scar tissue formation under [his] quadriceps tendon and/or traumatic chondromalacia," and that these were "unforeseen sequelae from his injury." As the case record contains no medical evidence stating that appellant no longer needs treatment for residuals of his employment injury, the Office did not meet its burden of proof to terminate appellant's medical benefits.

¹ An employee has the burden of proving that he or she is disabled for work as a result of an employment injury. *David H. Goss*, 32 ECAB 24 (1980).

² *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

³ *John L. Clark*, 32 ECAB 1618 (1981).

⁴ *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

The decisions of the Office of Workers' Compensation Programs dated July 23 and April 10, 1997 are affirmed, in part, finding that appellant had not established that he was disabled after August 25, 1992 due to his April 21, 1992 employment injury, and reversed, in part, with regard to terminating appellant's medical benefits.

Dated, Washington, D.C.
June 16, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member