

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. McANDREWS and U.S. POSTAL SERVICE,
POST OFFICE, Columbia, S.C.

*Docket No. 98-59; Submitted on the Record;
Issued July 16, 1999*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on April 18, 1995 causally related to his May 5, 1993 employment injury.

In a decision dated February 24, 1997, the Office of Workers' Compensation Programs denied appellant's August 8, 1995 claim of recurrence on the grounds that the opinion of Dr. Anthony Colpini, a Board-certified orthopedic surgeon and appellant's attending physician, was rationalized but of diminished probative value because it was not shown to be based on an adequate medical background.

The Board finds that this case is not in posture for a determination of whether appellant sustained a recurrence of disability on April 18, 1995 causally related to his May 5, 1993 employment injury. A conflict in medical opinion exists between appellant's attending physician and the Office medical adviser necessitating referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a).

A review of the record shows that on the date of injury, May 5, 1993, Dr. Walter Kochanski, a Board-certified orthopedic surgeon, diagnosed strain/contusion of the right knee and reported that appellant may have pinched a cartilage. On the following day Dr. Douglas Roberts, a general practitioner, diagnosed knee strain and a possible medial meniscal injury. On November 28, 1995 Dr. Colpini reported that appellant had sustained an injury diagnosed as a possible medial meniscal injury to his right knee in May 1993. He noted that appellant subsequently had episodic exacerbations of medial knee pain and apparently had a reinjury in April 1995. A magnetic resonance imaging (MRI) scan confirmed the diagnosis of medial meniscal

tear, Dr. Colpini reported and appellant underwent arthroscopic surgery in July 1995. Dr. Colpini stated:

“In all likelihood this tear was the result of his original injury in 1993. It is fairly typical to have pain-free periods of time intermixed with periods of pain with this type of tear. X-rays at the time of original injury, if any were taken, would not have shown a meniscal tear.”

On October 11, 1996 Dr. Harry L. Collins, Jr., a Board-certified orthopedic surgeon and Office medical adviser, reported that appellant’s right knee abnormality, a torn medial meniscus, was not causally related to his injury of May 5, 1993. Dr. Collins noted that Dr. Kochanski, a Board-certified orthopedic surgeon, had diagnosed “strain/contusion of the right knee” on June 29, 1993. He noted that there was no medical record of appellant’s right knee from that date until the claimed recurrence of April 18, 1995, which appellant reported on August 8, 1995. Dr. Collins opined that in all likelihood the reinjury in April 1995 was the original injury of the medial meniscus because there was no medical evidence of a meniscal tear prior to that episode.

Section 8123(a) of the Federal Employees’ Compensation Act provides in part: “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.”¹

Appellant’s physician, Dr. Colpini and the Office physician, Dr. Collins, disagree on whether appellant’s right medial meniscus condition and the resulting disability in 1995 is causally related to the accepted employment injury of May 5, 1993. Dr. Colpini pointed to the diagnosis of possible medial meniscal tear in the contemporaneous medical evidence and explained that it was fairly typical to have pain-free periods of time intermixed with periods of pain with this type of tear. Dr. Collins pointed to absence of a diagnosis of medial meniscal tear in one of the contemporaneous medical reports and noted that there was no medical record of appellant’s right knee from that time until a reinjury in April 1995.

To resolve the conflict in opinion between appellant’s physician and the Office medical adviser, the Office should refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial specialist for an opinion on whether appellant’s right medial meniscus condition and the resulting disability in 1995 was causally related to his May 5, 1993 employment injury. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant’s claim of recurrence.

¹ 5 U.S.C. § 8123(a).

The February 24, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
July 16, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member