

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLEN WHITE and U.S. POSTAL SERVICE,
IRVINE POST OFFICE, Irvine, Calif.

*Docket No. 97-1341; Submitted on the Record;
Issued February 23, 1999*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained degenerative arthritis of the right knee in the performance of duty.

The procedural history of the case is as follows. On October 30, 1989 appellant, then a 57-year-old letter carrier, filed a claim for a right knee and leg injury sustained on September 5, 1989 while descending stairs, and while twisting and turning while casing mail, and on September 7, 1989 when descending stairs. The Office denied the claim by decision dated January 24, 1990 on the grounds that causal relationship was not established. Appellant made several requests for modification, denied by decisions dated June 15, 1990,¹ February 7,²

¹ On August 23, 1995 appellant claimed a recurrence of disability related to permanent aggravation of degenerative ankle changes bilaterally, a left heel spur, and degenerative arthritis of both feet. He attributed his condition to walking, climbing stairs and lifting heavy packages in the performance of duty. Appellant commented that his left foot condition caused him to place more weight on his right leg, aggravating his right knee symptoms. This claim was originally filed under claim no. 13-0940296, date of injury, June 30, 1989.

² In an August 3, 1996 letter, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review regarding the Office's February 7, 1996 decision. By decision dated August 28, 1996, the Office denied appellant's request for an oral hearing on the grounds that it was untimely filed more than 30 days after the Office's decision. The Office conducted a limited review, and further denied appellant's hearing request on the grounds that the issue involved could be addressed equally well through submission of additional medical evidence on reconsideration. As the case must be remanded to the Office for further development, the August 3, 1996 decision is moot.

October 16,³ and December 9, 1996,⁴ all on the grounds that the medical evidence submitted was insufficiently rationalized to establish a causal relationship between factors of appellant's federal employment and the claimed right knee condition.

The Board has conducted a thorough review of the case record and the issues involved, and finds that the case is not in posture for a decision as additional development is required.

The Board finds that appellant has submitted sufficient medical evidence from Dr. Wesley M. Nottage, an attending Board-certified orthopedic surgeon, to warrant further development of his claim. The Board notes that the Office did not refer appellant for a second opinion examination, and that there is no medical evidence of file controverting the causal relationship set forth by Dr. Nottage.

Appellant submitted several reports from Dr. Nottage, generally supporting a causal relationship between appellant's job duties, in particular prolonged walking and standing, and the claimed right knee condition.

In September 11 and 27, and October 23, 1989 reports, Dr. Nottage described the September 1989 onset of right knee symptoms.⁵ On November 28, 1989 he performed right knee arthroscopy to repair a large, degenerative posterior horn meniscal tear and chondromalacia. Dr. Nottage also diagnosed right knee medial compartment osteoarthritis. In a July 26, 1990 report, he opined that appellant's right knee symptoms were "directly related" to prolonged standing and casing mail, and a September 1989 twisting injury damaging "the articular cartilage," producing "progressive sequelae." In a September 28, 1995 report, Dr. Nottage again opined that right knee osteoarthritis was "accentuated in part by his work activities as well as the underlying disease process." He added that appellant's left ankle condition, accepted as

³ The Office further found that the evidence submitted pursuant to claim no. 13-918423, accepted for an April 23, 1990 right shoulder strain, and claim no. 13-1016788, accepted for a May 29, 1993 lumbar strain and head trauma, were not relevant to the present claim.

⁴ Appellant had a variety of other claims before the Office. Claim no. 13-905779 had been combined with 13-1097942, both regarding a September 5, 1989 injury, and 13-1097884 was combined with 13-940296. Under claim no. 13-1097884, accepted for a September 1, 1994 injury requiring left heel spur with excision, Jody Greenberg, DPM, submitted a June 30, 1995 report which did not address a knee condition. Claim no. 13-940296 was accepted for a June 30, 1989 injury resulting in permanent aggravation of a tarsal coalition of the calcaneus and talus of the left ankle, and aggravation of degenerative changes of both ankles, based on 1989 and 1991 reports from Dr. Greenberg, a March 5, 1991 report from Dr. Gordon Clark, and a September 15, 1995 report from Dr. Terrafranca, an attending podiatrist. The medical reports submitted in support of claim no. 13-918423, accepted for an April 23, 1990 right shoulder strain, and 13-1016755 for lumbar sprain and head trauma, do not address a knee condition. The record also mentions claim no. 13-1016788 regarding a May 29, 1993 injury.

