

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK T. RYBECK and U.S. POSTAL SERVICE,
POST OFFICE, Eureka, Calif.

*Docket No. 97-475; Submitted on the Record;
Issued May 25, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established a recurrence of disability based on his November 6, 1995 employment injury; and (2) whether appellant is entitled to a schedule award due to permanent impairment as a result of this injury.

On November 6, 1995 appellant, then a 39-year-old letter carrier, filed a claim for compensation benefits alleging that on that day he injured his left knee while in the performance of duty.

On November 13, 1995 Dr. Phillip L. Wagner, appellant's treating physician and Board-certified in preventive medicine and family practice, noted that appellant's left knee internal derangement had resolved and that he had full range of motion. On December 13, 1995 Dr. Wagner stated that appellant's left knee derangement had improved significantly; that he could return to full duty, and that he was discharged from care.

On December 22, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for internal derangement, left knee.

On May 30, 1996 appellant filed a claim for recurrence of disability stating that his legs had bothered him for the past two years. He also stated that he had had "no actual injury, but just the usual stiffness, soreness and pain that I [have] had for the past two years."

By letter dated June 27, 1996, the Office advised appellant that he needed to submit additional information regarding his claimed recurrence of disability including a detailed narrative report from his treating physician containing a well-rationalized medical opinion as to the relationship between his November 6, 1995 employment injury and his alleged recurrence of disability. Specifically, the Office advised appellant to discuss why he believed his continuous leg condition was related to his resolved cervical strain.

In a medical report dated July 9, 1996, Dr. Wagner stated that appellant sustained an internal derangement of the knee on November 6, 1995 but that he was able to work up to eight hours a day after the incident. In an attending physician's report dated the same day, Dr. Wagner stated that he had diagnosed appellant with internal derangement of both knees on November 6, 1995, that appellant was totally disabled from that date to November 11, 1995 at which time he was released to full duty and that on July 9, 1996 he had examined appellant and determined that he had "painful swollen knees." In a July 16, 1996 medical report, Dr. Wagner requested a magnetic resonance imaging scan for appellant due to internal derangement of both knees.

On July 27, 1996 appellant filed a claim for a schedule award based on his November 6, 1995 employment injury.

In a narrative report received by the Office on July 30, 1996, appellant stated that he took a week off at the time of the November 6, 1995 original injury and returned to full duty on November 13, 1995.¹ He noted that he had been in pain for two years and that he "reinjured my knees on May 29 through June 1[, 1996]."

In a letter dated August 8, 1996, the Office notified appellant that it had incorrectly considered his recurrence of disability claim to have been based on a cervical injury which occurred on September 23, 1994, but that it now recognized that appellant's claim was based on his November 6, 1995 employment injury to his left knee. The Office then requested appellant to provide a rationalized medical opinion regarding how his current knee symptoms of discomfort were causally related to his November 6, 1995 employment injury.

On August 9, 1996 appellant filed a claim for recurrence of disability noting that he left work due to the recurrence of disability on May 29, 1996 but returned to work on June 1, 1996 to work, as noted by his supervisor, on "mounted driving routes whenever possible."

On September 9, 1996 the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of record failed to establish a causal relationship between appellant's employment injury and his claim for recurrence of disability. Further, the Office stated that appellant failed to establish that he had sustained a permanent partial impairment due to his employment injury and denied his claim for a schedule award.

Regarding appellant's claim for a recurrence of disability, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his recurrence of disability commencing on or about May 30, 1996 and his November 6, 1995 employment injury.² This burden includes that necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and

¹ The Board notes that appellant's statement that he returned to work on November 13, 1996 should read November 13, 1995.

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

In this case, appellant submitted two medical reports from Dr. Wagner in support of his claim for recurrence of disability and schedule award. In his July 9, 1996 medical report and in an attending physician's report dated the same day, Dr. Wagner stated that appellant had sustained a left knee derangement on November 6, 1995. However, neither of these medical reports attempted to establish a causal relationship between appellant's claimed recurrence of disability and his employment injury. Although the Office initially considered appellant's claim to be based on a cervical sprain which compelled clarifying reports from Dr. Wagner, the Office, on August 8, 1996, acknowledged that appellant's claim was based on his November 6, 1995 employment injury and provided appellant 30 days from that date to support his claim for recurrence of disability with a rationalized medical opinion. Appellant has not submitted the necessary rationalized medical evidence to support his claim of recurrence of disability. Neither medical report established that appellant's current medical condition was causally related to his November 6, 1995 employment injury.

Regarding his claim for a schedule award, section 8107 of the Federal Employees' Compensation Act⁴ and section 10.304 of the implementing regulations,⁵ provide that 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for determining the percentage of impairment and the Board has concurred in such adoptions.⁶

In this case, appellant has failed to establish that he sustained a permanent partial impairment due to his employment injury. Indeed, Dr. Wagner, his treating physician, noted in treatment notes dated November 13 and December 13, 1995 that appellant's employment injury had resolved and that he could return to full duty without restriction. Thus appellant has failed to establish that he had sustained a permanent partial impairment due to his November 6, 1995 employment injury and the Office properly denied his claim.

³ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

⁶ *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

The decision of the Office of Workers' Compensation Programs dated September 9, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 25, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member