

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA A. RORICK and U.S. POSTAL SERVICE,
POST OFFICE, North Babylon, NY

*Docket No. 98-516; Submitted on the Record;
Issued January 21, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on April 5, 1995 causally related to the September 8, 1993 employment injury.

On September 8, 1993 appellant, then a 28-year-old letter carrier, sustained an employment-related left knee sprain, for which she underwent authorized arthroscopy.¹ She stopped work on September 10, 1993 received appropriate continuation of pay and compensation and returned to a limited-duty position, four hours per day, on August 15, 1994. On April 17, 1995 she filed a Form CA-2a, recurrence claim, stating that her knee was swollen and that she was in constant pain and could not kneel, squat or bend her knee without extreme pain. She stopped work on April 5, 1995. By letter dated May 22, 1995, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support her recurrence of disability claim. By decision dated August 25, 1995, the Office denied the claim on the grounds that the medical evidence failed to demonstrate a causal relationship between the September 8, 1993 employment injury and the claimed recurrence of disability.

On September 23, 1995 appellant requested a hearing that was held on April 2, 1996. At the hearing she testified that she had to stand four hours per day casing mail and that the pain continued to worsen until her doctor recommended that she stop work. By decision dated June 16, 1996, the Office hearing representative affirmed the August 25, 1995 decision. She returned to a sedentary position, four hours per day, on May 31, 1997. On June 9, 1997 appellant, through counsel, requested reconsideration and submitted additional evidence. She increased her work to eight hours per day on June 28, 1997. By decision dated August 26, 1997, the Office denied the reconsideration request, finding the medical evidence insufficient to warrant merit review. The instant appeal follows.

¹ The arthroscopic surgery indicated that appellant sustained a torn lateral meniscus of the left knee.

Initially, the Board notes that in its August 26, 1997 decision, the Office conducted a merit review of appellant's claim.

In denying appellant's request for reconsideration, the Office reviewed the newly submitted medical evidence and noted that it contained a magnetic resonance imaging (MRI) report dated September 24, 1996 that had not been reviewed, as well as two reports from appellant's treating Board-certified orthopedic surgeon, Dr. Arnold M. Illman, dated March 28 and May 30, 1997. The Office memorandum states:

"Dr. Illman's findings of total disability are based on a positive McMurray's test. To further evaluate the 'problem,' the physician recommended [an] MRI. [The] MRI was performed on September 24, 1996 and came up normal, as did a previous MRI of December 6, 1994. The physician's reiteration that the MRI is of little value and the McMurray's test should be the determinant of the claimant's condition and alleged recurrent disability does not contain the color of validity. The MRI, by its very nature, must be considered an **objective** test. The McMurray's test is, on the other hand, (as confirmed in discussion with the Office's District Medical Director on August 25, 1997) based solely upon the **subjective** pain responses of the claimant. This was properly recognized (based on the evidence of the original MRI) in the decision of the Branch of Hearings and Review as seriously diminishing the probative value of Dr. Illman's opinion on recurrent disability.

"The previously unreviewed reports submitted along with the reconsideration request (of March 28, 1997 and the addendum of May 30, 1997) are insignificant to the previous decision of record in that they provide summaries of reports previously in file and state that MRI findings (normal examination) should not be given consideration. The argument fails to reasonably and logically address the relative value of an objective test (MRI) as opposed to subjective pain responses of the claimant and is of diminished probative value. More importantly, the reports fail to address how [Dr. Illman's] findings may have represented a material change in the nature and extent of the injury-related condition, especially in light of the previous surgery, which, to all appearances, was successful.

"The reports also show a particular lack of understanding, on the physician's part, of the claimant's documented preexisting bilateral knee arthritis, for which conditions she receive[d] physical therapy until December 1991 and her documented obesity (reported as 270 pounds at one point), in relation to her work-related knee condition." (Emphasis in the original.)

The Board finds that in the August 26, 1997 decision, the Office, in fact, considered the merits of appellant's claim by weighing the medical evidence submitted from Dr. Illman. For this reason, the Board has jurisdiction to review the merits of appellant's recurrence of disability claim.

