

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT MANIER and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Ann Arbor, MI

*Docket No. 00-1376; Submitted on the Record;  
Issued April 24, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he had a recurrence of disability, beginning November 20, 1996 that was causally related to his accepted condition of aggravation of preexisting arthritis of the left knee.

On April 24, 1995 appellant, then a 38-year-old letter carrier, filed a claim for arthritis of the left knee. He stated that his duty as a letter carrier consisted of constant standing, bending, stooping, climbing, heavy lifting and other activities, which aggravated his knee condition. Appellant had stopped working on August 9, 1994, underwent surgery on his knee on August 23, 1994 and returned to limited-duty work on September 24, 1994.

In a May 8, 1995 report, Dr. Michael S. Fitzsimmons, a Board-certified orthopedic surgeon, indicated that he first examined appellant on August 17, 1994 for pain and swelling in the left knee. He reported that appellant has sustained two previous knee injuries while serving in the Army. Dr. Fitzsimmons stated that an August 23, 1994 operation showed moderate degenerative arthritis of the femoral medial condyle and the patella femoral joint. He commented that these conditions were in part related to appellant's prior injuries and in part to the type of work appellant performed for the employing establishment, particularly walking. Dr. Fitzsimmons recommended that appellant be placed in a sit-down job or limited walking or climbing.

The Office of Workers' Compensation Programs accepted appellant's claim for aggravation of preexisting arthritis of the left knee. The Office authorized buy back of 266 hours of leave used for the period August 10, 1994 through September 16, 1995.

On December 10, 1996 appellant filed a claim for a recurrence of disability. He noted that he stopped working on November 20, 1996 and returned to work on November 23, 1996. Appellant then used leave without pay from February 15 through April 11, 1997.

In an October 30, 1997 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence of record failed to establish a causal relationship between the claimed recurrence of disability and the accepted employment injury. Appellant requested a hearing before an Office hearing representative, which was conducted on May 13, 1998. In an August 13, 1998 decision, the Office hearing representative found that the Office properly denied appellant's claim for a recurrence of disability.

In an August 3, 1999 letter, appellant requested reconsideration. In a November 4, 1999 merit decision, the Office denied appellant's request for modification of the Office's prior decisions.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability after November 20, 1996 causally related to his accepted employment injury.

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 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 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.<sup>1</sup>

Appellant accepted a September 13, 1995 offer of a temporary position, which involved casing mail while sitting. The position had restrictions of no lifting over 10 pounds, no standing more than 2 hours a day, no prolonged walking or negotiating steps and an allowance to work from a rest bar if tolerated. Appellant returned to work on October 3, 1995.

In an April 30, 1996 note, Dr. Fitzsimmons stated that appellant had difficulty returning to work to a job that was compatible with treatment of his knee. He recommended that appellant continue in a sit down or light-duty job and observe how he progressed. Dr. Fitzsimmons referred to a March 28, 1998 duty status report in which he indicated that appellant could work while sitting eight hours a day and walking, pulling, pushing, twisting, bending and stooping two hours a day. He reported appellant could not stand, climb or kneel at work.

The Office referred appellant to Dr. Julius J. Huebner, a Board-certified orthopedic surgeon, for an examination and second opinion. In a June 10, 1996 report, Dr. Huebner diagnosed post-traumatic arthritis, primarily patellofemoral. He commented that it was not advisable for appellant to return as a letter carrier due to the need for squatting and stair climbing. Dr. Huebner recommended that appellant not perform any climbing or kneeling. He noted appellant was off work due to anxiety and depression.<sup>2</sup> In a June 10, 1996 duty status report, Dr. Huebner gave the same restrictions as Dr. Fitzsimmons, sitting eight hours a day,

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<sup>1</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>2</sup> Appellant had filed concurrent claims for stress and a left shoulder condition.

standing, pulling, pushing, bending, stooping and twisting two hours a day and no kneeling, walking or climbing.

In a December 31, 1996 office note, Dr. Fitzsimmons stated that appellant continued to work but claimed that his work restrictions were not being honored as he was being asked to do more work than was listed in his restrictions. Dr. Fitzsimmons noted that appellant had a full range of motion of the left knee with some mild crepitus. He concluded that appellant had a chronic problem and recommended that his restrictions be made permanent.

