

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARMELO L. CALDERONE and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 97-2363; Submitted on the Record;  
Issued October 20, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that his diagnosed neuropathy is causally related to his accepted bilateral knee conditions.

The Board has duly reviewed the case record and finds that the case is not in posture for a decision due to an unresolved conflict in the medical opinion evidence. Further development of the medical evidence is required.

On August 13, 1981 appellant, then a 55-year-old letter carrier, twisted his right knee when he stepped off a porch in the performance of his duties. The Office of Workers' Compensation Programs accepted that appellant sustained a torn right medial meniscus and authorized appropriate benefits. Appellant's knee condition deteriorated and the Office approved total right knee replacement surgery, which was performed in July 1988. Subsequently, due to the resultant excess strain on appellant's left knee, his left knee deteriorated and the Office approved a total knee replacement for the left knee, which was performed on May 17, 1995.

Shortly after his 1988 right knee replacement, appellant was diagnosed with bilateral neuropathic symptoms, ranging from a severe burning sensation in his thighs, weakness of his legs, numbness and sensations of cold, to a myriad of bladder problems. By letter dated June 27, 1996, appellant requested that his neuropathy be formally accepted by the Office as causally related to his right knee replacement surgery.<sup>1</sup> In support of his claim, appellant resubmitted copies of medical reports from his treating physician, Dr. Susan J. Steen, a Board-certified neurologist. In these reports, already contained in the record, Dr. Steen diagnosed appellant with bilateral symptoms of femoral neuropathy approximately six weeks after his 1988 right knee replacement surgery. An electromyogram (EMG) performed on September 13, 1998 confirmed the diagnosis. Appellant's symptoms persisted and in a report dated November 26, 1991,

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<sup>1</sup> Appellant's request came in response to a letter from the Office informing him that his neuropathic conditions had not been accepted by the Office. While the Office had been covering appellant's treatment for his neuropathic conditions, the payment of medical expenses does not constitute acceptance of a claim. *Carolyn F. Allen*, 47 ECAB 240 (1995).

Dr. Steen stated that appellant had been diagnosed with bilateral femoral neuropathy as well as peripheral neuropathy and symptoms of possible gastric paresis. She further stated that it “appears as though the femoral neuropathy has been related to surgery done in conjunction with a work-related knee injury” and that appellant’s “femoral neuropathic pain could very well be related in this way to the work[-]related injury.” Dr. Steen added that it was “possible” that appellant’s urologic symptoms could be related as well and indicated that she had referred appellant for further consultation.<sup>2</sup>

In addition, appellant submitted more recent evidence from his other treating physicians, regarding his diagnosed neuropathy. In reports dated February 1, August 15, September 13 and November 8, 1995, Dr. Shashidar Kori, a Board-certified neurologist, to whom appellant had been referred by Dr. Steen, diagnosed sensory peripheral neuropathy, etiology unclear, possibly related to heavy alcohol use prior to 1966 or possibly related to the nitrous oxide anesthesia used during appellant’s knee surgery. A February 3, 1995 EMG indicated a diagnosis of axonal polyradiculoneuropathy.

Upon receipt of appellant’s request that the Office accept his diagnosed neuropathy as a condition related to employment, the Office scheduled a second opinion examination with Dr. William R. Greenberg, a Board-certified neurologist. Dr. Greenberg was asked to answer specific questions as to the cause of appellant’s femoral neuropathy, its relationship, if any, to appellant’s 1988 right knee replacement surgery and its possible causal relationship to appellant’s bladder complaints. Following his review of the record and the statement of accepted facts and his examination of appellant, Dr. Greenberg stated, in pertinent part:

“The clinical impression is one of a gentleman who presents with symptomatology consistent with a peripheral neuropathy. The onset of the neuropathic symptoms occurred sometime in 1988, noted was what theoretically could be considered an exacerbation around August when he developed the symptomatology for bilateral femoral neuropathy. Individuals can experience a femoral neuropathy after a surgical procedure; his presentation sounds to be more of a plexopathy occurring bilaterally, this cannot be on the basis of a traumatically induced neuropathy from surgery. Subsequently, those symptoms resolved leaving him with a sense of numbness involving the lateral thigh. He then developed dysesthesias in the feet which have persisted per his subjective complaints, gradually worsening with the suggestion of a neurogenic bladder noted in the records.

