

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM T. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, Va.

*Docket No. 97-225; Submitted on the Record;
Issued September 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of disability on November 16, 1993 causally related to his November 25, 1986 employment injury; and (2) whether appellant sustained more than an 18 percent permanent impairment of the right leg, for which he received a schedule award.

On November 25, 1986 appellant, then a 46-year-old letter carrier, sustained an injury to his right knee when he stepped off a porch and slipped. The Office of Workers' Compensation Programs accepted appellant's claim for a right knee strain and authorized arthroscopic surgery on January 13, 1987. Appellant additionally received a schedule award for an impairment rating of 18 percent of the right lower extremity.

Appellant now claims that his original work injury caused a recurrence of disability for the period November 16 through December 10, 1993 and the need for surgery on November 17, 1993. He further claims that his employment injury has resulted in a 20 percent impairment rating of his right knee.

By decision dated March 14, 1995, the Office denied the recurrence claim on the grounds that appellant's degenerative arthritis of the right knee was not causally related to his work injury of November 25, 1986. The Office further denied the claim for an increased schedule award as appellant did not submit any medical evidence which demonstrated how his impairment rating was calculated as required by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fourth edition (A.M.A., *Guides*).

Appellant disagreed with this decision and a hearing was held before the Branch of Hearings and Review. By decision dated October 20, 1995 and finalized October 23, 1995, the Office hearing representative affirmed the March 14, 1995 decision. The hearing representative found that the medical evidence in the record did not establish that appellant sustained any increase in permanent impairment of his right knee; that he sustained a recurrence of disability

beginning November 16, 1993, or that the surgery performed on November 17, 1993 was necessitated by the November 25, 1986 injury.

On December 4, 1995 appellant requested reconsideration and submitted additional evidence. Appellant submitted previously considered evidence consisting of: (1) medical progress notes covering the period December 4, 1986 through April 13, 1994 from Dr. Frederick S. Fogelson, a Board-certified orthopedic surgeon; (2) a November 26, 1986 progress note from Dr. D.G. Seitz, a Board-certified orthopedic surgeon; (3) an October 9, 1995 medical report from Dr. Michael J. Decker; and (4) a copy of the October 23, 1995 decision. He also submitted: (1) a July 24, 1995 letter from the employing establishment addressed to the Office attaching Form CA-2a, notice of recurrence; (2) his reconsideration letter in which appellant discusses his November 15, 1986 injury and the progression of his condition; and (3) two new reports from Dr. Fogelson dated July 13 and November 22, 1995.

In his July 13, 1995 medical report, Dr. Fogelson reported that appellant had a flare-up of aching both in his back and in his arthritic knee after standing for an extended period and in air conditioning at work.

In his November 22, 1995 medical report, Dr. Fogelson reported that he has been treating appellant since an injury to his knee was sustained on November 25, 1986. He stated that appellant's "ongoing and progressive right knee symptoms are due to involving osteoarthritis of his right knee and all of this is felt to be related to trauma sustained to his knee in the injury of November 25, 1986. Again, to reiterate, [appellant's] present knee problems are not new, but are a result of injuries sustained in the injury of November 25, 1986."

By decision dated December 28, 1995, the Office denied modification of the March 14, 1995 decision. The Office found that appellant had not submitted any rationalized medical evidence or opinion from his attending physician which showed that his claimed right knee condition, with the need for surgery, and disability for work were related to his work injury of November 25, 1986. The Office further found that appellant had not submitted any medical evidence addressing an additional schedule award to the right leg.

By letter dated March 24, 1996, appellant requested reconsideration and submitted a previously submitted April 13, 1994 medical report and a new report dated February 15, 1996 from Dr. Fogelson.

In the February 15, 1996 medical report, Dr. Fogelson stated that he performed arthroscopic surgery on appellant's right knee on January 13, 1987 because of ongoing symptoms related to the trauma appellant sustained in the November 25, 1986 accident. Dr. Fogelson stated that, at that time, area of fresh cartilage damage on the weight bearing surface of the medial femoral condyle was noted, and this was debrided through the arthroscope. Dr. Fogelson further stated that despite modified work at the post office, appellant had progressive symptoms of medial jointline pain with x-rays throughout the early 1990's showing progressive narrowing of the medial joint space. Dr. Fogelson reported that rearthroscopy of appellant's right knee on November 17, 1993 showed advancing medial compartment arthritis with further area of cartilage loss in the weight bearing surface of appellant's medial condyle. Dr. Fogelson opined that with no history of any significant intercurrent injury, the findings in

appellant's right knee at rearthroscopy were unquestionably a progressive deterioration of the articular cartilage in appellant's right knee which was damaged in the accident of November 25, 1986. Dr. Fogelson stated that it was, therefore, his belief that the osteoarthritis which had developed was causally related to the accident of November 25, 1996.

