

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD STEVENSON and U.S. POSTAL SERVICE,
FAIRLESS HILLS POST OFFICE, Langhorne, PA

*Docket No. 00-1805; Submitted on the Record;
Issued August 14, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability causally related to an accepted August 11, 1997 employment injury; and (2) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation.

On August 11, 1997 appellant, then a 50-year-old letter carrier, filed a notice of traumatic injury alleging that while delivering mail he twisted his left knee. Appellant's claim was accepted on September 10, 1997 for left knee sprain. Appellant returned to limited duty on September 2, 1997 and filed a claim for a recurrence of disability which was accepted on October 9, 1997 for arthroscopy of the left knee. The September 26, 1997 surgery revealed degenerative joint disease in appellant's left knee. A magnetic resonance imaging (MRI) scan dated on September 9, 1997 also revealed degeneration and a linear tear of the medial meniscus.

Appellant returned to a modified-duty position on October 6, 1997. Appellant's treating physician, Dr. Bernard J. Amster, treated appellant on October 13, 1997 and stated: "we know [appellant] has advanced degenerative joint disease which is tricompartmental of his left knee. We know this is an ongoing process which will continually wear."

Appellant returned to full-time, full-duty work as of October 14, 1997, but had an immediate increase in discomfort and swelling of his knee. Dr. Amster recommended on November 3, 1997 that appellant do sedentary work. Appellant returned to full-time duty with permanent restrictions on November 4, 1997.

Dr. Amster reexamined appellant on June 1, 1998 and, in a duty status report (CA-17) dated June 11, 1998, indicated: "no work of any kind" and diagnosed appellant with "advanced degenerative joint disease left knee." Appellant stopped work and filed a claim for a recurrence of disability on June 1, 1998, alleging that he was unable to walk or drive and could not perform his regular duties at work. Appellant underwent total knee replacement surgery on June 17, 1998.

The Office referred appellant to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated June 5, 1998, he opined:

“I feel that [appellant] had a preexisting arthritis of his knee and the twisting injury at work probably stirred up inflammation, synovitis and fluid as confirmed by the arthroscopic examination. There were no acute changes in the knee joint and this surgery was performed about five weeks later so it kind of confirms that there was no acute change as a result of this injury. So, therefore, it is a preexisting condition. *** I feel that the injury did not totally cause his symptoms and his findings and, therefore, I do not think that he is suffering as a result of just twisting his knee and that is based on the MRI scan, the x-rays, the operative report and the clinical history.”

* * *

“I would say that under normal circumstances a sprain or strain of a knee under these conditions should be relieved or resolved within three to four months under a good program of exercises, anti-inflammatories and somewhat restricted activities, but in this case the situation is permanent and it is again unclear how much is due to the strain or to the arthroscopic evaluation although most of the problem is due to his preexisting arthritis....”

By letter dated June 19, 1998, the Office referred Dr. Salem’s second opinion report to the Office medical adviser for review. He opined on June 23, 1998 that appellant’s current knee pain was caused by the underlying degenerative joint disease and the surgeries performed were also connected to the underlying condition.

The Office issued a notice of proposed termination on July 17, 1998.

In support of his claim, appellant submitted an attending physician’s report dated September 17, 1998 from Dr. Frank L. Cuce, an osteopathic practitioner, who indicated, “twisted left knee at work aggravating degenerative joint disease caused by years of walking and carrying mail.” On August 3, 1998 Dr. Cuce stated:¹

“In regard to [appellant], with review of his chart, as well as conversations with Dr. Amster, it has become known to me that [appellant] has had long-standing arthritis in the left knee. Both Dr. Amster and I believe that this is secondary to his work in that he was a postal carrier for 17 years. In that time, he walked his route and did not have a vehicle until just recently.

“On September 26, 1997, he had an arthroscopic surgery done of the left knee which showed tricompartmental disease. He subsequently underwent a total knee arthroplasty on [June 17, 1998] for the tricompartmental arthritis. The injury that he sustained at work aggravated the long-standing arthritis that he has had in the

¹ Dr. Cuce replaced Dr. Amster when he retired.

knee which was caused from his many years of walking secondary to his job description.”

By decision dated November 20, 1998, the Office denied appellant’s claim for recurrence and terminated appellant’s compensation for medical benefits and limited duty.

By letter dated December 23, 1998, appellant, through his representative, requested an oral hearing. By decision dated May 21, 1999, the Office denied appellant’s request for an oral hearing as untimely.