In a January 31, 1997 office note, Dr. Fitzsimmons indicated that appellant should continue working within his current work restrictions. He offered to review appellant's job description. In a February 27, 1997 report, Dr. Fitzsimmons stated that appellant continued to have chondral damage to the knee, including mild arthritis. He commented that appellant's most recent flare-up had resolved but he was at high risk for recurrent pain and swelling if he used the knee for an extensive period. Dr. Fitzsimmons stated that appellant's restrictions were a sit-down job with walking limited to less than one hour per shift and no lifting greater than 20 pounds. In a March 4, 1997 note, Dr. Fitzsimmons stated that appellant should continue off work until he received a permanent job assignment. In an April 8, 1997 note, Dr. Fitzsimmons reported that appellant was off work and involved in a dispute with the employing establishment's management about his job restrictions. Appellant indicated that management was unwilling to give him a job within his restrictions and he refused to return to work until they did so. Dr. Fitzsimmons offered to review job descriptions to choose what would be most beneficial for appellant's knee. He indicated that appellant's knee currently worked well but because of cartilage defects, any ambulatory job, particularly carrying mail, would likely cause further degeneration. He recommended a sit-down job with minimal stress.

In a July 22, 1997 report, Dr. Fitzsimmons indicated that he had received a job description from the postmaster, which described a casing and withdrawal of mail for a city route. He related that appellant stated he was doing that job but indicated it would take him only two hours a day to do the job and then he would be sent home. He also noted that a chair appellant used in the job was occasionally missing. Dr. Fitzsimmons stated that it was reasonable for appellant to try to work if he felt capable of doing it. He did not provide any new restrictions because appellant was not having a significant amount of pain.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Norman L. Pollak, a Board-certified orthopedic surgeon, for an examination. In an October 15, 1997 report, Dr. Pollak stated that appellant had difficulty squatting and complained of anterior pain in the left knee. He reported appellant had some suprapatellar swelling and slight weakness in the quadriceps strength on the left. Dr. Pollak indicated that the ligaments were stable but there was a fairly loose patella with a prominent apprehension sign. He noted that x-rays showed a markedly lateralized patella which was basically subluxated. Dr. Pollak stated that, after a prolonged carrying of mail, appellant had a work-related aggravation of his left knee condition. He indicated that he would restrict walking, standing and climbing to a total of two hours and stated that appellant could not stoop or crawl. Dr. Pollak described appellant's condition as a wear and tear condition which would likely worsen without operative treatment.

In a November 21, 1997 office note, Dr. Fitzsimmons stated that appellant had mild to moderate degenerative arthritis in the left knee. He commented that any type of active job, such as letter carrying or anything requiring heavy lifting, would likely exacerbate the condition. Dr. Fitzsimmon recommended observation and restriction of appellant's work as previously outlined.

In a June 1, 1998 note, the employing establishment's postmaster stated that appellant had been offered a limited-duty job that required he remain inside and perform city carrier office duties. The postmaster reported that appellant cased mail while using a stool. He noted that, after appellant completed his own route, he was to case mail on other routes. The postmaster stated that appellant resisted being reassigned even though the duties were within the position description of the limited-duty position. He indicated that appellant worked very little after January 1, 1997, claiming he could not sort flats due to a shoulder problem. The postmaster stated that in late February 1997 appellant stopped coming to work.

In an October 20, 1998 report, Dr. Thomas Ditkoff, a Board-certified orthopedic surgeon, stated that appellant had full range of motion of the knee and no instability. He found no quadriceps atrophy. Dr. Ditkoff noted tenderness over the medial femoral condyle anteriorly and over the lateral femoral condyle laterally. He reported that x-rays showed no significant medial or lateral osteophytes but did show a superior patellar osteophyte and an osteophyte in the patellofemoral groove. Dr. Ditkoff indicated that appellant's knee did well as long as he restricted his activities markedly. He diagnosed early arthritis of the knee. Dr. Ditkoff stated appellant could not walk more than 20 minutes at a time. He concluded appellant could not return to work as a letter carrier but was suited only to a sedentary job which would allow for brief periods of standing and walking, no more than 20 minutes at a time. Dr. Ditkoff restricted appellant from stooping, kneeling, crawling or extensive stair climbing. He stated that appellant's employment caused an aggravation of the preexisting knee condition.

Dr. Fitzsimmons, in his extensive reports and office notes, did not suggest or describe any changes in appellant's work restrictions since he first established them in the March 28, 1996 duty status report. He continually stated that appellant could perform a sedentary job with some standing. Drs. Huebner, Pollak and Ditkoff also indicated that appellant could perform a sedentary job with some standing. Appellant did not submit any medical evidence to show that his employment-related knee condition had changed to the extent that he was unable to perform the limited-duty work that he was assigned after his return to work. In one of Dr. Fitzsimmons reports, he stated that he was being forced to work beyond his restrictions by the employing establishment's management. However, appellant did not submit any evidence that would show that the duties of his limited-duty position changed to the point that he was unable to perform those duties. Appellant, therefore, has not met his burden of proof in establishing that he had an employment-related recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated November 4, 1999 is hereby affirmed.

Dated, Washington, DC  
April 24, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member