

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS P. McKEE and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

*Docket No. 01-676; Submitted on the Record;
Issued October 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established a bilateral knee condition causally related to his federal employment.

On October 28, 1998 appellant, then a 61-year-old mailhandler, filed a claim alleging that arthritis in both knees had been aggravated by his federal employment as a mailhandler. By decision dated June 14, 1999, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence did not establish an employment-related knee condition. In a decision dated January 6, 2000, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not established a bilateral knee condition causally related to his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.² Neither the fact that

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

² *See Walter D. Morehead*, 31 ECAB 188 (1979).

the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.³

In this case, an attending physician, Dr. Jonathan L. Knight, an orthopedic surgeon, noted in an August 12, 1998 report that appellant had a preexisting valgus deformity in his knees, with left knee surgery in 1993 and a bilateral total knee replacement in 1998. Dr. Knight diagnosed bilateral lateral compartment arthritis, and opined that appellant's employment, which included standing on his feet, aggravated his knee condition. In a report dated December 15, 1998, Dr. Knight noted that appellant's work included a history of lifting and twisting activity. Dr. Knight opined that the working conditions and the amount of lifting performed had certainly aggravated the deterioration of the knee.

The Office referred appellant, along with a statement of accepted facts and medical records, to Dr. Allan R. Wilson, an orthopedic surgeon, for examination. In a report dated January 8, 1999, Dr. Wilson provided a history and results on examination. Dr. Wilson opined that appellant's work activities did not aggravate or objectively worsen the preexisting knee condition.

The Office properly found that a conflict in the medical evidence existed. Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁴ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁵

In a report dated April 19, 1999, Dr. James B. Smith, a Board-certified orthopedic surgeon selected as an impartial medical specialist, provided a history and results on examination. Dr. Smith stated in pertinent part:

“[Appellant's] course is entirely typical of primary osteoarthritis. There is, by the statement of the patient and his wife, no history of any injury. Although it is understandable to assume that standing and walking are a causative factor in this disease, there is practically no scientific basis for it. By far the majority of patients undergoing total knee replacements for osteoarthritis have no history of injury, and, except for one report in the literature of a higher incidence of osteoarthritis in farmers, primary osteoarthritis occurs as often in inactive patients

³ *Manuel Garcia*, 37 ECAB 767 (1986).

⁴ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁵ *William C. Bush*, 40 ECAB 1064 (1989). Appellant offers the argument that there was no conflict because the attending physician's report was not of sufficient probative value to create a conflict. The reports of Dr. Knight, however, provide a medical opinion based on an accurate background that supports appellant's claim and is of virtually equal probative value with the opinion of Dr. Wilson. Accordingly, a conflict was properly found in this case.

as it does inactive people. In other conditions in which a joint is subjected to abnormally high loads, such as amputation or polio, there is no increase in the incidence of osteoarthritis in the normal limb.

“The history, physical findings, available radiographs, and review of the medical record show only that this patient had bilateral primary osteoarthritis, and I could find no evidence that it was caused or aggravated by his employment. Therefore, it is my opinion that the patient is not suffering from the residuals of any work-related conditions, is not disabled for his regular employment as a result of employment-related conditions, and has no physical capacity restriction related to his work.”

Dr. Smith provided a reasoned medical opinion, based on a complete background, that appellant’s bilateral knee condition was not causally related to the identified employment factors. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶ The Board finds that Dr. Smith’s opinion is entitled to special weight and represents the weight of the evidence in this case.

The January 6, 2000 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
October 3, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁶ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).