

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THELMA V. LEE and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, Md.

*Docket No. 96-784; Submitted on the Record;
Issued June 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she was totally disabled from March 16 to 18, June 14 to 17, August 15 to 18, and October 18 to 28, 1994.

The Office of Workers' Compensation Programs accepted that appellant sustained a tear of the meniscus of her right knee on January 26, 1977. The Office authorized and paid for surgeries to appellant's right knee on June 3, 1977, April 19, 1978, June 19, 1981, February 7, 1986, and May 13, 1992, the last of which was a total knee replacement. Appellant received continuation of pay or compensation for temporary total disability for her intermittent absences from work from February 5, 1977 to August 9, 1978. Appellant received a schedule award for a 20 percent permanent loss of use of the right leg, which was paid from September 28, 1978 to November 5, 1979, followed by compensation for temporary total disability until her return to work at the employing establishment as a modified distribution clerk on December 10, 1984. Appellant was paid from May 10, 1988 to September 26, 1989 pursuant to a schedule award for an additional 25 percent permanent impairment of her right leg, and also received compensation for other intermittent absences from work, and for the hours fewer than eight per day she worked after her February 7, 1986 surgery. Following her knee surgery on May 13, 1992, appellant returned to work for six hours per day as a modified distribution clerk on November 3, 1992, and began to work eight hours per day in this position on September 10, 1993.

On December 9, 1994 appellant filed a claim for compensation for the periods from March 16 to 18, June 14 to 17, August 15 to 18, and October 18 to 28, 1994. By letter dated January 13, 1995, the Office advised her that, to establish this claim, she needed to submit medical evidence supporting that she was totally disabled to work as a result of her employment-related injury. The Office allotted appellant 30 days to submit such evidence. By decision dated February 13, 1995, the Office found that the evidence failed to establish that appellant's disability after March 16, 1994 was causally related to her employment injury.

Appellant has the burden of proving by the preponderance of the reliable, probative, and substantial evidence that she was disabled for work as the result of an employment injury. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to her employment.¹

The Board finds that appellant has not met her burden of proof.

At the time of the Office's February 13, 1995 decision, the record contained no medical evidence that appellant was disabled for work during any of the claimed periods between March 16 and October 28, 1994. The Office advised appellant of the evidence needed to establish her claim, but she did not submit such evidence within the time allotted by the Office.²

The decision of the Office of Workers' Compensation Programs dated February 13, 1995 is affirmed.

Dated, Washington, D.C.
June 10, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

¹ *David H. Goss*, 32 ECAB 24 (1980).

² Although appellant later submitted medical evidence addressing one of the claimed periods, the Board cannot consider this evidence on appeal. The Board's review is limited by 20 C.F.R. § 501.2(c) to "the evidence in the case record which was before the Office at the time of its final decision."