

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN F. GOETZ and DEPARTMENT OF THE TREASURY,
BUREAU OF ALCOHOL, TOBACCO & FIREARMS, Philadelphia, Pa.

*Docket No. 97-492; Submitted on the Record;
Issued January 4, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that he is entitled to a schedule award for an impairment of his right knee.

On July 29, 1993 appellant, then a 46-year-old special agent, filed a claim for compensation alleging that on July 28, 1993 he slipped and twisted his right knee while in the performance of duty. The record reflects that appellant did not stop work.

In a February 21, 1995 letter to the Office of Workers' Compensation Programs, appellant noted that he had attached a CA-2a claim form based on the July 28, 1993 incident. Appellant alleged that the July 28, 1993 incident caused continuous right knee pain and that he had undergone medical treatment since that time. Appellant submitted weekly physical therapy progress notes indicating that he had knee therapy on seven occasions in January, February and March 1993; a March 29, 1993 medical report from Dr. David A. Miller, appellant's treating osteopath, which sought authorization to continue appellant's physical therapy after it was interrupted due to a temporary reassignment; a November 11, 1993 medical report from Dr. Miller, who diagnosed appellant with chronic sprain of the lateral collateral ligament, right knee; and a January 26, 1994 medical report from Dr. James Casaia, a specialist in diagnostic radiology, who read an x-ray taken that day as normal. Appellant also submitted a June 20, 1994 magnetic resonance imaging (MRI) scan read by Dr. Mark Schweitzer, Board-certified in radiology, which indicated that the scan revealed a bucket-handle tear of the medial meniscus and grades I and II chondromalacia in the patellar cartilage. In September and October 1994 treatment notes, Dr. Ray A. Moyer, a Board-certified orthopedic surgeon, noted that appellant had right knee soreness for two years and that a recent MRI had been read as normal.

In an April 14, 1995 decision, the Office denied appellant's claim on the grounds that appellant failed to establish that he sustained a compensable injury on July 28, 1993.

In a letter dated April 8, 1995 and received by the Office on April 20, 1995, appellant stated that his July 28, 1993 injury to the right side of the right knee was different from the injury for which he received medical treatment on January 26, 1993. Appellant attached medical records from Dr. Miller which noted that on January 26, 1993 appellant complained of continuous right lateral knee pain and contained Dr. Miller's diagnosis of right lateral collateral strain and his referral of appellant to physical therapy, and clinical notes from May 17, 1994 noting appellant's pain in the right knee. Appellant also submitted a treatment note from Dr. Moyer dated March 27, 1995 in which Dr. Moyer stated that appellant had a "residual of lateral capsular sprain, ... as time goes this should resolve, gradually increase his activity to tolerance."

On May 5, 1995 appellant requested an oral hearing on the Office's April 14, 1995 decision denying benefits.

In a decision issued on September 26, 1995 and finalized on September 27, 1995, an Office hearing representative found the medical evidence sufficient to accept that appellant sustained a lateral capsular sprain of the right knee in the performance of duty on July 28, 1993. The Office found appellant did not stop work and that Dr. Moyer indicated that "the problem will resolve without permanent impairment."

On October 18, 1995 appellant, through counsel, filed a request for reconsideration seeking to include joint arthralgia involving the lateral side of the right knee as part of the accepted condition, and requesting that the Office accept appellant's knee conditions as permanent. Appellant submitted a July 14, 1995 medical report from Dr. Moyer which noted that appellant had joint arthralgia involving the lateral side of the right knee which "apparently started following the injury he suffered in 1993."

On January 31, 1996 the Office denied modification of the September 26, 1995 decision finding that Dr. Moyer did not provide sufficient rationale for his diagnosis or address a preexisting knee injury appellant sustained while using a stairmaster.

On June 4, 1996 appellant filed a request for reconsideration and a claim for a schedule award for permanent partial impairment of his right knee. Appellant submitted a March 31, 1996 medical report from Dr. Ronald John Potash, a Board-certified surgeon, who stated that he examined appellant on March 21, 1996 and reported these findings. Dr. Potash noted peripatellar tenderness over the medial and lateral joint spaces and medial midline. He noted appellant's difficulty in squatting and kneeling. Dr. Potash further noted that appellant had a decreased range of motion in his right knee, mild atrophy of the right calve muscle and weakness of the right quadriceps muscle. He also noted a bucket-handle tear of the medial meniscus, a thickening of the medial collateral ligament and grades I and II chondromalacia of the patella. Dr. Potash stated that he rated appellant's impairment on the basis of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, finding a 12 percent permanent impairment of the right knee based on right quadriceps muscle atrophy. Regarding appellant's medical history, Dr. Potash stated that prior to appellant's July 1993 injury he had had "no pain and no difficulties with his activities of daily living." Although Dr. Potash noted the nonemployment-related January 1993 knee injury, he noted that it fully healed with rest and that it only swelled "if he spends time on a ladder."

On August 19, 1996 the Office denied modification of its January 31, 1996 decision.

The Board finds that appellant has failed to establish that he sustained a permanent impairment of the right knee based on his employment-related injury of July 28, 1993.

An employee seeking compensation under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,¹ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.² As part of this burden, appellant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.³

Under section 5 U.S.C. § 8107 of the Act⁴ and section 10.304 of the implementing regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoptions.⁶

In this case, Dr. Potash's medical opinion is of diminished probative value because it was not based on an accurate factual medical history of appellant's injury. Dr. Potash stated that appellant's January 1993 knee injury "fully healed with rest." However, other medical reports note that appellant continued to complain of pain for months after the January 1993 nonemployment incident; that he had undergone seven physical therapy treatments from January through March 1993 for his right knee; and that his treating physician requested authorization for additional therapy upon appellant's return from a temporary reassignment. Further, Dr. Potash failed to discuss Dr. Moyer's finding in his September 1994 treatment note that appellant's MRI was read as normal.

Inasmuch as Dr. Potash's medical opinion was not based on a complete factual and medical background and failed to provide sufficient rationale in establishing a causal relationship between appellant's knee condition and the accepted injury, appellant has not met his burden of proof to establish that he is entitled to a schedule award based on his accepted injury.

¹ *Mark A. Cacchione*, 46 ECAB 148 (1994).

² *Corlisa L. Sims (Smith)*, 46 ECAB 172 (1994).

³ *Id.*

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

⁶ *Kenneth E. Leone*, 46 ECAB 133 (1994).

The decision of the Office of Workers' Compensation Programs dated August 19, 1996 is affirmed.

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

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member