

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA J. BLEDSOE and U.S. POSTAL SERVICE,
POST OFFICE, Cedar Hill, TX

*Docket No. 99-392; Submitted on the Record;
Issued June 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award as she had not reached maximum medical improvement.

On November 2, 1995 appellant, then a 52-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a knee contusion and degenerative joint disease (DJD) when she tripped over mail tubs and fell on her left knee. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care from Dr. John Jamison, a Board-certified orthopedic surgeon, on November 2, 1995. Appellant's supervisor controverted appellant's claim for continuation of pay on the grounds that the medical evidence received by the employing establishment failed to show that appellant was totally disabled.

By letter dated November 25, 1996, the Office notified appellant that the evidence submitted to support her claim was insufficient to establish that she sustained an injury on November 2, 1995, as alleged. The Office requested additional factual and medical evidence and allowed appellant 20 days to respond.

In support of her claim, appellant submitted three duty status reports dated November 17, 1995 to January 10, 1996 from Dr. Jamison. Appellant also submitted an attending physician's report (Form CA-20) from Dr. Jamison dated December 15, 1995. He diagnosed a torn medial meniscus and DJD, and noted that arthritis, torn medial meniscus and DJD were observed on x-rays. Further, appellant submitted Texas Workers' Compensation Commission medical review forms from Dr. Jamison dated November 2, 1995 to January 9, 1996. Additionally, appellant submitted a report from Dr. Jamison dated December 7, 1995 noting marked ecchymosis, swelling, limited range of motion, joint effusion and previously-present degenerative changes in appellant's knee.

On December 26, 1995 appellant filed a claim for compensation on account of traumatic injury (Form CA-7) claiming compensation from December 18 through 22, 1995.

On January 11, 20 and 30, 1996 appellant filed claims for continuing compensation on account of disability (Form CA-8). On the January 11, 1996 claim form appellant claimed compensation from December 23, 1995 through January 5, 1996. On the January 30, 1996 claim form appellant claimed compensation from January 12 through 19, 1996. On the January 30, 1995 claim form appellant claimed compensation for January 20 through February 2, 1996.

To support her claims appellant submitted attending physician's supplemental reports from Dr. Jamison dated January 8, 1995¹ and January 26, 1996

In a statement of accepted facts dated January 22, 1996, the Office accepted appellant's claim for a left knee contusion and torn left medial meniscus. The Office noted that Dr. Jamison performed arthroscopy of the left knee on December 12, 1995 and that appellant was scheduled to resume work for three hours daily commencing November 20, 1995 but she had not yet returned to work.

On August 5, 1996 appellant filed a recurrence of disability claim (Form CA-2a) alleging that she sustained a recurrence of her November 2, 1995 employment injury on June 21, 1996. On the claim form appellant asserted that her left knee injury "never stopped hurting" and that her knee was permanently damaged by her November 2, 1995 employment injury. Appellant noted that, following her alleged recurrence of disability, Dr. Jamison treated her on June 24, 1996.

In support of her claim, appellant submitted Texas Workers' Compensation Commission medical review report forms dated January 29, 1996 to February 4, 1998 from Dr. Jamison. Appellant also submitted attending physician's reports (Form CA-20) from Dr. Jamison dated January 28 and June 22, 1998. In his January 28, 1998 report, Dr. Jamison diagnosed a knee contusion and noted chronic degenerative changes in appellant's left knee. By check mark he asserted that appellant's injury was related to her November 2, 1995 employment injury and that appellant was advised to return to work. Dr. Jamison stated: "I do not anticipate any improvement in [appellant's] condition. She is limited by her knee, but may continue to work on it as long as she is able." In his June 22, 1998 report, Dr. Jamison diagnosed DJD and noted chronic degenerative changes in the left knee. By check mark he indicated that appellant's condition was caused or aggravated by her November 2, 1995 employment injury. Dr. Jamison remarked: "[Appellant] is not expected to have any improvement in condition. She will require total knee replacement." Additionally, appellant submitted progress notes from Dr. Jamison dated February 26, 1996 to March 25, 1998. In his notes dated February 26, 1996, Dr. Jamison stated that appellant experienced continued aching and soreness in her left knee and occasional swelling to her ankle. In his notes dated April 15, 1996, Dr. Jamison stated that appellant was doing "fairly well" and working full duty. He noted "I think [appellant] has reached [maximum medical improvement]." In his notes dated June 24, 1996, Dr. Jamison stated that appellant experienced swelling, continued diffuse crepitus, medial and lateral joint line and patella pain

¹ The Board notes that it appears that Dr. Jamison intended to write January 8, 1996.

