

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY C. HUFF and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Knoxville, TN

*Docket No. 01-80; Submitted on the Record;
Issued August 10, 2001*

DECISION and ORDER

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

The issues are: (1) whether appellant has met his burden of proof in establishing that he has a recurrence of disability for the period July 22 through August 2, 1999 causally related to his December 10, 1992 right knee injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On December 10, 1992 appellant, then a 30-year-old mail processor, slipped on a label on the floor of the employing establishment and felt his right knee buckle. He filed a claim for right knee pain and swelling. A December 11, 1992 medical note indicated that appellant had a previous right medial meniscectomy. In a January 4, 1993 operative report, Dr. T. Craig Beeler, a Board-certified orthopedic surgeon, diagnosed a chronic torn anterior cruciate ligament, status post partial medial meniscectomy with early Grade III chondromalacia of the medial femoral condyle and posterior and medial aspects of the tibial plateau, a torn lateral meniscus and mild chondromalacia, Grade I or II, of the lateral femoral condyle and lateral tibial plateau. The Office accepted appellant's claim for right knee strain, right lateral meniscus tear and right anterior cruciate ligament tear. He received continuation of pay for the periods December 11 through 13, 1992 and January 2 through February 12, 1993. He returned to limited-duty work on February 15, 1993. Appellant received temporary total disability for the period April 10 through 15, 1993. In a September 12, 1994 decision, the Office issued a schedule award for a 15 percent permanent impairment of the right leg.

On August 2, 1999 appellant filed a claim for a recurrence of disability. He indicated that he stopped working on July 22, 1999 and returned to work on August 3, 1999. Appellant stated that his knee would swell and he had constant pain when he was on his feet for any length of time. He commented that his physician related that his cartilage was gone due to the knee surgery. Appellant reported that his physician placed him on light duty for the period July 28 to August 3, 1999.

In a November 4, 1999 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence of record was incomplete. In an August 2,

2000 letter, appellant requested reconsideration and submitted medical reports. In a September 22, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and therefore insufficient to warrant review of its prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

In his claim for a recurrence of disability, appellant submitted a July 28, 1999 office note which stated that he had been working out with jogging and biking and had swelling of the knee. A physician with an illegible signature recommended that appellant decrease activity. The report did not relate appellant's condition to his original employment injury but to exercise. It therefore was insufficient to establish that the December 10, 1992 employment injury had led to the recurrence of disability approximately seven years later.

The Office, in response to appellant's claim for a recurrence of disability, instructed him in a September 24, 1999 letter to submit medical evidence, including medical records and clinical notes related to treatment of his right knee condition, to support his claim for a recurrence of disability. The Office also stated that he should submit a narrative report from his personal physician which gave a history of the injury, description of findings, diagnosis and an opinion on the relationship between his current disability and the original injury. Appellant was given 30 days to submit such evidence. However, he did not submit any medical evidence within the specified time frame. Appellant therefore did not meet his burden of proof in establishing that his recurrence of disability from July 22 through August 2, 1999, was causally related to his December 10, 1992 employment injury.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.² Evidence that repeats or duplicates evidence already

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

² 20 C.F.R. § 10.608(b).

in the case record has no evidentiary value and does not constitute a basis for reopening a case.³ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁴

Appellant submitted office notes relating to treatment of degenerative joint disease of the right knee, including the July 28, 1999 note submitted previously. He also submitted a May 8, 2000 report from Dr. Paul J. Becker, an orthopedic surgeon, who diagnosed right knee pain status post anterior cruciate ligament reconstruction seven years previously. Dr. Becker noted that appellant had some tenderness in the lateral facet of the patella with some patella crepitance when attempting to squat. He commented that appellant was informed that he might be pivoting on his knees and involving overuse pattern of his knee at work. These reports did not address whether appellant had a recurrence of disability beginning July 22, 1999 due to the effects of the original employment injury. The reports, therefore, are irrelevant to the issue in this case.

Similarly, in an undated form, submitted by a physician with an illegible signature, it was reported that as of April 12, 2000 appellant would be on medication therapy and treatment for life. The physician indicated that it would be necessary for appellant to work intermittently or less than a full schedule due to his condition. The probable duration of the condition was reported as unknown. The physician stated that appellant would need additional treatment several times a year with a possibility of further surgery on the right knee. He answered “yes” to a question of whether appellant would need medical leave from work due to his inability to work as a result of his condition. The physician did not indicate at any point that appellant had a recurrence of disability after July 22, 1999 due to the effects of the original employment injury. This report is also irrelevant to the issue in this case.

In a June 14, 2000 report, Dr. Beeler stated that there were no restrictions on appellant’s activities. He commented that there might be if appellant continued to be symptomatic but there were no restrictions at that time. Dr. Beeler stated that appellant’s condition was a continuation of a preexisting problem and indicated that he would have intermittent problems with his knee in the future. He, therefore, did not support appellant’s claim for a recurrence of disability and did not address the issue of whether appellant had a recurrence of disability as of July 22, 1999 due to the employment injury. Dr. Beeler’s report therefore is irrelevant to the issue in this case. Appellant has not submitted any relevant medical evidence that would show he had a recurrence of disability for the period July 22 through August 2, 1999 due to the original employment injury. As the only limitation on the Office’s authority in this matter is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.⁵ Appellant has not shown any abuse of discretion in the denial of his request for reconsideration.

³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs dated September 22, 2000 and November 4, 1999 are hereby affirmed.

Dated, Washington, DC
August 10, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member