In a June 19, 1996 letter, the Office referred the entire case file to an Office medical adviser to help interpret the medical reports. The Office specifically asked the Office medical adviser: (1) what part of the knee was injured on November 25, 1986; (2) what area of the knee required surgery on November 17, 1993; (3) based on the review of Dr. Fogelson's report dated February 15, 1996, was his reasoning medically sound; (4) after reviewing the medical records, has claimant had continuous medical treatment for the injury of November 25, 1986 and was the claimant's need for surgery due to the natural progression of the degenerative process which resulted from the surgical procedure of January 13, 1987; and (5) to render an opinion as to whether or not the claimant's second knee surgery was related to the work injury and to provide rationale for his opinion.

In a June 20, 1996 report, the Office medical adviser opined that the diagnosis of degenerative arthritis of the knee was related to the previously accepted injuries and that appellant's progressive arthritis might be ratable to determine whether an increased schedule award was justified. The Office medical adviser stated that if the attending orthopedic surgeon followed the A.M.A., Guides, pages 82 and 83 and Table 62 and had a competent radiologist use radiologic measurements of the cartilage intervals for specified areas in the lower extremities and report the results in millimeters, a fair determination of the present impairment could be quantitated. The Office medical adviser stated that if this figure was more than the already rated impairment, there should be an additional rating equal only to the difference between the old rating and the new rating. If there was no measurable increase or the amount is lesser than the previous rating, then no additional payment would be justified.

By decision dated June 25, 1996, the Office stated that it reviewed appellant's claim on the merits but that the evidence submitted in support of the application was not sufficient to warrant modification of the decision dated March 14, 1995.

The Board finds that this case is not in posture for decision.

Where an employee alleges that he sustained a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disabling condition for which compensation is sought is causally related to the accepted employment injury.¹ As part of this burden, the employee must submit rationalized medical evidence based upon a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related injury.²

¹ *Kevin J. McGrath*, 42 ECAB 109 (1990).

² *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

In the instant case, the Office accepted that appellant sustained a right knee strain at work on November 25, 1986 and authorized an arthroscopic procedure on January 13, 1987. Appellant claimed a recurrence of disability beginning November 16, 1993 and claimed that the surgery performed on November 17, 1993 was a result of the November 25, 1986 injury and resulted in an increase in impairment. In support of his claim, appellant submitted medical reports from his attending physician, Dr. Fogelson, which, while supportive of his claim, were insufficient to establish his claim.

Although Dr. Fogelson opined that appellant's osteoarthritis of the right knee was related to the injury of November 25, 1986 in his November 22, 1995 and February 15, 1996 reports, those reports are insufficient to establish a causal relationship between appellant's alleged recurrence of disability commencing November 16, 1993 and his prior employment-related right knee strain on November 25, 1986 as they are not sufficiently well rationalized. In his November 22, 1995 report, Dr. Fogelson stated that appellant's ongoing and progressive right knee symptoms involved osteoarthritis of his right knee and that "all of this is felt to be related to trauma sustained to his knee in the injury of November 25, 1986." To merely state that a condition is related is not considered well rationalized. Dr. Fogelson did not provide sufficient medical reasoning in support of his opinion. Likewise, while Dr. Fogelson indicated in his February 15, 1996 report that appellant's osteoarthritis condition was a progressive deterioration of cartilage damaged in the accident of November 25, 1986, he did not state whether the damage was a result of employment factors or the employment injury of November 25, 1986 and how such factors caused the deterioration. Additionally, the report did not show how the osteoarthritis condition was related to the right knee strain.

The Board notes that while the November 22, 1995 and February 15, 1996 medical reports by Dr. Fogelson are insufficient to establish a causal relationship between appellant's alleged recurrence of disability commencing November 16, 1993 and his employment-related knee strain on November 25, 1986, the reports constitute sufficient evidence to require further development of the record by the Office.³

The Office sought advice from an Office medical adviser with specific attention directed towards the February 15, 1996 and November 22, 1995 medical reports of Dr. Fogelson. Although the medical adviser's June 20, 1996 report was directed to the senior claims examiner who issued the June 25, 1996 decision, there is no indication that the senior claims examiner was aware of the medical adviser's report. Thus, the Board will set aside the Office's decisions dated June 25, 1996, December 28 and October 23, 1995 denying appellant's recurrence claim and the claim for an increased schedule award and remand the case to the Office so that it may consider the Office's medical adviser's report of June 20, 1996.

The Office should also refer appellant, along with the case record and a statement of accepted facts, to an appropriate medical specialist for an examination and based on an evaluation of his right knee using appropriate sections of the A.M.A., *Guides*. The specialist should be requested to specify whether the degenerative arthritis of the right knee was related to

³ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion contrary to appellant's claim.

the right knee strain, arthroscopic surgery or necessitated the need for a second arthroscopic surgery on November 17, 1993. The specialist should also be requested to provide the permanent impairment rating of appellant's right knee and whether appellant's current right knee condition is causally related to the accepted November 25, 1986 injury. The Office should thereafter issue a *de novo* opinion on appellant's entitlement to compensation under the Federal Employees' Compensation Act.

The Office of Workers' Compensation Programs' decisions dated June 25, 1996, December 28 and October 23, 1995 are hereby set aside and the case remanded for further development to be followed by a *de novo* decision consistent with this decision of the Board.

Dated, Washington, D.C.
September 21, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member