

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH DREW and U.S. POSTAL SERVICE,
POST OFFICE, Barrington, IL

*Docket No. 00-1012; Submitted on the Record;
Issued August 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant's disability causally related to his January 8, 1988 employment injury ended by December 20, 1999.

On January 8, 1988 appellant, then a 36-year-old letter carrier, filed a claim for an injury sustained that date when he slipped on ice and twisted his left knee. On April 6, 1988 Dr. Arnold J. Herbstman, a Board-certified orthopedic surgeon, performed surgery on appellant's left knee for removal of an anterior horn tear of the medial meniscus and shaving of the patella for chondromalacia. Appellant returned to limited duty on June 27, 1988.

On September 29, 1989 Dr. Herbstman performed a total left knee replacement for avascular necrosis. The Office of Workers' Compensation Programs determined that there was a conflict of medical opinion on the question of whether appellant's left knee condition was causally related to his January 8, 1988 employment injury. To resolve this conflict, the Office referred appellant, the case record and a statement of accepted facts to Dr. Leonard R. Smith, a Board-certified orthopedic surgeon. In a report dated December 12, 1989, Dr. Smith stated:

"The clinical condition in this individual is basically one who has been on large doses of steroids for a long period of time and will have to remain so following a liver transplant for hepatitis. He was doing reasonably well in working and was injured in January 1988, following which a diagnosis was made of internal derangement of the knee, which did not respond to conservative treatments. In the fact sheet supplied, it states that the record reflects that the patient injured his left knee when he slipped on ice in the performance of duty. This condition was accepted as a work-related internal derangement of the left knee, for which he underwent surgery. Clearly, this is a result of the incident in question and following a lengthy period of convalescence, marked deterioration of the knee occurred which recently resulted in a necessity for a total knee replacement. The opposite knee shows some mild changes, probably related to Prednisone usage; however, it would appear from the record supplied, that given the condition and the resulting surgery, that this precipitated a rapid deterioration of the knee and as

such, reflects a permanent aggravation of a preexisting condition, which is continuing irreversible and altered the condition of the disease process, or hastened it.

“At present, the patient is totally disabled from work.... It is further evident that he will never return to work as a mail carrier and that work activities will be confined to restricted work once he has received the maximum benefits of rehabilitation.”

The Office accepted that appellant’s January 8, 1988 employment injury resulted in a torn meniscus, patellar chondromalacia and a permanent aggravation of the preexisting avascular necrosis of his left knee. The Office began payment of compensation for temporary total disability.

On September 10, 1998 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. Charles W. Mercier, a Board-certified orthopedic surgeon, for a second opinion evaluation of appellant’s left knee condition and its effect on his ability to work. In a report dated September 24, 1998, Dr. Mercier concluded that appellant’s left knee avascular necrosis was not causally related to his January 1988 employment injury. He noted: “From his left knee joint point of view, he could return to work as a letter carrier and he presently needs no further medical care.”

The Office determined that Dr. Mercier’s opinion created a conflict of medical opinion with that of Dr. Herbstman, who stated in a July 20, 1993 report, that appellant was permanently disabled because of his left knee and in an October 20, 1998 report concluded that “there is no way that he would be able to work in any capacity at all at this point in view of the fact that he has his knees bother him, his hips and shoulders.”

To resolve this conflict of medical opinion, the Office referred appellant, the case record and a statement of accepted facts to Dr. Richard A. Geline, a Board-certified orthopedic surgeon. In a report dated May 10, 1999, Dr. Geline, after setting forth appellant’s history, complaints and findings on examination, stated:

“At present, I believe none of the extensive findings of the patient are related to the work-related tear of the medial meniscus. The extensive orthopedic treatment the patient has received is no doubt related to the chronic administration of steroids made necessary following performance of the liver transplantation. The known natural history, a torn medial meniscus, does not ordinarily lead to avascular necrosis.

“The specific injury to the left knee, namely a tear of the anterior horn of the medial meniscus with subsequent treatment would not preclude the patient from returning to his position as a letter carrier. Considering, however, the extensive medical history present involving both the cardiovascular and musculoskeletal systems, the patient is presently incapable of any kind of gainful employment and must be considered permanently and totally disabled.”

By letter dated July 23, 1999, the Office requested that Dr. Geline clarify whether the laxity and instability of appellant’s left knee noted in his report were residuals of the accepted

condition and whether the accepted permanent aggravation of the preexisting left knee joint avascular necrosis was still ongoing on examination. In a report dated October 26, 1999, Dr. Geline stated:

“(1) The instability of the left knee with valgus stress and also in an anterior/posterior direction is related to the accepted condition as stated in the statement of facts. The rationale for this conclusion is that the described instability is a residual finding from the total knee replacement. The replacement itself was made necessary as a result of an underlying left knee necrosis, which was accepted as permanently aggravated by the incident of January 1998. Accordingly, a direct connection exists between the accepted permanent aggravation and the current condition.

“(2) The accepted permanent aggravation of preexisting left knee joint avascular necrosis continued at the time of the exam[ination]. This statement is made because the total knee replacement performed for the condition of avascular necrosis while providing some symptomatic relief does not in any way return the knee to the preinjury or precondition status. In fact, considering that [appellant] is a relatively young man potential exists for deterioration or complication of the implant components to develop in future years, which may necessitate treatment and could be directly traced back to the aggravated status of avascular necrosis.

“(3) The current examination finds that the accepted conditions of left knee strain and internal derangement have been the object of extensive treatment, namely the total knee replacement. Insofar as treatment has been given, the original conditions can be considered to have been resolved, however, the knee has not been restored to its original condition and as a result of the treatment provided may in fact require further treatment in the form of revision or replacement of the total knee components in the future.”

On November 18, 1999 the Office issued a notice of proposed termination of compensation, on the basis that the disability related to appellant’s accepted employment injury had ceased. By letter dated November 30, 1999, appellant expressed disagreement with the Office’s proposal to terminate his compensation. By final decision dated December 20, 1999, the Office found that the weight of the medical evidence, represented by the reports of Dr. Geline, established that the residuals of appellant’s accepted conditions were no longer disabling.

The Board finds that the evidence does not establish that appellant’s disability causally related to his January 8, 1988 employment injury ceased by December 20, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

without establishing that the disability has ceased or that it is no longer related to the employment.¹

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based on a proper factual background, must be given special weight.² There was a conflict of medical opinion between appellant's attending Board-certified orthopedic surgeon, Dr. Herbstman and the Board-certified orthopedic surgeon, to whom the Office referred appellant, Dr. Mercier. To resolve this conflict, the Office referred appellant to Dr. Geline, a Board-certified orthopedic surgeon.

Dr. Geline's reports do not show that appellant's disability ceased or that it was no longer related to his employment. Dr. Geline stated that the left knee strain and internal derangement had been resolved by the total knee replacement, which was necessitated by the permanent aggravation of appellant's underlying avascular necrosis. He also stated that appellant had continuing residuals of the permanent aggravation of his avascular necrosis of the left knee, in that the total knee replacement did not return his knee to preinjury status. While Dr. Geline stated that the torn meniscus appellant sustained would not prevent him from working as a letter carrier, he did not address whether appellant could perform the duties of a letter carrier given that he underwent a total knee replacement. As Dr. Geline, the impartial medical specialist, did not conclude that appellant is no longer disabled, or that his condition is no longer related to his employment injury, the Office has not met its burden of proof to terminate his compensation.

The December 20, 1999 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
August 8, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

² *James P. Roberts*, 31 ECAB 1010 (1980).