

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YVONNE E. GLADDEN and DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HOSPITAL, Claremore, OK

*Docket No. 99-2377; Submitted on the Record;  
Issued November 9, 2000*

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DECISION and ORDER

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

The issue is whether appellant sustained a bilateral knee condition causally related to factors of her federal employment.

On March 1, 1996 appellant, then a 61-year-old medical technologist, filed a notice of occupational disease and claim for compensation alleging that she suffered from left knee tendinitis and osteoarthritis of both knees due to excessive walking and standing in the performance of duty.<sup>1</sup> The employing establishment noted on the reverse side of the Form CA-2, that appellant had not stopped working.<sup>2</sup>

The record indicates that appellant was diagnosed by x-ray with degenerative arthritis as early as August 9, 1991. In series of treatment notes dating from November 1995 to February 1996, Dr. Scott H. Sexter, a family practitioner, noted that appellant had calcium deposits on the tendons of both knees, for which he prescribed a course of physical therapy and medication.

Dr. Sexter referred appellant to Dr. Laurence Mansur, an orthopedist, on November 2, 1995. An x-ray obtained on that date in conjunction with Dr. Mansur's evaluation revealed mild degenerative changes. Dr. Mansur diagnosed degenerative joint disease, pseudogout and intermittent tendinitis of the right knee. He did not offer an opinion on causation.

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<sup>1</sup> Appellant previously filed a (CA-1) claim for traumatic injury on February 29, 1996 alleging that she sustained multiple bilateral knee conditions aggravated by standing, bending and walking 12-hour shifts. On the reverse side of the CA-1 form, her supervisor stated that appellant's medical problems were "aggravated by the 12-hour shifts that she was working prior to December 1995."

<sup>2</sup> The employing establishment further noted that effective February 3, 1996 appellant was reassigned to an eight-hour shift, five days a week. Prior to that date, appellant worked a 12-hour shift, 4 days a week.

In a January 31, 1996 physician's note, Dr. Sexter, stated that appellant "was treated for knee pain, which is felt to be aggravated by work."

The employing establishment signed a (Form CA-16) authorization for medical treatment and appellant was seen by Dr. Juan Legeratta on February 28, 1996. Dr. Legeratta reported that she had bilateral degenerative joint disease of the knees, severe left knee arthritis, pes anserinus tendinitis, enthesopathy and pseudogout, aggravated by prolonged standing, walking and bending at work. He indicated that appellant could perform light duty, but that she could not stand more than two to three hours during her regular eight-hour shift.

In a memorandum dated April 8, 1996, appellant's supervisor indicated that appellant had been reassigned from the night shift to the day shift in order to provide her with adequate periods of rest and less walking. She stated: "it is my understanding that [appellant] had a preexisting medical condition that was aggravated by the physical demands of the position."

In a statement that was received by the Office on April 26, 1996, appellant advised that she first sought treatment for left knee pain in 1991 and was told that she had bursitis/tendinitis, for which she was prescribed Feldene. She wrote that she had been assigned to the night shift on September 13, 1992, which involved working for a 10-hour shift and required her to walk all over the hospital delivering reports to various departments and drawing blood. Appellant stated that she was on her feet most of the shift and rarely had a break or lunchtime. According to appellant, beginning October 19, 1993, a night tour was implemented, whereby she had to work on a 12-hour shift. She worked in that position until she developed severe left knee discomfort during the summer of 1995. Thereafter, appellant was advised by her doctor to reduce the number of hours at work that required her to be on her feet.

In a decision dated April 22, 1996, the Office denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's bilateral knee condition and factors of her federal employment.

By letter dated May 9, 1996, appellant requested an oral hearing.

Appellant subsequently submitted a May 10, 1996 report from Dr. Sexter, who noted that she had been under his care for bilateral knee pain associated with tendinitis, degenerative arthritis and pseudogout. He stated: "[a]lthough it is felt her underlying knee problems are mostly familial or age related, it is also felt that the activities associated with her job, as I understand them, are aggravating her knee pain." Dr. Sexter recommended that appellant modify her activities at home and at work to minimize exertion to her knees.

