

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVE ESCOBAR and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, Ga.

*Docket No. 96-1657; Submitted on the Record;
Issued November 3, 1998*

DECISION and ORDER

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

The issue is whether appellant had any disability or medical condition on or after June 10, 1991 causally related to his March 28, 1991 employment injury.

This is the second appeal in this case. By decision and order dated November 10, 1994,¹ the Board remanded this case for further development of the medical evidence. The facts of this case are more fully set forth in that decision and are hereby incorporated by reference. The Board directed the Office of Workers' Compensation Programs to obtain a statement from the employing establishment addressing the number of hours per day that appellant was required to perform the activities of squatting, bending or kneeling and then to further develop the medical evidence as to whether these activities contributed to appellant's claimed condition.²

Following remand of the case, by letter dated January 9, 1995, the Office asked the employing establishment to provide a statement as to the number of hours that appellant performed squatting, repetitive bending, or kneeling in his job. The employing establishment responded that he performed these activities for less than two hours a day.

In a statement of accepted facts, the Office provided a description of appellant's duties, which included heavy lifting; walking and squatting, repetitive bending, or kneeling for less than two hours a day. The statement of accepted facts indicated that appellant did not work from April 29 through June 14, 1991.

¹ See Docket No. 93-1600.

² On April 12, 1994 appellant, then a 30-year-old engineman, filed a claim for a knee condition which he attributed to his federal employment. By decisions dated August 28, 1991, July 7, 1992, January 7 and April 13, 1993, the Office denied appellant's claim for compensation benefits.

By letter dated February 23, 1995, the Office sent to Dr. Alexander N. Doman, appellant's Board-certified orthopedic surgeon, a copy of the statement of accepted facts and asked him to provide a detailed narrative medical report explaining whether appellant's bilateral chondromalacia patellae was causally related to his employment and whether he had any continuing residuals from this condition.

In a report dated March 17, 1995, Dr. Doman stated:

“[Appellant's] bilateral chondromalacia patella was not caused by his employment as described in the statement of accepted facts. The chondromalacia may be temporarily adversely affected by his employment that would have involved repetitive kneeling or squatting. It is my opinion that the adverse effects of kneeling or squatting during parts of [appellant's] workday would have been temporary and the adverse effects of this activity would have resolved within a few weeks of avoiding that type of activity. The medical rationale for these conclusions is that chondromalacia patella is a chronic type condition which refers to anterior type knee pain in the area of the patella femoral joint.

“[Appellant's] knee condition was not caused by his employment. The rationale for this statement is again that this condition is chronic and long-standing. [Appellant] has had multiple complaints of hip pain, pain in the temporomandibular joint and pain in the shoulder area as noted in the [statement of accepted facts]. This condition does not develop as a result of an injury. In addition, [appellant] had a psychological profile performed while under my care, which indicated significant psychological problems including depression. It has been my experience as an orthopedic surgeon that people with significant psychological stresses including depression are much more prone to complain of painful disorders especially multiple painful disorders.

“While repetitive bending or squatting may have effected [appellant's] preexisting chondromalacia patella, is not my opinion that this caused a material change in his underlying condition. It is my opinion that the chondromalacia patella was very mild in degree. There was no evidence on radiological examination of any loss of articular cartilage or subluxation of the patella. There are increased patella femoral compressive forces that occur with bending or squatting that can give reason for increased pain in those patients that have significant chondromalacia patella. However, with avoidance of those activities, patients rapidly resume their baseline status as has been the case with [appellant]....

“If there was even a temporary aggravation of [appellant's] pain, then this would have resolved within three weeks of avoiding this activity. If his pain did not resolve within three weeks maximum, then any contribution of this work to his complaints of pain from chondromalacia patella would have been negligible. Within three weeks, any employment-related effects from squatting or bending would have resolved without residual[s].”

By decision dated April 21, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate causal relationship between his March 28, 1991 employment injury and his claimed disability or condition after June 10, 1991. The Office stated that the medical evidence established that appellant had a compensable temporary aggravation of bilateral chondromalacia patella but that the employment-related aggravation ceased without residuals by June 10, 1991.

By letter received by the Office on May 26, 1995, appellant requested an oral hearing before an Office hearing representative.

On January 25, 1996 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated April 4, 1996, an Office hearing representative affirmed the Office's April 21, 1995 decision.

The Board finds that appellant has not met his burden of proof to establish that he had any continuing disability or medical condition after June 10, 1991 causally related to his March 28, 1991 employment-related temporary aggravation of his chondromalacia patella condition.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.³ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.⁴ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁵ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁶ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁷

In this case, the Office accepted that appellant sustained a temporary aggravation of bilateral chondromalacia patella but that the employment-related aggravation ceased without residuals by June 10, 1991.

In a report dated March 17, 1995, Dr. Doman, appellant's attending Board-certified orthopedic surgeon, stated that he had reviewed the statement of accepted facts, which described

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

⁴ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁵ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁶ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁷ *Ern Reynolds*, 45 ECAB 690 (1994); *James Mack*, 43 ECAB 321 (1991).

appellant's job duties and activities and provided a rationalized medical opinion that appellant may have sustained a temporary aggravation of his chondromalacia condition but that this condition

would have resolved within three weeks of avoiding the repetitive kneeling or squatting which caused the aggravation of his condition. He stated:

“While repetitive bending or squatting may have effected [appellant’s] preexisting chondromalacia patella, is not my opinion that this caused a material change in his underlying condition. It is my opinion that the chondromalacia patella was very mild in degree. There was no evidence on radiological examination of any loss of articular cartilage or subluxation of the patella. There are increased patella femoral compressive forces that occur with bending or squatting that can give reason for increased pain in those patients that have significant chondromalacia patella. However, with avoidance of those activities, patients rapidly resume their baseline status as has been the case with [appellant]....

“If there was even a temporary aggravation of [appellant’s] pain, then this would have resolved within three weeks of avoiding this activity. If his pain did not resolve within three weeks maximum, then any contribution of this work to his complaints of pain from chondromalacia patella would have been negligible. Within three weeks, any employment-related effects from squatting or bending would have resolved without residual[s].”

This well-rationalized report of Dr. Doman establishes that appellant’s employment-related temporary aggravation of his chondromalacia patella condition would have ceased approximately three weeks after he stopped the activities, repetitive bending or squatting, which caused the temporary aggravation. There is no medical evidence establishing that appellant had any employment-related residual disability or medical condition after June 10, 1991.

The April 4, 1996 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
November 3, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member