

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY SHINHOSTER and U.S. POSTAL SERVICE,  
POST OFFICE, Opa-locka, FL

*Docket No. 98-1074; Submitted on the Record;  
Issued November 5, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant established that he sustained a recurrence of disability causally related to his August 30, 1996 employment injury

On August 30, 1996 appellant, then a 42-year-old letter carrier, filed a notice of traumatic injury and claim for compensation alleging that on that date he slipped on some rocks and injured his right knee while in the performance of duty. The Office of Workers' Compensation Programs approved the claim for right knee strain. Appellant was off work from August 31, 1996 to September 5, 1996. He worked in a limited-duty position until he was approved for full duty without restrictions on November 6, 1996.

Appellant was treated for his right knee strain at an outpatient clinic. He received a needle aspiration on September 10, 1996. He also underwent a course of physical therapy.

In a November 6, 1996 outpatient injury treatment report, Dr. Robert W. Fleigelman, a Board-certified family practitioner, diagnosed that appellant's right knee strain had resolved. He approved appellant for full duty with no restrictions.

On July 19, 1997 appellant filed a claim alleging that he sustained a recurrence of disability on January 20, 1997 and again on July 19, 1997 when his knee "slipped out and swole up." Appellant also indicated that his right knee would swell and ache whenever he was required to perform overtime work. He noted on his CA-2a form that he was off work from January 21 to January 23, 1997.

In a statement dated July 19, 1997, attached to the CA-2a form, appellant stated he was told by his personal physician in February 1997 that he had fluid in the right knee. Appellant indicated that since the Office refused to pay for an orthopedic referral, he was unable to seek treatment. According to appellant, on July 19, 1997 while he was trying to get out of a

thunderstorm, he turned to his right and felt his knee slip out, then it swole. He further stated that the medication is not solving his knee problems.

By letter dated August 11, 1997, the Office requested that appellant submit rationalized medical evidence in support of his claim.<sup>1</sup>

In a decision dated October 8, 1997, the Office denied appellant's claim for compensation on the grounds that there was no rationalized medical evidence of record which related his alleged recurrence of disability to the August 30, 1996 employment injury.<sup>2</sup>

By letter dated November 30, 1997, appellant requested reconsideration.

In support of his reconsideration request, appellant submitted treatment notes from Dr. Ana Hernandez, an osteopath. In an October 16, 1996 treatment note, she reported that appellant slipped and twisted his right knee 1½ months ago, resulting in pain and swelling in the knee for which appellant was given a knee brace. In a January 23, 1997 treatment note, Dr. Hernandez noted that appellant complained of pain and swelling in the right knee. She diagnosed suprapatellar bursal effusion by x-ray and recommended an orthopedic referral.

Appellant submitted an outpatient injury treatment report signed by Dr. Samuel Rand, a Board-certified anesthesiologist, on January 24, 1997 which reported that appellant's right knee strain was resolved and that he was approved for full unrestricted duty.

In a treatment note dated April 30, 1997, Dr. Hernandez reported that appellant got lumbosacral relief by supportive therapy but still had right knee instability with a sensation of "giving out" when he rotated his leg. She indicated that appellant needed an orthopedic referral to rule out a meniscus tear. In a treatment note dated July 23, 1997, Dr. Hernandez noted that appellant's knee had been swollen since Saturday and that he was unable to completely bear weight on his right knee. She prescribed pain medication and again indicated that appellant required an orthopedic referral.

In a November 12, 1997 report, Dr. Robert M. Maywood, an orthopedist, reported that appellant sustained a work-related injury in August 1996 when he slipped on rocks and twisted his right knee. He diagnosed right knee partial anterior cruciate ligament tear and medial meniscus tear. Dr. Maywood noted that while it had been over one year since appellant's injury, appellant felt that the injury still significantly impinged on his lifestyle. He recommended that appellant undergo arthroscopic evaluation and meniscus surgery.

In a decision dated January 28, 1998, the Office denied modification following a merit review of the record.

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<sup>1</sup> Appellant alleged that he filed a claim for recurrence for disability in February 1997, but his CA-2a form was lost by the Office. There is no support for appellant's allegation in the record.

<sup>2</sup> The Office advised appellant of his right to file an occupational disease claim (Form-CA-2) since the medical record suggested that his knee condition may have developed over a period of days or over more than one work shift.

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability causally related to the August 30, 1996 injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>3</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relationship.<sup>5</sup>

In the instant case, the Office accepted that appellant sustained a right knee sprain on August 30, 1996. Appellant was approved for full unrestricted duty on November 6, 1996. Although appellant alleges that he sustained a recurrence of disability on January 20, 1997 and again on July 17, 1997, he has submitted no rationalized medical opinion evidence to support his claim. The medical treatment notes from Dr. Hernandez do not explain how appellant's knee condition on or after January 20, 1997 is causally related to the August 30, 1996 work injury. In his November 12, 1997 report, Dr. Maywood noted appellant's prior August 30, 1996 work injury and diagnosed a meniscal tear, but the physician offered no explanation supported by medical rationale as to how appellant sustained a meniscal tear, taking into consideration the nature of the original right knee sprain injury and the factors of appellant's employment. Inasmuch as appellant's right knee sprain was reported to be resolved as of November 1996 and the Office only accepted the claim for a right knee sprain, it was necessary for appellant to submit a rationalized medical opinion discussing how the meniscal tear is causally related to the August 30, 1996 knee injury. Thus, to the extent that the record is devoid of a rationalized medical opinion based on a complete factual and medical record, from which it concluded that appellant sustained a recurrence of disability on or after January 20, 1997, the Office properly denied compensation.

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<sup>3</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

<sup>4</sup> *See Nicolea Brusco*, 33 ECAB 1138 (1982).

<sup>5</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

The decisions of the Office of Workers' Compensation Programs dated January 28, 1998 and October 8, 1997 are hereby affirmed.

Dated, Washington, D.C.  
November 5, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member