The Board finds, however, that appellant has failed to establish that she sustained a recurrence of disability on April 5, 1995 causally related to the September 8, 1993 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.² Causal relationship is a medical issue,³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

On appeal, appellant's counsel contends that there was a change in the nature and extent of appellant's light-duty requirements such that she had to stand four hours per day, which was outside the restrictions provided by her physician. The record indicates that when appellant filed her recurrence claim on April 17, 1995, she indicated that she stopped work because she could not kneel, squat or bend her knee without pain. In an undated statement received by the Office on September 5, 1995 appellant stated, "after returning to limited duty on August 15, 1994 my condition continuously became worse until April 5, 1995." At the hearing, held on April 2, 1996, she testified that she stood for four hours per day. The position description provided by the employing establishment indicates that all appellant's limited duties "may be done either standing or sitting for comfort."

Appellant did not allege that the limited-duty requirements had changed when she filed her recurrence claim or when she submitted a statement some months later. While she testified at the hearing that she had to stand four hours daily, the position description indicates that appellant could choose to either stand or sit while completing her work duties. Appellant, therefore, failed to substantiate a change in the nature of her limited-duty position.

Appellant also contends that the medical evidence establishes that she could no longer perform the light-duty position. The medical evidence relevant to her condition in April 1995 includes MRIs dated December 6, 1994 and September 24, 1996, which were within normal

² *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

limits. Dr. Illman, appellant's treating Board-certified orthopedic surgeon, submitted a treatment note dated April 7, 1995, in which he advised that appellant could not work. In a May 16, 1995 attending physician's report, he indicated that appellant was "taken out of work for a few days" due to pain and effusion in the left knee and advised that, while the MRI was negative, further arthroscopy was needed to solve the problem of internal derangement. In a June 27, 1995 report, Dr. Illman stated she was unable to work due to knee pain and in a September 13, 1995 report, he merely indicated that when seen on April 7, 1995 she was taken out of work for a few days. Dr. Illman continued to submit Office form reports and treatment notes and, while he continued to request authorization for surgery, Dr. Illman did not indicate that she was disabled from work.⁵ In reports dated February 1 and May 31, 1996, he indicated that she was not working. In a March 28, 1997 report, Dr. Illman again reviewed his findings and treatment. He noted that surgery had been authorized and booked on two different occasions but canceled due to appellant's breathing problems and concluded:

"I do not feel that the negative MRI's in this patient's situation are significant in that this MRI was not capable of picking up a partial meniscectomy which was carried out by Dr. Manes in the past. Therefore, it probably was not capable of picking up the fact that she has a recurrent torn meniscus. It is not known whether or not [due] to the passage of such a long period of time and the fact that she is somewhat obese, that secondary arthritis might have set in as a result of this torn cartilage which caused her to have increased symptoms to her knee and would obviate her ability to be a mail carrier on a permanent basis.

"I feel strongly that this patient, through a combination of pulmonary disease requiring constant Prednisone usage, internal derangement of the knee due to recurrent torn meniscus and secondary osteoarthritis of the knee would permanently prevent her from ever returning to her normal job as a letter carrier."

In a May 30, 1997 report, Dr. Illman advised:

"This patient stated that she developed excruciating pain in her knee while working, but there is no specific injury description by the patient. This patient should have permanent sedentary duty and this was causally related to her initial accident."

The medical evidence in this case, does not support that appellant sustained a recurrence of disability causally related to the accepted employment injury. When appellant's treating physician, Dr. Illman, examined her in April 1995, at the time of the claimed recurrence of disability, he merely stated that she should not work for a few days. In March 1997 Dr. Illman indicated that she should not return to her regular job as a letter carrier and in May 1997 advised that she should have permanent sedentary duty. In none of these reports does he provide a rationalized explanation of why appellant could not perform the limited-duty position. As appellant failed to submit rationalized medical evidence that identified specific employment

⁵ The record indicates that on October 15, 1996 the Office authorized additional surgery. This was not undertaken due to appellant's pulmonary condition.

factors that caused her to stop work on April 5, 1995, she failed to discharge her burden of proof and the Board finds that she failed to establish a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated August 26, 1997 is hereby affirmed as modified.

Dated, Washington, D.C.
January 21, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member