

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Eatontown, NJ

*Docket No. 00-629; Submitted on the Record;
Issued January 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained a recurrence of disability beginning May 1, 1997 causally related to his accepted November 12, 1995 knee injury; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On November 12, 1995 appellant, sustained an employment-related knee injury when he tripped over a floor mat while entering the employing establishment. On December 8, 1995 the Office accepted appellant's claim for left knee sprain and authorized surgery. Appellant returned to limited duty following the employment injury on April 11, 1996. Appellant was compensated for lost wages from November 13, 1995 to February 16, 1996 and issued a schedule award for 10 percent permanent impairment of the left leg on March 3, 1997.

Appellant filed two recurrence of disability claims on August 7 and 25, 1997 alleging disability beginning May 1, 1997, causally related to the November 12, 1995 employment injury.

The relevant medical evidence submitted includes a note dated July 3, 1997, from Dr. R. Commentucci, an attending physician, who discussed appellant's employment injury on November 12, 1995 and reported that he had also been treating appellant for diabetes mellitus, diabetic neuropathy, edema, tendinitis and phlebitis.¹

In a medical report dated July 14, 1997, Dr. Alfred Greisman, a Board-certified orthopedist, reported that appellant was seen at that time for aching in both knees with swelling in his left leg and in his right. Dr. Greisman noted that appellant had phlebitis with edema, for which he stated appellant was hospitalized in early May. Dr. Greisman gave his assessment of appellant and stated: "[appellant] has significant arthritis in the knees complicated by the entire

¹ Appellant also submitted various medical and radiology reports pertaining to the November 22, 1995 employment injury, of which many had been previously submitted.

picture, with his significant weight, CP [cerebral palsy], lack of exercise and difficulty in getting about. This is a major situational problem.”

In a March 18, 1998 CA-20 report, Dr. Greisman advised that appellant was disabled for regular work for an indefinite period due to the November 12, 1995 employment injury, but provided no explanation regarding the cause of appellant’s condition.

In a March 27, 1998 report addressed to appellant’s counsel, Dr. Greisman reviewed appellant’s November 21, 1995 employment injury and treatment history. He further discussed appellant’s return to work in April 1996 and that appellant continued to be seen every four to six weeks until July 14, 1997. Regarding the July 14, 1997 office visit, Dr. Greisman stated:

“When I last saw the patient ... he complained of aching in both of his knees with swelling in both legs and aching in his hips. X-rays of the hips revealed no significant arthritis, although x-rays of the knees revealed significant bilateral arthritis. He was still significantly overweight at 333 pounds. ... We recommended that he commence weight loss and regular exercises for maintenance of strength in the legs.

“It is within a reasonable degree of medical probability that the rupture of the left quadriceps, the subsequent symptoms, surgery and treatment were directly related to the accident of November 12, 1995. Assuming that the right knee was normal prior to the accident, then we have at least a 20 degree lack of full motion on the left compared to the right. Also, within a reasonable degree of medical certainty, the patient will suffer permanent recurrent pain and discomfort as a result of traumatic arthritis in the left knee as a result of the accident.”

By decision dated July 18, 1998, the Office denied appellant’s recurrence of disability claims.

In a letter dated July 23, 1998, appellant requested an oral hearing. Following a hearing held February 9, 1999, by decision dated March 25, 1999, an Office hearing representative affirmed the July 18, 1998 decision. The Office hearing representative found upon review of appellant’s testimony and the medical evidence, that appellant’s cessation of work on or after May 1, 1997 and subsequent disability was due to his hospitalization for edema as opposed to his accepted knee condition. The Office hearing representative noted that when inquiry was made at the hearing as to who advised appellant to stop work on May 1, 1997, he stated, “[n]o one. That was when I had the edema going wild. I went to the hospital to try to get it down.” The Office hearing representative also noted that when appellant was questioned about the location of his edema he stated, “[s]lightly below the knee all the way through the feet, my feet would go up like balloons.” When appellant was questioned about the cause of his edema appellant stated, “[y]our guess is as good as mine. I have always had over the years I have had a very slight amount but I took a water pill every few days and it would never be a problem. After this accident I just didn’t, I was confined to my house.... It just swelled up.” The Office hearing representative further noted appellant’s testimony that he was in the hospital for 13 days in May and that his physicians later told him to attempt work, however, subsequently advised that his conditions had gotten worse and that he should “give up.” Regarding the medical evidence, the Office hearing representative found that although reports of record addressed permanency and

appellant's possible development of traumatic arthritis due to the accepted employment injury, the evidence failed to discuss a causal relation between appellant's claimed disability beginning May 1, 1997 and the employment injury.