“At this point, the etiology of this peripheral neuropathy is undeterminable it does not appear to be on the basis of a traumatic event. Other than it becoming more symptomatic surrounding the surgical procedure, there is no evidence it can be causally related to the problems involving his knees. The progressive nature of the problem also speaks against it being interrelated to the knee problem, rather to some undetermined systemic etiology.

“Regarding specific questions posed, I do not feel the diagnosis for a femoral neuropathy, especially bilaterally, could be caused as a result from the total right

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<sup>2</sup> Appellant was diagnosed with a “neurogenic bladder.”

knee replacement surgery of 1988. The peripheral neuropathy is also unrelated to the surgical procedures. It is quite possible this peripheral neuropathy has spread to involve the bladder, the etiology of the peripheral neuropathy cannot be determined at this point in time, but it can be clearly stated it is not causally related to the knee problems.”

In a decision dated January 16, 1997, the Office denied appellant’s claim on the grounds that the evidence of file, represented by the unequivocal report of Dr. Greenberg, failed to establish that the claimed condition of neuropathy is causally related to appellant’s accepted right knee condition.

By letter dated March 3, 1997, appellant requested reconsideration and submitted additional factual evidence, as well as a report from his treating physician, Dr. Frank B. Vasey, a Board-certified internist with a secondary specialty in rheumatology, in support of his request.

In his report dated February 27, 1997, Dr. Vasey stated:

“The above named is a patient of mine with peripheral neuropathy which began four weeks after total knee replacement in 1988. This was originally documented by Susan Stein, M.D. (Neurology) in 1988 at St. Joseph’s Hospital and reconfirmed in her letter of November 26, 1991. I believe his immune system reacted to the total knee replacement and caused his neuropathy. Interestingly he had a chronically swollen and painful knee after the surgery. While he did have a superficial wound infection the implant was not infected and did not have to be removed.

“A recent epidemiologic study documented statistically increased idiopathic peripheral neuropathy (IPN) after total metal joint replacement ... see enclosed.

“Concisely summarizing [appellant] developed job related osteoarthritis in his knees which required total knee replacement. He either suffered an exacerbation of a latent condition or experienced a totally new neuropathy. Both circumstances within a reasonable medical probability were caused by an immune response to his total knee replacement and should be included in his disability.”

In a merit decision dated June 25, 1997, the Office found that the weight of the medical evidence continued to rest with Dr. Greenberg and, therefore, the report of Dr. Vasey was insufficient to warrant modification of its prior decision.

The Federal Employees’ Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “If there is a 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.”<sup>3</sup>

In the present case, appellant has alleged that he suffers from neuropathy causally related to his accepted right total knee replacement. As part of appellant’s burden of proof, he must

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<sup>3</sup> 5 U.S.C. § 8123(a); *Esther Velasquez*, 45 ECAB 249, 252-53 (1993).

submit rationalized medical evidence based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and his accepted condition.<sup>4</sup> To support his claim, appellant submitted a narrative report from Dr. Vasey, one of his treating physicians. However, Dr. Greenberg, the Office second opinion physician, is in disagreement with appellant's physician as to the causal relationship, if any, between appellant's diagnosed neuropathy and his 1988 total knee replacement. Consequently, the case will be remanded so that the Office may refer appellant, together with a statement of accepted facts, questions to be answered and the complete case record, to an appropriate Board-certified specialist for an impartial medical examination and a rationalized medical opinion to resolve the medical conflict regarding this issue.<sup>5</sup>

Therefore, the decisions of the Office of Workers' Compensation Programs dated June 25 and January 16, 1997 are hereby set aside and the case is remanded for further action in accordance with this decision and order of the Board. The decision dated November 19, 1996, granting appellant a schedule award for a 50 percent permanent impairment of his left lower extremity, is affirmed.<sup>6</sup>

Dated, Washington, D.C.  
October 20, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>5</sup> *Kathryn Haggerty*, *supra* note 4; *Carol A. Dixon*, 43 ECAB 1065, 1071 (1992).

<sup>6</sup> Appellant did not contest the November 19, 1996 decision on appeal.