and a 2+ effusion of her left knee. In his notes dated June 13, 1997, Dr. Jamison stated that appellant continued to have arthritic problems in her knees. He noted that he discussed treatment alternatives with appellant and that Dr. Schubert agreed that appellant would need a future total knee replacement. In Dr. Jamison's notes dated February 4, 1998, he stated "I think the next step for her will be knee replacement." In Dr. Jamison's notes dated February 16, 1998, he stated that he would refer appellant to Dr. Paul Peters, a Board-certified orthopedic surgeon, for total knee replacement. In his notes dated March 25, 1998, Dr. Jamison stated that appellant continued to have knee pain and that she had difficulty finding a physician willing to accept her insurance for a knee replacement. Appellant further submitted a letter from Dr. Jamison dated June 17, 1998. He stated:

"[Appellant] was injured on November 2, 1995 when she fell over a container while at work. At that time her x-rays showed degenerative changes of her knee, which had existed previously but she had no pain in her knee prior to the injury. Therefore, I believe the fall at work is the sole cause of her pain at this stage. She will require a knee replacement in order to alleviate her symptoms."

On July 2, 1998 appellant filed a claim for compensation on account of traumatic injury (Form CA-7) claiming a schedule award.

A memorandum of referral to specialist (Form CA-19A) dated July 13, 1998 was entered into the record. The form stated that appellant's file was referred to the district medical adviser for review.

In a statement of accepted facts, the Office accepted that the November 2, 1995 employment incident caused a left knee contusion, torn left medial meniscus, and "resulted in left knee arthroscopy with debridement and a partial medial menisectomy." The Office also accepted that appellant had preexisting degenerative changes of the left knee. Finally, the statement included a rural carrier position description.

A July 14, 1998 report by Dr. Don W. Vanderpool, a Board certified orthopedic surgeon, was entered into the record. Dr. Vanderpool opined that the proposed left knee arthroplasty procedure was related to appellant's work-related knee condition and "*may* be warranted, however, the medical records submitted for review did not contain sufficient information to make a definite determination." (Emphasis in the original.) He noted that appellant continued to experience pain and swelling despite a conservative treatment plan by Dr. Jamison.

By letter dated August 28, 1998, the Office requested additional medical evidence from Dr. Jamison in order to determine whether authorization for total knee replacement would be granted.

By decision dated September 8, 1998, the Office accepted appellant's claim for left knee contusion, medial meniscus tear and arthroscopic surgery. The Office found that appellant was not eligible for a schedule award because she had not reached maximum medical improvement as Dr. Jamison opined that appellant needed total knee replacement surgery.

By letter dated September 16, 1998, the Office informed Dr. Jamison that it authorized total left knee replacement surgery.

On appeal, appellant contends that she should be granted a schedule award because she was unable to locate a surgeon willing to perform her total knee replacement surgery.

The Board finds that the Office properly denied appellant's claim for a schedule award as she has not reached maximum medical improvement.

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the injury.² Thus, an employee is not eligible to receive a schedule award until she has reached maximum medical improvement. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.³ The question of when maximum medical improvement has been reached is a factual one depending upon the medical findings in the record.⁴

In this case, the weight of the medical evidence shows that appellant has not reached maximum medical improvement. Dr. Jamison's report dated June 22, 1998 clearly stated that appellant was in need of total left knee replacement surgery, which was authorized by the Office in its letter to Dr. Jamison dated September 18, 1998. Similarly, Dr. Jamison's progress notes dated February 4 through March 25, 1998 reported his opinion that appellant required total knee replacement surgery. Dr. Jamison's June 17, 1998 letter stated the same. As appellant's condition may change following her authorized total knee replacement surgery, she has not, by definition, reached maximum medical improvement and is, therefore, not eligible to receive a schedule award. Appellant's contention on appeal that she was unable to find a doctor willing to perform the necessary surgery is not grounds to grant a schedule award.

² *Eugenia L. Smith*, 41 ECAB 409, 413 (1990); *Yolanda Librera*, 37 ECAB 388 (1986).

³ *Joseph R. Waples*, 44 ECAB 936, 940 (1993); *Marie J. Born*, 27 ECAB 623, 629 (1976).

⁴ *Id.* at 940; *Marie J. Born*, *supra* note 3 at 630.

The decision of the Office of Workers' Compensation Programs dated September 8, 1998 is affirmed.⁵

Dated, Washington, D.C.
June 26, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ The Board notes that appellant submitted additional factual and medical evidence to support her requests for an oral hearing and reconsideration. However, the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. *Robert D. Clark*, 48 ECAB 422, 428 (1997).