U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMON V. SILVACOLL and U.S. POSTAL SERVICE,
WESTFIELD POST OFFICE, Westfield, NJ

Docket No. 98-1304; Submitted on the Record;
Issued October 26, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that his employment-related disability ceased.

On July 5, 1996 appellant, then a 51-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 2, 1996 he stepped off a sidewalk while delivering mail and felt a sharp pain in his left knee.

In response to an August 2, 1996 request by the Office for more information, appellant submitted a medical report from Dr. Alan Goldstein, a Board-certified internist, who examined appellant on July 3, 1996 at the Multi-Care Health Center and diagnosed appellant as suffering from "left knee strain -- Rule out cartilage tear."

On July 12, 1996 appellant was seen by Dr. James Aragona, a Board-certified orthopedic surgeon with the Multi-Care Health Center, who diagnosed a sprain to the knee with mild effusion, probably internal derangement. He stated that appellant could remain in limited duty at work. Appellant saw Dr. Aragona again on September 20, 1996, at which time Dr. Aragona noted "mild swelling, positive McMurray's medially and also lateral joint line tenderness." Dr. Aragona ordered a magnetic resonance imaging (MRI) scan of the left knee, which was conducted on February 28, 1997.

The record reveals that appellant returned to Dr. Aragona on March 7, 1997. In his medical report dated March 10, 1997, Dr. Aragona reviewed the results of appellant's MRI scan performed by Dr. Bernard J. Beute, a Board-certified radiologist. Dr. Aragona stated that the MRI scan demonstrated that appellant had meniscal tears, lateral and medial, and degenerative changes at the patellofemoral joint, popliteal cyst. He noted that appellant retained a full range of motion in his left knee without instability or swelling; that tenderness was present about the medial and lateral joint line, centrally and posteriorly; that appellant did not limp; and that the neurovascular status was intact to the limb. At that time, Dr. Aragona recommended

arthroscopic surgery of the left knee. He noted that appellant had a right knee arthroscopy 10 to 15 years prior.

The Office accepted appellant's claim for left knee sprain and authorized left knee surgery. Appellant underwent surgery on June 3, 1997.

On June 3, 1997 appellant filed a notice of recurrence of disability and claim for continuation pay/compensation for surgery. Appellant's supervisor indicated that appellant stopped working on that date to undergo surgery. On the same date, Dr. Aragona performed a "partial medial and lateral meniscectomy, medial and lateral compartment chondroplasties [d]ebridement of [anterior cruciate ligament]" on appellant. The discharge diagnosis was "left knee torn meniscus, posterior third of medial meniscus. Posterior and middle third of lateral meniscus. Triocompartmental chondromalacia. Attenuated anterior cruciate ligament."

On June 9, 1997 Dr. Aragona found that the knee "portals look fine," that neurovascular status to the limb was intact, and that appellant had good straight leg raises and limited, but active range of motion. On June 27, 1997 Dr. Aragona completed an attending physician's report (Form CA-20), wherein he released appellant to return to work as of July 7, 1997.[1]

On June 19, 1997 appellant filed a claim for continuing compensation on account of disability (Form CA-8) claiming compensation for the period June 28 through July 6, 1997. On that same date, the employing establishment filed a report of termination of disability and/or payment (Form CA-3) showing that appellant returned to full-time limited-duty work. In a separate note accompanying the CA-3 form, an employing establishment official stated that appellant worked four hours "on the road" and four hours "in the office."

When appellant saw Dr. Aragona on July 14, 1997, he had attempted to go back to work, and reported difficulties. Dr. Aragona determined that appellant had pain on patellofemoral compression and pain along the joint line, as well as mild crepitus. He diagnosed chondromalacia and derangement of the left knee. Dr. Aragona set forth new restrictions, noting appellant could stand or sit a full eight hours, but walking should be limited to four hours maximum, and he was prohibited from climbing ladders.

By letter dated January 12, 1998, the Office referred appellant for a second opinion to Dr. Irving Strouse, a Board-certified orthopedic surgeon. Enclosed with the referral was a statement of accepted facts.

In a report dated January 23, 1998, Dr. Aragona opined that appellant was walking without a limp, but that sometimes cold weather would aggravate his knee. Dr. Aragona opined

[1] The record reveals that appellant stopped work on July 2, 1996 and returned to light duty on September 20, 1996, he stopped work again on June 3, 1997 for his surgery, and returned to limited duty for eight hours a day on July 7, 1997, with his duties limited to working as a letter carrier for four hours a day and working in the office for four hours a day.

that appellant was able to complete his limited-duty assignment, which is a maximum of four hours per day standing and no ladder climbing, for a total of an eight-hour day "combined." Dr. Aragona noted that appellant had no swelling of the knee, that he had full range of motion and no instability; that he complained of pain; and that there was "light crepitus" which he stated was "consistent with his arthroscopic findings of knee degeneration."