Appellant again requested reconsideration on April 13, 1999 and submitted a supplemental report from Dr. Greisman, addressed to his counsel, dated February 22, 1999. In his report Dr. Greisman stated:

“[W]e really do not have specific information on how [appellant's] condition worsened.

“He was seen by us in the office on July 14, 1997. At that time, he recounted to us that he had developed swelling and pain in the left knee, with him developing phlebitis and edema. He stated that he was hospitalized from May 4 through 14, 1997. We do not know the exact circumstances of that but on your report from [appellant], it is stated that as a result of his returning to work, he was walking long distances to get to his workstation. He was using two canes since the date of his surgery and actually, after his surgery, he was using a walker for a good period of time. ... According to the reporting that I am getting, his left knee continued to bother him and that apparently precipitated his required hospitalization in May 1997.

“The progressive deterioration that he had from when he had last been seen by us on July 3, 1996, his return to work utilizing two canes and how his condition progressed to May 1997, would be best substantiated by whomever had taken care of him for the hospitalization and what the circumstance of that were.”

By decision dated July 29, 1999, the Office denied appellant's request for reconsideration. The instant appeal follows.

The Board finds that appellant failed to establish a recurrence of disability beginning May 1, 1997 causally related to his accepted November 12, 1995 knee injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.²

Causal relationship is a medical issue,³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical

² *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

The medical evidence in this case does not establish that appellant sustained a recurrence of disability beginning May 1, 1997 causally related to the accepted injury. He also has not shown that the nature and extent of his injury worsened due to the November 21, 1995 employment injury or that his light-duty job requirements changed. The record contains medical reports from Dr. Greisman who advised that the rupture of appellant's left quadriceps, the subsequent symptoms, surgery and treatment were directly related to the accident of November 12, 1995. He connected the diagnosed pain, swelling and arthritis in appellant's left knee to the November 12, 1995 employment injury, although he did not attempt to explain the nature and extent of such conditions based on the specific employment incident. Moreover, Dr. Greisman advised that, while appellant suffered pain and arthritis in his left knee related to the November 12, 1995 employment injury, he also indicated various underlying conditions, of which appellant suffered in May 1997, including phlebitis with edema and obesity that "could have" contributed to his disability. Dr. Greisman opinion, therefore, is not sufficiently addressed, as his discussion of appellant's disability commencing May 1, 1997 is speculative in nature. Furthermore, Dr. Greisman stated in his February 22, 1999 report, that he did not have specific information on how appellant's condition worsened and recommended that appellant's progressive deterioration in May 1997 would be best substantiated by a physician who treated him at that time. The Board notes that appellant testified at the February 9, 1999 hearing that he stopped work and was hospitalized in May 1997 due to his edema, which he indicated ultimately caused his subsequent disability from work. As appellant failed to submit rationalized medical evidence relating his current condition to the November 21, 1995 employment injury, he failed to discharge his burden of proof and the Board finds that he failed to establish a recurrence of disability.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office's regulations provide in section 10.606(b)(2) of Title 20 of the Code of Federal Regulations that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁶ Section 10.608(b) provides that when an application for reconsideration does not meet at least

⁴ Gary L. Fowler, 45 ECAB 365 (1994); Victor J. Woodhams, 41 ECAB 345 (1989).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 20 C.F.R. § 10.606(b) (1999).

one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

The Board finds that the Office properly determined that the evidence submitted on reconsideration was insufficient to warrant reopening of appellant's case. Among previously submitted evidence, appellant submitted a medical report dated February 22, 1999 from Dr. Greisman, which appellant argued established that his accepted condition had worsened. The report, however, is repetitive of evidence already of record and does not discuss the cause of appellant's disability commencing May 1, 1997. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.⁸

Appellant's April 13, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim.

The decisions of the Office of Workers' Compensation Programs dated March 25 and July 29, 1999 are hereby affirmed.

Dated, Washington, DC
January 22, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ 20 C.F.R. § 10.608 (1999).

⁸ *Jerome Ginsberg*, 32 ECAB 31 (1980).