

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY CARTER and DEPARTMENT OF TREASURY,
U.S. MINT, West Point, N.Y.

*Docket No. 97-948; Submitted on the Record;
Issued February 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden in terminating appellant's compensation effective December 10, 1996.

On February 25, 1994 appellant, then a 52-year-old machine operator, filed a claim for traumatic injury (Form CA-1) alleging that in the performance of duty on February 23, 1994 she slipped and fell on ice while emptying the garbage. The Office accepted the claim for contusion of both knees, right elbow and partial tear posterior medial meniscus of both knees. Appellant was off work from February 23 to June 20, 1994, when she returned to limited duty.

Appellant worked for two days and filed a claim for recurrence of disability commencing June 22, 1994.

The Office authorized Dr. Robert Sadler, a Board-certified orthopedic surgeon and appellant's attending physician, to perform an arthroscopy of the left knee. The surgery was performed on July 28, 1994. In an August 31, 1994 attending physician's report, Dr. Sadler advised that appellant's left knee was feeling better after surgery, but that she was now having problems with her right knee. He recommended a magnetic resonance imaging and physical therapy. Appellant returned to work on November 21, 1994 as coin checker. The Office subsequently authorized Dr. Sadler's request for arthroscopic surgery, which was performed on appellant's right knee on April 4, 1995. Appellant was approved for light duty on May 2, 1995.

On September 5, 1995 appellant filed a claim alleging that she suffered a recurrence of disability commencing July 24, 1995. Appellant has not returned to work.

In an August 7, 1995 attending physician's report, Dr. Sadler noted his prior diagnoses of "left knee oblique tear [posterior] horn medial meniscus, and [right] knee partial tear medial meniscus." Dr. Sadler opined that appellant "may try to work but she does have severe pain in

the left knee including when she is sitting.” He attributed her condition to her employment injury.

In an August 24, 1995 work evaluation report, Dr. Sadler noted that appellant had spurring of articular surface of the patella due to a bilateral knee injury. Dr. Sadler indicated that appellant could not do any kneeling. He also indicated that appellant’s condition was employment related.

On August 31, 1995 the Office requested that Dr. Sadler provide a narrative report based on clinical evidence as to whether appellant’s work restrictions were permanent in nature.

In a report dated September 7, 1995, Dr. Sadler noted that appellant had significant narrowing and osteophytes formation in the medial joint line of her left knee, and some spurring of the articular surface of the patella with resultant narrowing of the patella femoral joint. He opined that appellant’s continuing symptoms were due to degenerative disease. Dr. Sadler also opined that appellant would soon be unable to perform work, “other than something that is sitting.” He further indicated that appellant “may” have reached maximum medical improvement.”

In an attending physician’s report dated September 20, 1995, Dr. Sadler noted appellant’s date of injury as February 23, 1994 and diagnosed degenerative disease. He prescribed hot soaks to the left knee and inflammatory medicine. Dr. Sadler also indicated that appellant’s condition was work related.

In a letter dated October 26, 1995 letter, the Office requested that Dr. Sadler provide additional information regarding appellant’s capacity for work and whether she had reached maximum medical improvement.

In an attending physician’s report dated November 6, 1995, Dr. Sadler noted that he had treated appellant from April 15, 1994 through October 25, 1995. He indicated that at the time of the work injury, appellant had no evidence of a concurrent or preexisting injury. Dr. Sadler diagnosed bilateral torn meniscus tears consistent with appellant’s fall. He opined that appellant had degenerative disease of the knees.

In an attending physician’s report dated November 22, 1995 and February 12, 1996, Dr. Sadler opined that appellant was totally disabled, that her condition was work related, and that she was in need of knee replacement surgery.

