

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL S. CALBETZOR and U.S. POSTAL SERVICE,
POST OFFICE, South Bend, Ind.

*Docket No. 97-819; Submitted on the Record;
Issued November 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to wage-loss compensation due to intermittent disability from work from October 15, 1993 to March 6, 1996.

On December 12, 1995 appellant, then a 46-year-old letter carrier, filed a claim alleging that degenerative joint disease and osteoarthritis were caused by factors of federal employment.

In a January 15, 1996 medical report, Dr. Robert B. Kolbe, appellant's treating physician and Board-certified in family practice, stated that appellant had internal derangement and chronic degenerative osteoarthritis of the left knee and that "work has caused further degenerative changes."

In a medical report dated February 20, 1996, Dr. Kolbe stated that he initially treated appellant on December 5, 1995 at which time he was diagnosed as having left knee strain with underlying degenerative joint disease. Based on a February 2, 1996 physical examination, Dr. Kolbe noted that appellant had no obvious effusion, but noted crepitation with range of motion on the knee, tenderness along the lateral joint line, a positive grind test and a positive McMurray's sign. He read the May 6, 1994 magnetic resonance imaging (MRI) scan as revealing a thinning of the anterior cruciate ligament, a tear of the lateral meniscus and bent cartilaginous surface of the femur.

On February 28, 1996 Dr. Kolbe placed appellant on total disability from that date to March 3, 1996 based on knee strain.

On March 6, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of internal derangement and chronic degenerative osteoarthritis of the left knee and, on March 26, 1996 referred him along with a statement of accepted facts and the medical record, to Dr. Louis C. Sfreddo, a Board-certified orthopedic surgeon, for a second opinion. The statement of accepted facts included appellant's work restrictions since

December 22, 1995 as standing to 1½ hours daily with 10-minute breaks and a walking limit of no more than one hour with no weight bearing responsibility.

On April 20, 1996 appellant filed a claim for compensation alleging intermittent wage loss from October 15, 1993 to March 6, 1996 based on his employment-related injury.

In an April 23, 1996 medical report, Dr. Sfreddo stated that he had examined appellant on April 15, 1996 noted a familiarity with appellant's medical history and reported findings based on review of the medical record and the results of a physical examination. He noted that appellant had full extension and flexion of the left knee and had stable ligaments; he noted a negative Lachman's test, minor discomfort on internal and external rotation of the tibia and the femur and minimal crepitus on flexion extension of the knee. Dr. Sfreddo noted that updated x-rays were read as normal and that the current MRI was essentially normal. He noted that appellant's work restrictions were reasonable because if appellant returned to regular duty including walking up to 8 hours a day, carrying a satchel of up to 35 pounds and walking up and down stairs, this would then cause additional temporary aggravation of the knee pain which, in turn, would cause effusion and probable loss of work. Dr. Sfreddo further noted that that appellant's work-related aggravation was temporary and that if he continued in his present restrictions, he would not further aggravate his knee. He opined that appellant did not have "any permanent aggravation that one would not have expected through his normal course of life."

On May 28, 1996 Dr. Kolbe, in response to the Office's inquiry of May 15, 1996, noted that at no time in 1994 did he place appellant on total disability status.

In a supplemental medical report dated June 25, 1996, Dr. Sfreddo stated that appellant has some early degenerative osteoarthritis of the knee, which was causing some aggravation and pain in the left knee and that "these changes ... were going to develop regardless of what activity that [appellant] would participate in as far as an occupation." He stated that appellant's work restrictions and current disability were based on his early degenerative osteoarthritis, "not due to a work-related injury."¹

In a report received by, the Office on July 10, 1996, the employing establishment stated that appellant was offered work on February 29 and March 6, 1996 but that no work was offered in December 1995 because the agency was not aware that appellant's disability was work related.

On August 1, 1996 the Office notified appellant that he was entitled to wage loss from December 15 to December 21, 1995. On that same date, the Office referred Dr. Sfreddo's medical reports to Dr. Kolbe for his review.

¹ The Board notes that Dr. Sfreddo's June 19, 1996 medical report is essentially the same as his April 23, 1996 report.

In a medical report dated July 20, 1996, which was received by the Office on August 12, 1996,² Dr. Kolbe noted that appellant had a temporary aggravation of his underlying internal derangement and degenerative osteoarthritis and that if he were to return to full duty as a letter carrier, the aggravation “will probably occur again.” He also stated that appellant’s work restrictions were permanent because of the “underlying osteoarthritis and previously determined knee disability.”

In an October 1, 1996 decision, the Office denied appellant’s claim for continuing compensation on the grounds that the medical evidence failed to establish that the claimed work restrictions were medically necessary due to residuals of a work-related injury

The Board finds that appellant has not established that he had work-related residuals based on his accepted injury from December 21, 1995.

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 the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

In the instant case, the Office accepted appellant’s work-related injury of an aggravation of internal derangement and degenerative osteoarthritis of the left knee. The record establishes that appellant was assigned light duty on December 5, 1995, the day that he had reported his condition to his supervisor, to January 31, 1996 and from February 12 to July 21, 1996. He was referred for a second opinion to Dr. Sfreddo, a Board-certified orthopedic surgeon, who stated that the cause of appellant’s knee pain and discomfort was early degenerative osteoarthritis and that appellant’s work restrictions were based on this condition, not on a work-related aggravation. Dr. Kolbe, appellant’s treating physician and Board-certified in family practice, stated that work further caused degenerative changes in appellant’s preexisting internal derangement and chronic degenerative osteoarthritis and noted that his work restrictions were permanent because of the “underlying osteoarthritis and previously determined knee disability.”

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant’s own belief that there is causal relationship between her claimed condition and her employment.⁴ To establish causal relationship, appellant must submit a physician’s report, in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of

² The Board notes that Dr. Kolbe’s report is dated prior to the date of the Office’s referral to him of Dr. Sfreddo’s reports.

³ *Cloteal Thomas*, 43 ECAB 1093 (1992); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Donald W. Long*, 41 ECAB 142 (1989).

appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof. These reports are insufficient to meet appellant's burden of proof as neither doctor offered a medical rationale explaining the causal relationship between appellant's current medical condition and his accepted injury, or how and why appellant's work-related aggravation prevented him from performing the duties of his light-duty position. As appellant has failed to submit sufficient rationalized medical opinion to establish that he was unable to work in his light-duty position, he has failed to establish that he was disabled and thus is not entitled to continuing compensation benefits for times when he did not work. Without such evidence, appellant cannot establish his claim for compensation on and after December 21, 1996.

Consequently, appellant has not met his burden of proof as he submitted insufficient medical evidence indicating that the accepted injury caused a continuing disability after December 21, 1996.

The October 1, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
November 25, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member