By letter dated October 18, 1999, appellant requested reconsideration. In support of his request, appellant submitted a duplicate copy of Dr. Salem’s June 5, 1998 report and a September 20, 1999 report from Dr. Cuce, who opined:

“It is obvious that [appellant’s] job description as a mail carrier requires primarily walking, carrying mail, stopping and bending. This type of activity, as well as his injury that occurred on August 11, 1997 aggravated a preexisting degenerative joint disease of the knee that was asymptomatic up to that point. It can be said with a reasonable degree of medical certainty that the twisting injury that he sustained, as well as his job description, was the cause of his acute flair of his arthritis of that joint.”

* * *

“Again, just let me reiterate that secondary to this twisting injury at work along with years of ‘wear and tear’ with his walking, carrying, stooping and bending were the causes of his ongoing pain necessitating the subsequent surgeries.”

Appellant also submitted progress notes dated February 23, 1999 and a follow-up report dated October 22, 1999.

In a merit decision dated January 24, 2000, the Office denied modification of its November 20, 1998 decision.

The Board finds that the issue of a recurrence of disability is not in posture for decision and requires further development by the Office.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disabilities for which he claims compensation are causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

² *Jose Hernandez*, 47 ECAB 288 (1996).

³ *Id.*

In this case, reports from Dr. Cuce indicated that the August 11, 1997 injury appellant sustained at work aggravated his long-standing arthritis, which was itself caused by his many years of walking on the job. Dr. Cuce explained that both appellant's job duties as a mail carrier and his August 11, 1997 injury aggravated the preexisting degenerative joint disease of his left knee. He added that appellant's twisting injury and his employment duties were the cause of his acute flare-up of arthritis of that joint. Dr. Cuce concluded that the twisting injury, along with the years of "wear and tear" from mail carrier duties, caused appellant's ongoing pain and necessitated the subsequent surgeries.

While Dr. Cuce did not fully explain how appellant's underlying degenerative joint disease was aggravated by the original work injury and his employment duties, the Board finds that these reports, plus the absence of a complete and rationalized opinion to the contrary, are sufficient to require further development of the evidence. The medical evidence from Dr. Cuce attributing appellant's current knee condition to continuous employment activities as well as his original injury requires a remand to the Office to determine whether appellant's work stoppage on June 1, 1998 and subsequent surgery were caused or aggravated by his employment.

It is well established that proceedings under the Federal Employees' Compensation Act,⁴ are not adversarial in nature.⁵ While the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁶ The Office has the obligation to see that justice is done.

On remand, the Office should send appellant's complete record and a statement of accepted facts to a medical specialist to determine whether appellant's recurrence of disability was causally related to his accepted work injury or employment factors. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The Board also finds that the Office did not meet its burden of proof to terminate appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁷ After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation benefits without establishing that the disability has ceased or that it is no longer related to the employment.⁸ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁹ To terminate authorization for medical

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

⁶ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

⁷ *Harold S. McGough*, 36 ECAB 332 (1984).

⁸ *Vivien L. Minor*, 37 ECAB 541 (1986).

⁹ *Marlene G. Owens*, 39 ECAB 1320 (1988).

treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.¹⁰

In this case, the Office based its termination of appellant's compensation on the June 5, 1998 second opinion report from Dr. Salem. He stated that appellant's preexisting arthritis of the knee and the twisting injury at work "probably stirred up inflammation, synovitis and fluid as confirmed by the arthroscopic examination." He opined that, since the surgery was performed five weeks after the work incident, it confirmed that there were no acute changes in the knee joint. Dr. Salem added that the work injury aggravated appellant's condition but should not have been permanent. He concluded by stating, "we are unclear as to what the natural course of this strain would have been" since an intervening episode occurred.

Thus, Dr. Salem did not rule out that appellant's knee condition was at least partially related to his accepted employment injury. Dr. Salem concluded that under normal circumstances a sprain or strain of a knee would have resolved within three or four months, but that in appellant's case the condition was permanent. Not only did Dr. Salem give no indication that appellant's condition had ceased, but also he indicated that appellant's condition is permanent.

The Board finds that because Dr. Salem did not rule out that appellant's aggravation was at least partially related to his accepted employment injury and admitted that appellant's condition was permanent in nature, the Office did not meet its burden of proof to terminate appellant's compensation.

¹⁰ See *Calvin S. Mays*, 39 ECAB 993 (1988).

The January 24, 2000 decision of the Office of Workers' Compensation Programs regarding appellant's recurrence of disability is hereby set aside and the case is remanded for further proceedings consistent with this decision.¹¹ The decision is hereby reversed with regard to the termination of compensation.

Dated, Washington, DC
August 14, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹¹ The Board also has jurisdiction over the Office's May 21, 1999 decision denying appellant's request for an oral hearing as untimely. Since the Office correctly found that appellant's request was untimely and the Board has jurisdiction over the last merit decision, the timeliness issue is moot.