The Office referred appellant for a second opinion evaluation by Dr. James F. Morrissey, a Board-certified orthopedist. In a July 24, 1996 report, Dr. Morrissey noted that appellant was injured on February 23, 1994 when she slipped and fell on ice at work while disposing of the garbage. He stated that appellant has “findings that are quite symmetrical in both of her knees, including a fairly significant valgus which is not trauma related and preexisted this injury of February 23, 1994.” Dr. Morrissey indicated that appellant’s condition was suggestive of “prolonged preexisting degenerative disease.” He diagnosed osteoarthritis in both knees and concluded that appellant has a moderate disability which is related to her preexisting disease and not solely to the employment incident of February 23, 1994. He opined that appellant’s

February 23, 1994 fall at work temporarily aggravated her degenerative condition, but that the aggravation had ceased. Dr. Morrisey advised that appellant could not perform the tasks of her regular employment, but that she could, very possibly, do some part-time sedentary position where she would be seated, although being seated for long periods of time would still be difficult for her because of stiffness in the knees. He noted that it would have to be a very light job from which she can change position on a frequent basis.” Dr. Morrisey found that appellant had no continuing hand or elbow condition.

In a work capacity evaluation form dated July 24, 1996, Dr. Morrisey indicated that appellant could work four hours a day with restrictions, which included no kneeling, no standing for no more than 30 minutes, bending only 15 minutes, minimal twisting for only 10 minutes, bending and lifting no more than 5 to 10 pounds. He indicated that her restrictions were due to her preexisting arthritis.

The Office issued a notice of proposed termination of compensation on November 8, 1996, citing Dr. Morrisey’s reports.

In response to the Office notice, appellant submitted a statement advising that she had never experienced problems with her knees prior to her employment injury. Accompanying this, appellant submitted an October 31, 1996 report from Dr. Sadler. Dr. Sadler diagnosed “bilateral tricompartment degenerative arthritis, left worst.” He indicated that appellant still had pain bilaterally in her knees with crepitus, which totally disabled her. He opined that appellant’s condition remained work related and recommended a total knee replacement.

In a decision dated December 10, 1996, the Office terminated appellant’s compensation on the grounds that the weight of the medical evidence established that her disability due to the injury of February 23, 1994 had ceased by and not later than December 10, 1996.

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

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In the instant case, the Office determined that appellant’s disability was no longer related to her employment. Based on the opinion of the Office second opinion referral physician, Dr. Morrisey, the Office concluded that appellant’s employment injury on February 23, 1994 resulted in temporary aggravation of a preexisting degenerative arthritic process which had returned to the status quo ante. The Office further found that appellant’s arthritic condition was

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

fully established prior to her February 23, 1994 fall, and that her present left knee condition requiring replacement surgery was related to her preexisting condition and not the work injury.

The Board finds that the weight of the medical evidence established that appellant's accepted right elbow condition has resolved. Dr. Morrisey noted no findings regarding this condition, nor has Dr. Sadler indicated that this condition continues. The Board, however, finds that there is a conflict of medical opinion evidence between Dr. Morrisey and Dr. Sadler, appellant's attending physician, as to whether appellant's bilateral knee condition and disability is work related. Contrary to Dr. Morrisey's opinion, Dr. Sadler has indicated that appellant's continuing condition and disability are related to or aggravated by appellant's February 23, 1994 employment injury. Dr. Sadler has provided consistent reports finding appellant's condition to be work related, and has specifically opined that appellant's degenerative disease did not preexist appellant's fall. Thus, there is a conflict in the medical evidence regarding whether the accepted conditions and accepted surgical procedures have caused or aggravated any continuing or preexisting condition or disability.

Section 8123(a) of the Federal Employees' Compensation Act provides that, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."³ As there is an existing conflict of medical opinion evidence regarding the extent of appellant's employment-related condition and disability, the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

The decision of the Office of Workers' Compensation Program dated December 10, 1996 is affirmed with regard to the accepted elbow condition, and the decision is reversed with regard to appellant's bilateral knee condition.

Dated, Washington, D.C.
February 4, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ 5 U.S.C. § 8123.