⁵ An October 5, 1989 magnetic resonance imaging scan of appellant's right knee showed a large medial meniscal tear, chondromalacia and degenerative changes.

occupationally related,⁶ caused appellant “to increase his weight on the right leg,” accelerating the progress of his osteoarthritis.

In a February 6, 1996 report, Dr. Nottage opined that appellant had a “continuing evolution of his knee complaints,” with precipitous progress of the degenerative process beginning in 1989 as documented by periodic x-rays. He commented that appellant’s symptoms were concurrent with “the continuous trauma of his demands of being on his feet as a postal worker,” and that the lesions observed were consistent with those produced by these activities. Dr. Nottage diagnosed “evolving osteoarthritis of the right knee compartment ... directly as a sequela of the original condition of [appellant’s] knee in 1989 with progression of the condition ... absent an additional injury.... The osteoarthritis ... has been aggravated and accelerated by work duties as a function of the time on his feet and the physical demands which would not have progressed with either the speed or severity noted had he not had the same physical demands during his workday.”

In a September 24, 1996 report, Dr. Nottage diagnosed “[r]ight knee end stage symptomatic osteoarthritis, medial compartment.” He opined that appellant would require total knee replacement “if he ha[d] pain on weight bearing interfering with his functioning activities.” Dr. Nottage commented that appellant’s right knee symptoms “reflect continued evolution of his degenerative disease ... contributed to by his work activities....”⁷

Although Dr. Nottage’s reports are insufficiently rationalized to discharge appellant’s burden of proof, the Board finds that the history of the employment injury, knowledge of appellant’s job duties, detailed history of treatment with objective test results, consistent diagnoses and consistent support for causal relationship, constitutes sufficient evidence in support of appellant’s claim to require further development of the record.⁸ Therefore, the case shall be remanded to the Office for further development. On remand the Office shall refer appellant, the medical record and a statement of accepted facts to an appropriate medical specialist or specialists to obtain a rationalized medical opinion regarding any pathophysiologic causal relationship between factors of appellant’s federal employment, including the accepted bilateral foot and ankle conditions, and the claimed right knee condition. Following this and any

⁶ In a June 30, 1995 report, Dr. Greenberg diagnosed occupationally-related degenerative arthritis of the left ankle and subtalar joint with osteophytes, midtarsal joint damage with degenerative joint disease, proliferation of exotosis, and an infra calcaneal heel spur with entrapment of the medial superficial calcaneal nerve requiring February 28, 1991 and October 21, 1994 surgical excision.” In a September 15, 1995 report, Dr. Nicholas A. Terrafranca, an attending podiatrist, noted a surgical history of left ankle and right knee procedures in November 1989, right heel spur excision in 1992, and left heel spur excision in October 1994 complicated by postoperative infection. Dr. Terrafranca diagnosed degenerative joint disease on the subtalar joint bilaterally, right greater than left and postsurgical paresthesia of the left foot.

⁷ In a November 11, 1996 report, Dr. Nottage assessed appellant’s right shoulder complaints, noting that he was placed on modified duty due to these symptoms. He diagnosed right shoulder rotator cuff syndrome with history of prior arthroscopy and decompression, and possible neuropathy. This report does not address appellant’s right knee condition.

⁸ 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 and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

such development as the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decisions of the Office of Workers' Compensation Programs dated December 9, October 16 and August 3, 1996 are hereby set aside, and the case remanded to the Office for further development consistent with this decision and order.

Dated, Washington, D.C.
February 23, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member