U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL Y. WEBBER and U.S. POSTAL SERVICE,
POST OFFICE, Resida, CA

Docket No. 03-272; Submitted on the Record;
Issued July 25, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for wage-loss compensation for the period October 22 through November 23, 2001.

On June 2, 1992 appellant, then a 27-year-old letter carrier, sustained a traumatic injury in the performance of duty while walking to deliver the mail.[1] Appellant noted her right knee gave out and stated that she had problems with her right knee ever since a work injury of August 1, 1988. The Office accepted the claim for a subluxation of the right patella and bilateral chrondomalacia.

On April 3, 1993 appellant underwent right lateral release for persistent patellofemoral pain. She also had a left knee arthroscopy with lateral and plica resection on February 6, 1996, and a left knee arthrotomy with lateral release and a McKay procedure with tibia tubercle elevation on October 8, 1998. She returned to work in a modified position effective August 31, 1999.

Appellant has been under the care of Dr. Jerome. R. Friedland, a Board-certified orthopedic surgeon, for treatment of her bilateral knee condition. In a report dated July 28, 2000, Dr. Friedland noted that appellant was performing work that was mostly sedentary in nature and that her major complaint was persistent parathesia down the left leg at the graft site, and daily subjective pain for which she used both narcotic and nonnarcotic medication. He noted that appellant continued to wear leg braces for ambulation. Dr. Friedland's impression was listed as "chronic patellofemoral arthritis."

[1] Appellant previously injured her right knee in the performance of duty on August 1, 1988, while being chased by a dog. An October 14, 1988 x-ray revealed a tear in the posterior horn of the medial meniscus. She underwent arthroscopic right knee surgery with a lateral release on April 17, 1988.

In an attending physician's report dated November 28, 2000, Dr. Friedland stated that appellant should continue to work restrictions including no prolonged sitting, walking, kneeling or driving.

In a February 15, 2001 report, Dr. Friedland noted that appellant was working permanent light duty and that she complained of increasing pain of the patellofemoral joint possibly due to the cold and damp weather changes. Dr. Friedland maintained appellant's permanent light-duty status in a subsequent report dated March 19, 2001.

On March 26, 2001 the employing establishment issued an amended rehabilitation job offer for a modified carrier position, which was approved by Dr. Friedland on April 3, 2001. In the modified carrier position, appellant was listed with the following restrictions: intermittent lifting and carry of 10 to 15 pounds, intermittent sitting, standing and walking 1 to 2 hours per day, no climbing, no kneeling, intermittent bending no more than 30 minutes per day and intermittent driving a vehicle from 45 minutes to 1 hour per day.

Appellant accepted the job offer on April 4, 2001 under protest. She also submitted a CA-17 duty status report signed by Dr. Friedland on April 4, 2001. He noted on the CA-17 that appellant was unable to drive more than 30 minutes per day on an intermittent basis.

In an attending physician's report dated September 14, 2001, Dr. Friedland diagnosed chondromalacia due to the June 2, 1992 work injury. He advised that appellant was on permanent light duty, but that she had been off work from September 10 to 14, 2001. His report stated, "No more driving more than 30 minutes per day."

In a report dated October 1, 2001, Dr. Friedland noted that appellant was driving 40 to 45 minutes per day and was experiencing pain in the patellofemoral joint of her left knee. He indicated that with any prolonged sitting and flexing of the knee, especially when driving, appellant felt a lot of pain and discomfort. Physical findings and measurements of the patella were reported. The impression was listed as chronic patellofemoral pain of the left knee. He specifically stated: "It is my opinion that, if the driving in excess of 40 minutes does cause her increasing pain, she should limit her driving to 30 to 35 minutes a day and work at a closer location in order to discontinue the aggravation of the left patellofemoral knee joint."

On October 10, 2001 the employing establishment offered appellant a position as a video coding system technician. It was noted that the job was on the same schedule as appellant's husband therefore she would not have to drive to work. Appellant was further advised that she could sit or stand while at work dependent on how her knee felt during the day.

On November 2, 2001 appellant filed a CA-7 claim for wage-loss compensation from October 22 to November 23, 2001.

In a January 9, 2002 report, Dr. Friedland noted that appellant presented with complaints of bilateral knee pain. He reported that a magnetic resonance imaging scan of the left knee revealed arthritic changes. Dr. Friedland described appellant's work history and work injury. He stated, "I feel she should still maintain a light-duty status, which would basically be driving no more than 30 minutes in one direction with more or less desk-type work, walking only short

distances on an intermittent basis, every hour; avoiding any kind of climbing, squatting or kneeling. Predominantly more sedentary-type work would be advantageous to both her knees."

