

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALBERT CASCONE and U.S. POSTAL SERVICE,  
POST OFFICE, Plainview, NY

*Docket No. 98-2527; Submitted on the Record;  
Issued March 16, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability commencing October 24, 1996, causally related to his March 11, 1993 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a right knee sprain in the performance of duty on March 11, 1993. He returned to light duty on April 20, 1993. Appellant underwent right knee surgery on February 3, 1994. Dr. Anthony Puglisi, an orthopedic surgeon, provided a postoperative diagnosis of torn lateral meniscus, loose body of the medial aspect and synovitis. Appellant returned to light duty on March 15, 1994 and to full duty on May 31, 1994. On April 24, 1995 he again underwent right knee surgery and stopped working. Appellant returned to work on August 7, 1995 at four hours per day, based on the restrictions imposed by Dr. Puglisi.<sup>1</sup>

Appellant filed a notice of recurrence of disability (Form CA-2a) commencing October 24, 1996. By decision dated July 15, 1998, the Office denied appellant's claim for a recurrence of disability commencing October 24, 1996.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing October 24, 1996.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

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<sup>1</sup> The Office terminated appellant's compensation by decision dated May 31, 1996. The termination issue is on appeal under Docket No. 98-591.

burden of proof, 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.<sup>2</sup>

In the present case, appellant submitted a brief report dated October 25, 1996 from Dr. Puglisi, noting that appellant was seen on October 23, 1996 “due to the fact that he had an episode of swelling of the knee and comes in today with an obvious effusion.” He found that appellant was totally disabled, but he did not discuss appellant’s employment injury or explain causal relationship of his findings with the employment injury. In a report dated November 11, 1996, Dr. Stuart Cherney, an orthopedic surgeon, diagnosed right knee synovitis and indicated that appellant remained disabled. He did not discuss causal relationship between and disability and the employment injury. In a report dated December 11, 1996, Dr. Cherney noted right knee swelling and stiffness, but again did not provide an opinion relating total disability to the employment injury.

The Board is unable to find probative medical evidence establishing a change in the nature and extent of the employment injury as of October 24, 1996. As noted above, it is appellant’s burden of proof to establish his claim. The Board finds that he has not met his burden in this case.

The decision of the Office of Workers’ Compensation Programs dated July 15, 1998 is affirmed.

Dated, Washington, D.C.  
March 16, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).