

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARNOLD L. SKLAR and U.S. POSTAL SERVICE,
BOWLING GREEN STATION, New York, NY

*Docket No. 97-2677; Submitted on the Record;
Issued September 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he had a recurrence of disability on or after March 27, 1992 causally related to his June 6, 1984 employment injury, to his back and right knee.

The case has been on appeal previously.¹ In a March 13, 1997 decision, the Board noted that after the June 6, 1984 employment injury appellant's claim had been accepted for low back sprain and internal derangement of the right knee, including a torn medial meniscus. He worked light duty until August 6, 1986 and returned to part-time light-duty work on April 22, 1989. He accepted disability retirement on May 15, 1989. He subsequently received a schedule award for a 39 percent permanent impairment of the right leg for the period September 24, 1989 through November 19, 1991. On March 27, 1992 appellant requested reinstatement of compensation benefits, claiming that he was totally disabled due to the residuals of the employment injury. The Board found that there existed a conflict in the medical evidence between Drs. Otto C. Krestler and Harvey R. Grable, both Board-certified orthopedic surgeons, who stated that appellant was totally disabled due to the residuals of his employment injury and Dr. Alexander Afalonis, a Board-certified orthopedic surgeon, who indicated that appellant could perform limited-duty work. The Board, therefore, remanded the case for referral of appellant to an appropriate impartial medical specialist.

On remand the Office of Workers' Compensation Programs referred appellant, together with the statement of accepted facts and the case record, to Dr. Nate V. Bondi, a Board-certified orthopedic surgeon, for an examination. In an April 28, 1997 report, Dr. Bondi indicated that appellant had some limitation in the motion of the lumbosacral spine but no evidence of spasm in the paravertebral musculature and no tenderness to palpation. He found no atrophy and indicated that the neurologic and sensory examinations were normal. Dr. Bondi reported that

¹ Docket No. 95-80 (issued March 13, 1997). The history of the case is contained in the prior decision and is incorporated by reference.

appellant had a three degree varus deformity of the knee and a five degree limitation in extension of the right knee he indicated appellant had mild crepitus of the right knee with no evidence of effusion or ligamentous instability. Dr. Bondi noted that x-rays showed moderate medial joint narrowing of both knees bilaterally. He concluded that appellant could not perform regular work duties but would be capable of part-time sedentary activity. Dr. Bondi recommended that appellant should avoid walking, standing, kneeling and heavy lifting. In a May 22, 1997 report, he stated that appellant could work eight hours a day with intermittent periods of standing, walking and bending for 10 minutes an hour. Dr. Bondi indicated that appellant could lift up to 10 pounds intermittently up to 10 times per hour. He commented that appellant should avoid kneeling.

In a June 9, 1997 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to show a causal relationship between the employing establishment and appellant's claimed disability.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.² Appellant has not met that burden here.

The light-duty job appellant accepted effective April 22, 1989 required that he work four hours a day and would be structured to allow continuous and intermittent sitting for up to four hours a day and intermittent walking for one hour a day with no requirement to lift, bend, squat, climb, kneel, twist, stand, push or pull. Dr. Bondi, in his reports, indicated that appellant could perform sedentary work of up to 8 hours with intermittent standing, walking and bending for short periods each hour and occasional lifting up to 10 pounds. The restrictions set by the doctor do not exceed the requirements of the position appellant left in May 1989. In situations when there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³ In this case, Dr. Bondi had an accurate history of appellant's claim, performed a complete physical examination and concluded from the examination that appellant was capable of sedentary work, with restrictions similar to the position he left. His report, therefore, is entitled to special weight and, in the context of this case constitutes the weight of the medical evidence. In light of Dr. Bondi's report, appellant had not met his burden of proof in establishing that there was a change in the nature or extent of the effects of his employment injury to the point that he was unable to perform the light-duty position he assumed after he returned to work.

² *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs, dated June 9, 1997, is hereby affirmed.

Dated, Washington, D.C.
September 8, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member