

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FREDERICK WILLIAMS and U.S. POSTAL SERVICE,  
POST OFFICE, Frankfort, Ky.

*Docket No. 96-1894; Submitted on the Record;  
Issued August 6, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to compensation for wage loss during the period October 27 to December 5, 1989.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a right knee sprain in the performance of duty on August 14, 1989. The record indicates that appellant had been working light duty at the time of the injury due to a nonemployment-related left knee injury. In a note dated August 22, 1989, Dr. R. Van Bussum, an employing establishment physician, diagnosed right knee sprain and indicated that appellant could case mail or drive, but could not walk his route. Appellant continued to work in a light-duty capacity until he underwent left knee surgery on October 3, 1989. In a note dated October 31, 1989, Dr. Van Bussum recommended additional physical restrictions, including limitations on standing and no climbing, lifting, bending or stooping. The employing establishment indicated that it did not have light-duty work within the new physical restrictions.

On March 13, 1992 appellant filed a claim for compensation (Form CA-7) for the period October 27, 1989 to January 31, 1990. By decision dated April 21, 1993, the Office found that appellant had not established an employment-related disability from October 27, 1989 to January 3, 1990. In a decision dated February 29, 1996, an Office hearing representative modified the prior decision, finding that appellant had established entitlement to compensation from December 6, 1989 to January 31, 1990, but had not established any employment-related disability from October 27 to December 5, 1989.

The Board has reviewed the record and finds that appellant has not established an employment-related disability from October 27 to December 5, 1989.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of

reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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.<sup>1</sup>

In the present case, the record indicates that appellant returned to work in a light-duty position following his August 14, 1989 employment injury to his right knee. He stopped working in order to undergo surgery on his left knee on October 3, 1989. The attending physician, Dr. Edward Leslie, an orthopedic surgeon, indicated in a treatment note dated October 25, 1989 that appellant's left knee was doing well, noted that appellant was having more pain in the right knee than the left knee, and stated that appellant "may return to work." In a note dated October 27, 1989, Dr. Leslie indicated that appellant was released to light duty on November 30, 1989. Dr. Leslie stated in his deposition testimony on July 8, 1992 that the release date was in error and he probably meant October 30, 1989. In any case, Dr. Leslie does not provide an opinion that appellant had any disability for the light-duty position as of October 27, 1989 causally related to the employment injury. He noted pain in the right knee on October 25, 1989, but also stated that appellant was able to return to work. The Board finds that the notes from Dr. Leslie do not establish entitlement to compensation for wage loss commencing October 27, 1989.

Appellant was treated by the employing establishment physician, Dr. Van Bussum, on October 31, 1989. His treatment note discusses only the left knee, noting that appellant was status post-arthroscopic surgery, and the left knee was healing well, with slight tenderness. The Board notes that the Office has not accepted a left knee injury related to the August 14, 1989 employment incident, nor is there medical evidence to establish a left knee injury in the performance of duty on August 14, 1989. In his disability note dated October 31, 1989, Dr. Van Bussum describes the injury as a left knee injury, checks a box indicating that the injury is not employment related, and recommends light duty with specific limitations, including 20 to 30 minutes per hour of standing per hour and no lifting. These limitations are more restrictive than those imposed by Dr. Van Bussum on August 22, 1989, but the available evidence indicates that the restrictions were based on the left knee, not on the employment injury to the right knee. Moreover, the employing establishment clearly indicated that the lack of a light-duty position for appellant was based on the new restrictions imposed by Dr. Van Bussum. There is no indication that the light-duty job appellant had been performing prior to his left knee surgery was unavailable.

Accordingly, the Board finds that appellant has not established 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, which would establish entitlement to compensation for wage loss during the period October 27 to December 5, 1989.

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

The decision of the Office of Workers' Compensation Programs dated February 29, 1996 is affirmed.

Dated, Washington, D.C.  
August 6, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member