In a report dated January 28, 1998, Dr. Strouse diagnosed appellant as post-arthroscopic surgery, left knee, with partial medial and lateral meniscectomies and chondroplasties of the medial and lateral femoral condyles. Dr. Strouse reported that the physical examination of appellant revealed that he was able to ambulate without a limp; that his legs were straight with no deformity; that he retained full range of motion of the left knee compared to the opposite "normal right side"; that arthrosocopic scars anteriorly, medially and laterally had healed; and that there was full patellar motion without crepitus or pain. He further found that, although appellant experienced some residual medial and lateral joint line tenderness, there was no swelling and that no medial or lateral instability existed. Dr. Strouse noted mild anterior-posterior instability and concluded that appellant made a complete recovery from the July 2, 1996 employment injury. He stated "it is my opinion based on reasonable medical probability that much of [appellant's] problem was preexisting to the injury of July 2, 1996, although the injury is considered an aggravation of his preexisting conditions." He explained that the "amount of trauma caused by stepping off a curb could not explain [appellant's] extensive findings at arthroscopic surgery," and pointed out that the current degenerative changes in appellant's knee were not employment related but were instead preexisting. Dr. Strouse noted that appellant was now clear to return to his full duties at work including working as a letter carrier eight hours a day.

By decision dated February 6, 1998, the Office terminated appellant's compensation benefits, finding that the weight of evidence was represented by the opinion of Dr. Strouse who analyzed the effects of appellant's prior condition and established that the injury-related disability ceased.[2]

The Board finds that the Office properly terminated appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation benefits.[3] After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.[4] The fact that the Office accepts appellant's claim for a specified period of disability

[2] On the same date, February 6, 1998, the Office issued a notice of proposed termination of medical benefits. No final decision was issued on the issue of termination of medical benefits. The Board will only review final decisions of the Office. 20 C.F.R. § 501.2(c).

[3] *Carolyn F. Allen*, 47 ECAB 240, 247 (1995).

[4] *Patrick P. Curran*, 47 ECAB 247, 251 (1995).

does not shift the burden of proof to appellant. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.[5]

In this case, the Office accepted appellant's original claim for left knee sprain and resulting surgery. The second opinion medical specialist, Dr. Strouse, concluded, based on a reasonable medical probability, that appellant has made a complete recovery from the injury sustained on July 2, 1996, and that a good portion of appellant's problem was preexisting to the injury of July 2, 1996, although the work injury caused a temporary aggravation of his symptoms. He explained that there was no objective evidence of any employent-related disabilty. Dr. Strouse pointed out that the degenerative changes in appellant's left knee were not due to the July 2, 1996 employment injury as the mechanism of said injury "could not explain his extensive findings at arthroscopic surgery." He further pointed out that any residuals were due to the underlying degenerative condition.[6] Dr. Strouse released appellant to full-duty work, and stated that "any residual disability as described by [appellant] would be preexisting and unrelated to his injury of July 2, 1996." Dr. Strouse's opinion was rationalized, as it was based on a complete medical history and his observations that appellant could ambulate without a limp, that his legs were straight with no deformity, that he had full range of motion in his left knee compared to the opposite normal right side, that the arthroscopy scars had healed anteriorly, medially and laterally, that there was full patellar motion without creptius or pain, that although there was some residual medial and lateral joint line tenderness, there was no swelling and that appellant's current problems were due to preexisting degenerative changes.

The Board notes that the physical observations made by appellant's treating physician, Dr. Aragona, were not significantly different from the observations of Dr. Strouse. Dr. Aragona also found that the left knee had no swelling, a full range of motion and no instability. Although Dr. Aragona diagnosed chondromalacia and derangement, and attributed these diagnoses to the employment injury, he did not explain how these conditions were employment related. The Board notes that such an explanation is needed, especially since the Office only accepted lumbar sprain of the left knee and the resultant arthroscopic surgery. The burden of proof is thus on appellant to establish a causal relationship between the diagnosed condition and the employment injury.[7] As appellant did not satisfy this burden, Dr. Aragona's report was insufficient to overcome the weight of the evidence as represented by Dr. Strouse, which establishes that appellant's employment-related disability ceased and that his current condition was due to the degenerative changes about the left knee.

Accordingly, the Office properly found that the weight of the medical evidence established that appellant had no continuing disability as a result of the employment injury of July 2, 1996.

The February 6, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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[5] *Id.*

[6] *James L. Hearn*, 29 ECAB 278 (1978).

[7] *See e.g., Nathaniel Milton*, 33 ECAB 1087 (1982).

Dated, Washington, D.C.
October 26, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member