

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY A. SMITH and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, Va.

*Docket No. 96-2029; Submitted on the Record;
Issued August 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant had any disability on October 21 and October 28, 1993 causally related to her March 26, 1991 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant is entitled to compensation for October 21 and 28, 1993.

The facts in this case indicate that on March 26, 1991 appellant, then a 34-year-old shipfitter work leader, sustained an employment-related right knee strain. She stopped work that day, returned on April 1, 1991, missed intermittent periods thereafter and received appropriate continuation of pay and compensation. On December 16, 1991¹ she filed a recurrence claim, stopped work that day due to recurring pain and received compensation for intermittent work absences for the period September 5, 1991 to February 6, 1992. On June 1, 1992 and May 31, 1993 appellant requested a change in physicians. By letter dated September 3, 1993, the Office of Workers' Compensation Programs approved the request. On October 29, 1993 appellant filed a claim for compensation for four hours on October 21, 1993 and four hours on October 28, 1993. In a November 15, 1993 letter, the Office informed appellant that she needed to submit "bridging" medical information regarding the causal relationship between her condition commencing on October 28, 1993 and the March 26, 1991 employment injury. Appellant submitted additional evidence and by decision dated February 4, 1994, the Office denied the claim, finding that the medical evidence of record failed to establish that appellant's disability on or after October 21, 1993 was causally related to her March 26, 1991 employment injury. Appellant timely requested reconsideration and submitted additional medical evidence. By decision dated December 13, 1995, the Office declined to modify the prior decision. The instant appeal follows.

¹ The record indicates that she had returned to full duty at this time.

The relevant medical evidence in this case includes reports from Dr. Arthur W. Waddell, a Board-certified orthopedic surgeon, who treated appellant from March 1991 to September 1992. Dr. A. Jamali, a Board-certified orthopedic surgeon, submitted an October 14, 1993 office note, in which he provided an accurate history of appellant's employment-related injury and noted findings on examination. X-ray demonstrated moderate arthritic changes. An October 21, 1993 magnetic resonance imaging (MRI) of the right knee demonstrated moderate to advanced osteoarthritic changes in the right knee joint with moderate to large effusion with evidence of considerable synovial proliferation. In an October 28, 1993 form report, Dr. Jamali diagnosed traumatic chondromalacia of the patellofemoral joint and restricted appellant's physical activities. He continued to submit reports and in a March 4, 1995 report, advised that appellant needed arthroscopic surgery of the right knee.²

Although the Office developed this case as a recurrence, appellant merely filed a claim for compensation while securing medical services. The Board has interpreted section 8103 of the Federal Employees' Compensation Act,³ which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services. An employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment. The rationale for this entitlement is that during such required examination and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.⁴ In this case, the Office accepted that appellant sustained an employment-related right knee strain. She requested a change in physicians on June 1, 1992. When the Office finally approved the request 15 months later, she visited Dr. Jamali on October 14, had an MRI on October 21, 1993 and saw Dr. Jamali again on October 28, 1993. She is claiming compensation for 4 hours on October 21, 1993 and 4 hours on October 28, 1993. The record indicates that she had an MRI on the former date and visited Dr. Jamali on the latter. Appellant is, therefore, entitled to wage-loss compensation for these periods.⁵

² The issue of authorization for surgery is not before the Board at this time as the Office has not issued a final decision regarding appellant's need for surgery.

³ 5 U.S.C. § 8103.

⁴ See *Henry Hunt Searls, III*, 46 ECAB 192 (1994).

⁵ *Id.*

The decision of the Office of Workers' Compensation Programs dated December 13, 1995 is hereby reversed.

Dated, Washington, D.C.
August 17, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member