In an undated report, Dr. Legarreta noted that appellant had been suffering from bilateral knee pain for several years and that x-rays showed degenerative joint disease with calcium deposits on the knees. He noted that there was marked swelling and inflammation of the left knee and mild to moderate swelling of the right knee on physical examination. Dr. Legarreta diagnosed: (1) chronic severe osteoarthritis of the knees; (2) Pes Anserinus tendinitis; (3) pseudogout of the knee; (4) enthesopathy of the left knee; (5) anemia of chronic disease; and (6) chronic intractable knee pain. He stated that appellant suffered from a permanent chronic

rheumatic condition that was progressive in nature and that would eventually put appellant in a wheelchair. Dr. Legarretta further stated:

“[Appellant] was already recommended to have restriction due to prolonged standing, bending, etc. She also had her shift change from night to days in order to prevent working by herself in the laboratory because she was n[o]t meeting the demand and work load it required for one person on the night shift. But in spite of these changes and from 12[-]hour shifts to 8[-]hour shifts she still needs to walk back and forth, standing, etc. to meet the job description, this is what aggravates and worsened her condition.”

In a decision dated September 27, 1996, an Office hearing representative vacated the Office’s April 22, 1996 decision and remanded the case for further medical development.

Appellant took disability retirement effective January 12, 1997.

Appellant underwent a right knee replacement on January 10, 1997 and a left knee replacement on April 17, 1997. The postoperative discharge summaries included a diagnosis of severe degenerative joint disease.

By letter dated September 4, 1997, the Office scheduled a second opinion examination by Dr. Brad Boone, a Board-certified orthopedist, on September 25, 1997. In a report dated September 24, 1997, Dr. Boone discussed appellant’s medical history, noting that she suffered from “bilateral degenerative joint disease of both knees of a severe nature, essentially since 1995.” He opined that appellant was completely disabled from work and stated, “her capacity for performing any work up on her feet for any period of time is, and will continue to be, significantly debilitating and I do not believe she will be able to perform those endeavours.”<sup>3</sup>

In an October 8, 1997 letter, the Office requested a supplemental report from Dr. Boone addressing a list of issues including causation. When the supplemental report was not forthcoming, the Office referred appellant for an examination with Dr. Don Hawkins, a Board-certified orthopedist, on January 29, 1998.

In a report dated January 14, 1998, Dr. Boone responded to the Office’s inquiry. He opined that appellant’s work duties did not create a significant aggravation of appellant’s preexisting osteoarthritis. Dr. Boone stated that he believed appellant’s symptoms would have been present regardless of the work activities. He opined that appellant’s preexisting degenerative joint disease would have been symptomatic regardless of her particular occupation.

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<sup>3</sup> It appears from the record that at the time he prepared this report, Dr. Boone was not in possession of a copy of the medical record or a statement of accepted facts. These were provided to the doctor on October 8, 1997.

In a January 29, 1998 report, Dr. Hawkins discussed appellant's history of knee pain and bilateral total knee arthroplasty. He noted physical findings and reviewed x-rays. Dr. Hawkins stated:

"I would consider that normally increased activities would be a temporary aggravation of an arthritic condition and the condition would normally go back to its preaggravation status except for the general progression of arthritis irregardless of activities. In this particular case, however, I would consider the condition to be permanent because the aggravation may have resulted in increased arthroplasty, which leaves her with permanent residuals which would not go back to the aggravation stated. I do believe [appellant] has a permanent aggravation."

Dr. Hawkins completed an (OWCP-5c) work evaluation form indicating that appellant could work eight hours per day with no more than two hours of standing or walking.

The Office found a conflict of medical opinion between Drs. Sexter and Legerretta, appellant's physicians, with Dr. Boone, a referral physician. Appellant was referred for an impartial medical evaluation with Dr. Harold Battenfield on March 18, 1998. In a report dated March 18, 1998, Dr. Battenfield noted that appellant presented with complaints of bilateral knee pain and that she had a history of total knee replacements of both knees. He indicated that appellant's job was that of a "normal laboratory clinician" and that appellant had changed from 12-hour shifts to 8-hour shifts. In response to a question regarding whether appellant's work duties aggravated her underlying degenerative condition, Dr. Battenfield replied "the degenerative joint disease of both knees was present and the symptoms would have been present regardless of the work activities."

In a decision dated April 15, 1998, the Office denied compensation, finding that the opinion of the impartial medical specialist established that there was no connection between appellant's bilateral knee condition and her federal employment.

On May 14, 1998 appellant requested a review of the written record.

In a decision dated September 28, 1998, an Office hearing representative determined that the opinion of the impartial medical specialist, Dr. Battenfield, was insufficiently reasoned to be entitled to controlling weight on the issue of whether appellant sustained a bilateral knee condition in the performance of duty. He vacated the Office's April 15, 1998 decision and remanded the case to clarify Dr. Battenfield's medical opinion.

