

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NEIL J. KELLY and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, N.Y.

*Docket No. 96-829; Submitted on the Record;
Issued February 24, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or after March 15, 1995 causally related to his October 28, 1994 employment-related contusion of the right knee.

On October 28, 1994 appellant, then a 59-year-old letter carrier, sustained a right knee contusion in the performance of duty when he was struck by a bicycle. Appellant's physician released him to full duty as of November 12, 1994. In his claim form, appellant stated that there was a history of medical problems with his right knee and that since October 29, 1994, his right knee was "swelling and hurting more than usual."

On March 16, 1995 appellant alleged that he sustained a recurrence of disability on March 15, 1995 which he attributed to his October 28, 1994 employment injury.

In a letter dated March 15, 1995, Dr. Alan M. Crystal, a Board-certified orthopedic surgeon, stated that appellant was totally disabled because of the progression of his arthritis. He stated that this condition occurred as a result of him being struck by a bicycle. He provided no findings on examination.

In a narrative report dated April 26, 1995, Dr. Crystal stated that in 1994, at the time appellant was struck by a bicycle, x-rays showed considerable osteoarthritic changes and that it was his opinion that this osteoarthritis was relatively asymptomatic until appellant was struck by the bicycle. Dr. Crystal related that appellant continued to be treated by him and had complaints of pain. Dr. Crystal related that appellant tried to work but that by March 15, 1995 he could no longer tolerate the pain while working.

By decision dated May 30, 1995, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that appellant's claimed recurrence of disability was causally related to his October 28, 1994 employment injury.

By letter dated September 14, 1995, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated June 28, 1995, Dr. Crystal stated that appellant's arthritis had been relatively asymptomatic prior to the 1994 accident when he was struck by a bicycle but that after that time his arthritis became symptomatic. Dr. Crystal stated that after the 1994 incident appellant continued to work even though he had pain but that now he was also limping. He noted that in 1988 appellant had surgery on his right knee and the knee had improved and he opined that, therefore, appellant's present condition was causally related to the incident when he was struck by a bicycle.

By decision dated November 6, 1995, the Office denied appellant's claim for further merit review of his claim on the grounds that the evidence submitted was found to be repetitive and cumulative of medical evidence previously of record.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on March 15, 1995 causally related to his October 28, 1994 employment injury.

As used in the Federal Employees' Compensation Act,¹ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of the injury.² When an employee claims a recurrence of disability due to an accepted employment injury, he has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the recurrence claimed is causally related to an accepted employment injury.³ As part of this burden, the employee must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the current disabling condition and the accepted employment injury.⁴ Causal relationship is medical in nature and can be established only by medical evidence.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

In this case, appellant sustained a right knee contusion on October 28, 1994 in the performance of duty when he was struck by a bicycle. He later claimed that he had sustained a

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.5(17); *Richard T. DeVito*, 39 ECAB 668, 674 (1988); *Frazier V. Nichol*, 37 ECAB 528, 540 (1986).

³ 20 C.F.R. § 10.121(a); *see also Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *E.g.*, *Kevin J. McGrath*, 42 ECAB 109, 116 (1990); *Herman W. Thornton*, 39 ECAB 875, 887 (1988); *Dennis E. Twardzik*, 34 ECAB 536, 542 (1983); *see* 20 C.F.R. § 10.110(a).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

recurrence of disability on March 15, 1995 which he attributed to his October 28, 1994 employment injury and submitted medical evidence in support of his claim.

In a letter dated March 15, 1995, Dr. Crystal, a Board-certified orthopedic surgeon, stated that appellant was totally disabled because of the progression of his arthritis. He stated that this condition occurred as a result of being struck by a bicycle. He provided no findings on examination. As Dr. Crystal provided no findings on examination and no medical rationale explaining how appellant's preexisting arthritis was aggravated by the bicycle incident, this report does not suffice to support appellant's claim.

In a narrative report dated April 26, 1995, Dr. Crystal stated that in 1994, at the time appellant was struck by a bicycle, x-rays showed considerable osteoarthritic changes and that this osteoarthritis was relatively asymptomatic until appellant was struck by the bicycle. Dr. Crystal related that appellant continued to be treated by him and had complaints of pain. Dr. Crystal related that appellant tried to work but that by March 15, 1995 he could no longer tolerate the pain while working. This report is not based upon an accurate factual history as the record shows that appellant stated, in his claim form for the 1994 employment injury, that he had a history of problems in his right knee which preceded the bicycle incident and that since October 29, 1994, his right knee was swelling and hurting "more than usual." Therefore, the history given by Dr. Crystal that appellant was asymptomatic before the bicycle incident is not accurate. Furthermore, Dr. Crystal provided no medical rationale explaining the relationship of the October 1994 bicycle incident to appellant's underlying arthritic condition and his claimed recurrence of disability on March 15, 1995. Therefore, this report does not suffice to establish that appellant's claimed recurrence of disability was causally related to his employment injury.

In a report dated June 28, 1995, Dr. Crystal stated that appellant's arthritis had been relatively asymptomatic prior to the 1994 accident when he was struck by a bicycle but that after that time his arthritis became symptomatic. Dr. Crystal stated that after the 1994 incident appellant continued to work even though he had pain but that now he was also limping. This report is not based upon an accurate factual background because, as noted above, appellant stated in the claim form for his October 28, 1994 employment injury that he had a history of pain and swelling in his right knee preceding the 1994 bicycle incident. Furthermore, the fact that appellant's pain may have been aggravated by the bicycle incident does not mean that the underlying arthritis condition was itself aggravated by appellant's employment injury in 1994.⁷ Therefore, this report is insufficient to establish that appellant sustained a recurrence of disability on March 15, 1995 causally related to his October 28, 1994 employment injury.

⁷ *Dominic Cuzzo*, 32 ECAB 591, 594 (1981).

The November 6 and May 30, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 24, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member