In a March 29, 2002 decision, the Office denied appellant's claim for compensation for the period October 22 to November 23, 2001.

On April 8, 2002 appellant requested reconsideration of the March 29, 2002 decision. She submitted an October 10, 2001 report from Dr. Friedland, which stated as follows: "[Appellant] has chondromalacia in both knees which makes it quite difficult for her to walk, stand or even sit in a car for more than 30 minutes at a time. There is no alternative transportation for her to get to Santa Clarita from her Palmdale address. If there is a location that is closer to her home that is under 30 minutes, I feel she can do this."

In an attending physician's report dated March 27, 2002, Dr. Friedland diagnosed chondromalacia due to the June 2, 1992 work injury. He stated that she was on permanent light duty with driving only 30 minutes.

In a May 8, 2002 decision, the Office denied modification of the March 29, 2002 decision.

Appellant filed a request for reconsideration on August 6, 2002, and submitted a July 8, 2002 report from Dr. Friedland, who stated: "[I]t would be a hardship for this patient to be stopping to get out of her car during a long drive due to the fact that her knee remains in the same position of flexion while commuting and the rests would be insufficient to break the ongoing pain and discomfort."[2]

In a September 16, 2002 decision, the Office denied modification of its prior decisions.

The Board finds that the Office properly denied appellant's claim for compensation for the period of October 22 through November 23, 2001.[3]

In this case, the Office paid compensation based upon submission of CA-7 or CA-8 forms following appellant's return to work, and as such, appellant maintained the burden of establishing entitlement to continuing disability which was related to the employment injury.[4] Appellant filed a CA-7 claim alleging disability for work from October 22 to November 23, 2001. She alleged that she was unable to physically drive or commute the 30 minutes it took each way to report to duty. Appellant contends that her treating physician advised her not to drive or commute more than 30 minutes each way to and from work.

[2] Appellant submitted physical therapy treatment notes from California Human Performance Center and copies of medical evidence that was already of record.

[3] On September 10, 2001 appellant filed a Form CA-7 claim for wage-loss compensation from September 10 to 14, 2001. In a November 5, 2001 decision, the Office denied compensation for that period. The Board's jurisdiction is limited to those Office decisions issued within one year of appellant's appeal. In this case, appellant's appeal was filed on November 12, 2002; therefore, the Board does not have jurisdiction over the Office's November 5, 2001 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[4] *See Donald Leroy Ballard*, 43 ECAB 876 (1992).

The Board finds that the reports of Dr. Friedland fail to establish that appellant was disabled for work for the period October 22 through November 23, 2001. Dr. Friedland has not found that appellant was disabled for her light-duty job. He noted that appellant complained of increased pain due to driving to work and recommended only that she not drive more than 30 minutes one way to work. Although Dr. Friedland indicated that it would have been a hardship for appellant to stop and get out of the car to stretch her leg during a commute over 30 minutes, he does not specifically discuss any objective findings to support a claim of disability. He notes that appellant would have experienced discomfort and pain" but pain is a subjective finding and does not establish disability for work. As noted by the Office, Dr. Friedland essentially provided a prophylactic restriction intended to prevent an increase in appellant's symptoms of pain, by restricting her commuting time to less than 30 minutes a day. However, the fear or possibility of further injury is not compensable.[5]

The Board has held that to establish entitlement to compensation, an employee must establish through competent medical evidence that disability from work resulted from the employment injury.[6] Appellant has the burden to demonstrate her disability for work based on rationalized medical opinion evidence.

The Board finds that Dr. Friedland has not provided a rationalized opinion stating that appellant is unable to perform her light-duty job. He has not stated that appellant was disabled for work from October 22 to November 23, 2001. Because appellant has not provided a rationalized opinion supporting her disability for work for the period in question, the Office properly denied appellant's claim for wage-loss compensation.

The decision of the Office of Workers' Compensation Programs dated September 16, 2002 is hereby affirmed.

Dated, Washington, DC
July 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[5] *Carlos A Marrero*, 50 ECAB 117 (1998); *Mary A. Geary*, 43 ECAB 300 (1991).

[6] *Gerald S. Chase*, 44 ECAB 572 (1993).