

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE O. BUSCHINI and U.S. POSTAL SERVICE,
POST OFFICE, White Plains, NY

*Docket No. 00-186; Submitted on the Record;
Issued January 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant sustained a recurrence of disability on June 15, 1998 causally related to his March 19, 1993 employment injury; and (2) whether the Office of Workers' Compensation Programs, by its March 20, 1999 decision, abused its discretion by denying appellant's request for further merit review under 5 U.S.C. § 8128(a).

On March 19, 1993 appellant, then a 43-year-old city mail carrier, sustained a work-related left knee sprain when he wrenched his knee on snow covered ice. He stopped work on March 20, 1993. On February 18, 1994 appellant underwent an authorized partial lateral meniscectomy. He returned to work on July 9, 1994. Appellant accepted a limited-duty position effective December 9, 1995.¹

Subsequently, appellant submitted numerous reports from Dr. William J. Walsh, a Board-certified orthopedic surgeon. In his April 8, 1996 report, Dr. Walsh noted bilateral knee pain, crepitation and tenderness. He also noted that x-rays of both knees were normal. In his May 15, 1996 report, Dr. Walsh noted that appellant reported decreased knee pain attributed to activity limitations. He also noted that appellant was symptomatic but had no swelling, tenderness, or crepitation. In his June 11, 1996 report, Dr. Walsh stated that appellant continued to complain of intermittent left knee pain and that he sustained low back strain resulting from favoring his left knee. He further stated that appellant's left knee examination was unchanged. Dr. Walsh noted that appellant's lumbar spine examination revealed guarding and diffuse mild spasm without an apparent neurological deficit. He also noted that anteroposterior and lateral x-rays showed lumbar lordotic curve straightening and degenerative changes in the two lower disc spaces and thoracic spine. Dr. Walsh diagnosed acute lumbosacral strain and stated that appellant was totally temporarily disabled.

¹ The record indicates that appellant received a third-party settlement regarding this claim.

On June 16, 1998 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on June 15, 1998 he sustained a recurrence of his March 19, 1993 employment injury.² He asserted that he experienced a throbbing ache, left knee inflammation, swelling and that his condition was unchanged since he returned to work on July 9, 1994. Appellant also alleged that he had been permanently disabled since December 10, 1995 due to his left knee condition. He did not stop work.

By letter dated June 29, 1998, the Office advised appellant of the type of factual and medical evidence needed to support his recurrence claim and allowed him 30 days within which to respond to its request.

Appellant submitted a statement dated July 12, 1998, in which he stated that on “June 5” his left knee became inflamed and swollen and that he had difficulty bending. He also stated that he did not seek to change his limited-duty restrictions.

By decision dated November 24, 1998, the Office denied appellant’s recurrence claim on the grounds that the medical evidence of record was insufficient to establish that his alleged recurrence of disability was causally related to his March 19, 1995 employment injury.

By letter dated December 20, 1998, appellant requested reconsideration of the Office’s November 24, 1998 decision. To support his request, appellant submitted a June 15, 1998 report in which Dr. Walsh, appellant’s treating Board-certified orthopedic surgeon, stated that appellant complained of intermittent episodes of left knee pain and that his examination revealed subpatella crepitation and mild anterior tenderness. Dr. Walsh also stated that left knee x-rays showed mild to moderate degenerative changes in appellant’s patella femoral joint. He recommended intermittent knee brace use and anti-inflammatory medication as needed.

By decision dated March 20, 1999, the Office denied appellant’s request for further merit review on the grounds that the medical evidence submitted to support his request was repetitious, irrelevant and immaterial.

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

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 he 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.³

² Appellant did not note the date of his alleged recurrence of disability, however, his supervisor noted that it allegedly occurred on June 15, 1998.

³ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry Hedman*, 38 ECAB 222, 227 (1986).

As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁴ However, it is well established that proceedings under the Federal Employee's Compensation Act⁵ are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷ In this regard, medical evidence of bridging symptoms between the alleged recurrence and the accepted injury must support the physician's conclusion of causal relationship.⁸

The evidence submitted in support of appellant's recurrence claim is devoid of rationalized medical opinion evidence relating his alleged recurrence of disability to his March 19, 1993 employment injury. Dr. Walsh's June 15, 1998 report noted appellant's complaint's and the doctor's objective findings but did not contain a rationalized opinion explaining how appellant's condition related to his March 19, 1993 employment injury. Dr. Walsh noted that a left knee x-ray revealed mild degenerative changes in the femoral joint but he did not address the issue of whether those changes related to appellant's accepted employment injury.

Accordingly, as appellant has not submitted rationalized medical opinion evidence explaining how and why his condition was related to his work injury, appellant has not satisfied his burden of proof in establishing his recurrence claim. Moreover, appellant does not seek to change his limited-duty restrictions.

The Board further finds that the Office did not abuse its discretion by denying appellant's request for further merit review under 5 U.S.C. § 8128(a).

In order to warrant a grant of a claimant's reconsideration request, the claimant must show that the Office erroneously applied or interpreted a specific point of law, advance a new legal argument supporting his claim not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.⁹ Where such evidence and arguments are present, it is well established under Board precedent that the Office must reopen a case for a merit review.¹⁰ Section 10.608(b) of the Office's regulations provides that when an

⁴ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Richard E. Konnen*, 47 ECAB 388 (1996); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁸ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

⁹ *Alton L. Vann*, 48 ECAB 259, 269 (1996); 20 C.F.R. § 10.606(b) (1999).

¹⁰ *Helen E. Tschantz*, 39 ECAB 1382, 1385 (1988).

application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.¹¹ The submission of evidence or argument which repeats or duplicates evidence or argument already considered by the Office does not constitute a basis for reopening a case for further review on the merits.¹²

The Office properly found that appellant's December 20, 1998 reconsideration request did not warrant further merit review of his claim as it was not supported by relevant and pertinent new evidence not previously considered by the Office, nor did it show that the Office erroneously applied or interpreted a specific point of law. In his June 15, 1998 report, though not previously submitted, Dr. Walsh merely reiterated findings and opinions rendered previously and the Office indicated in its November 24, 1998 decision that it had reviewed the entire case record.

The decisions of the Office of Workers' Compensation Programs dated March 20, 1999 and November 24, 1998 are affirmed.

Dated, Washington, DC
January 24, 2001

Michael J. Walsh
Chairman

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹¹ 20 C.F.R. § 10.608(b) (1999).

¹² *David E. Newman*, 48 ECAB 305, 308 (1997); see *Eugene F. Butler*, 36 ECAB 393, 398 (1984).