On November 18, 1998 the Office referred appellant, together with a revised statement of accepted facts<sup>4</sup> and a copy of the medical record, to Dr. Battenfield for another evaluation to be conducted on December 7, 1998.

In a report dated December 21, 1998, Dr. Battenfield related appellant's complaints of left and right knee pain to prolonged standing and walking. He discussed appellant's history of

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<sup>4</sup> The Office prepared an updated statement of accepted facts on November 12, 1998, which noted that appellant spent no more than 70 percent of her time standing or walking with the remaining 30 percent of time spent sitting.

left and right knee replacements during 1997 and recorded what he considered to be essentially normal postoperative physical findings. According to Dr. Battenfield, appellant's work duties did not aggravate her degenerative joint disease of the knee. He stated: "[i]t is noteworthy, her work activities were not abnormal in that she was standing and squatting representing normal ranges of function throughout an average persons day." Dr. Battenfield concluded that appellant did not have a permanent aggravation of her bilateral knee condition as a result of her employment duties and that her degenerative joint process was not causally related to her job.

Appellant next submitted medical records from Springer Clinic documenting her treatment for degenerative joint disease of both knees during 1997, including total knee arthroplasty.

In a decision dated January 7, 1999, the Office denied compensation on the grounds that the weight of the medical evidence residing with the opinion of the impartial medical specialist established that appellant did not have a bilateral knee condition causally related to her federal employment.

In a February 1, 1999 letter, appellant requested reconsideration and argued that the opinion of her attending physician was the most probative as to her medical condition.

In a decision dated May 6, 1999, the Office denied modification following a merit review.

On August 9, 1999 appellant requested an oral hearing.

In a decision dated September 30, 1999, the Office denied appellant's request for a hearing.

The Office's September 30, 1999 decision, which denied appellant's request for a hearing, was issued after the Board docketed appellant's appeal on August 27, 1999 and after the Board notified the Office of the appeal. Since the Board and the Office may not have concurrent jurisdiction over a case and since the Board assumed jurisdiction over the case on July 1, 1999,<sup>5</sup> the September 30, 1999 decision of the Office is null and void.<sup>6</sup>

The Board finds that appellant failed to establish that she sustained a bilateral knee condition causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>7</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury was sustained in

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<sup>5</sup> The date on which the Board received appellant's June 26, 1999 letter requesting review.

<sup>6</sup> See *Douglas E. Billings*, 41 ECAB 880 (1990) (the Board found that Office decisions, issued while an appeal is pending, are null and void where they attempt to change the status of the decision on appeal).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>8</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>10</sup>

In the instant case, the Office properly determined that a conflict existed in the record between the opinions of appellant's treating physician, Drs. Sexter and Legarreta and the Office referral physician, Dr. Boone, regarding the causal relationship between appellant's bilateral knee condition and her employment duties as a medical technologist. As such the case was correctly referred by the Office to Dr. Battenfield for an impartial medical evaluation. In conjunction with his examination, Dr. Battenfield was provided a statement of accepted facts outlining appellant's work duties and a complete copy of the medical record.

Where the case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup> In the instant case, Dr. Battenfield adequately explained that appellant's job as a laboratory technician did not require her to engage in any abnormal activities "in that she was standing and squatting representing normal ranges of function throughout an average persons day." Because the doctor did not consider appellant's work activities to be abnormal, he concluded that appellant's bilateral knee condition would have been exactly the same regardless of her job. He specifically opined that appellant's work activities did not aggravate her preexisting knee condition and stated that appellant's degenerative joint process was not a result of factors of her federal employment.

Consequently, the Board finds that since the impartial medical specialist's report was sufficiently rationalized and based on a complete and accurate factual and medical background, his medical conclusion that appellant's bilateral knee condition is not work related represents the weight of the medical evidence on that issue. The Board therefore finds that the Office properly denied appellant's claim for compensation.

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<sup>8</sup> See 20 C.F.R. § 10.115-16 (1999); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

<sup>9</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *Victor J. Woodhams supra* note 9.

<sup>11</sup> *Roger Dingess*, 47 ECAB 123 (1995); *Charles E. Burke*, 47 ECAB 185 (1995).

The decisions of the Office of Workers' Compensation Programs dated May 6 and January 7, 1999 are hereby affirmed.

Dated, Washington, DC  
November 9, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member