

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANK E. FELICE and U.S. POSTAL SERVICE,  
POST OFFICE, Poughkeepsie, NY

*Docket No. 99-2235; Submitted on the Record;  
Issued March 8, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied authorization for left knee surgery.

On the prior appeal of this case,<sup>1</sup> the Board found that a conflict in medical opinion existed between appellant's treating physician and the Office referral physician on whether appellant's left knee condition was consequentially caused or aggravated by overuse and overreliance during treatment and recovery from his accepted right leg injuries, or whether the left knee condition was the result of a congenital left varus deformity surgically treated years earlier. The Board remanded the case to the Office for an impartial medical opinion to resolve the conflict. The facts of this case as set forth in the Board's prior opinion are hereby incorporated by reference.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. George L. Steiner, a Board-certified orthopedic surgeon, for an impartial medical opinion.

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<sup>1</sup> Docket No. 97-480 (issued November 9, 1998).

In a report dated December 30, 1998, Dr. Steiner related appellant's history and his findings on physical examination. He reviewed the statement of accepted facts and the medical record. Dr. Steiner diagnoses included status postmedial meniscectomy and chondroplasty loose body right knee; osteoarthritis right knee; and osteoarthritis left knee with secondary degeneration of the left medial meniscus. On the issue of causal relationship, he offered the following opinion:

"The status of the claimant's left knee is, in my opinion, with a reasonable degree of medical certainty, not causally related to the injury of the right knee, nor its subsequent surgeries. Apparently there was some question very early by Dr. Samis in his red-inked notes reviewed by me today that there had been preexisting disease to the right knee which antedated the injury of August 1982. Loose body and osteochondromalacia and spurs reported by Dr. Ferrando at the time of his original surgery shortly after the injury were, according to Dr. Samis, not reasonably related to the injury of [August 10 and 11 1982]. Loose bodies such as that reported can result from either generalized arthritic degeneration or a preexisting osteochondritis dissecans. It is very likely that [the] claimant had varus deformity of the right knee, resulting in degenerative arthritis as he now has on the left. In most patients, absent a history of significant intra-articular injury, a varus knee is a bilateral condition. The degeneration of the medial compartment of [the] claimant's right knee may well have been hastened by the meniscectomy performed which unfortunately was necessitated by the fact that he had the torn cartilage.

"I do not believe that overuse of a knee, while the opposite extremity is in a protected weight-bearing condition exists. In normal gait 100 percent of the body weight is supported by whichever knee is in stance phase and none is supported by [the] other knee. If [the] claimant's right knee is in a condition in which he cannot bear weight and he is at least partly on crutches, his body weight is transferred to the crutches, but again no more than the body weight during 50 percent of the gait cycle would be placed on the left knee. Limping does not change the gait cycle to throw more weight on the uninjured side.

"I must agree, therefore, with Dr. Tannin [the Office referral physician] that the left knee is not consequential to the accepted right leg injury but is a congenital left varus deformity of which I have no record of it being treated years ago. I do not believe that any surgical procedure to the left knee should be authorized as consequential to the right."

In a decision dated March 10, 1999, the Office denied authorization for a left knee arthroscopy. The Office found that Dr. Steiner's opinion represented the weight of the medical evidence and established that appellant's left knee condition was not causally related to the accepted right knee condition of August 10, 1982.

The Board finds that the Office properly denied authorization for left knee surgery.

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>3</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>4</sup>

As appellant seeks authorization for a left knee surgery, he bears the burden of proof to establish that his left knee condition is causally related to the accepted right knee injury.<sup>5</sup>

When there exist 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 upon a proper factual background, must be given special weight.<sup>6</sup>

In this case, the Office referred appellant to Dr. Steiner to resolve the conflict found on the prior appeal. The Office provided Dr. Steiner with a statement of accepted facts and the medical record so that he could base his opinion on a proper factual and medical background. Dr. Steiner offered an opinion negating any causal relationship between the claimed left knee condition, surgery for which appellant sought authorization and the accepted right knee injury. Further, he supported his opinion with medical reasoning sufficient to convince the Board that the conclusion drawn was rational, sound and logical.<sup>7</sup> The Board finds that the opinion of the impartial medical specialist carries special weight in resolving the conflict found in this case and establishes that the status of appellant's left knee was not causally related to the injury of the right knee or its subsequent surgeries. The Board, therefore, finds that the Office properly denied authorization for the left knee surgery.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> See 5 U.S.C. § 8103(a) (the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies, prescribed or recommended by a qualified physician, that the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of any monthly compensation). To be entitled to reimbursement of medical expenses, however, the employee must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation must include supporting rationalized medical evidence. *Bertha L. Arnold*, 38 ECAB 282 (1986); *Delores May Pearson*, 34 ECAB 995 (1983); *Zane H. Cassell*, 32 ECAB 1537 (1981); *John R. Benton*, 15 ECAB 48 (1963).

<sup>6</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>7</sup> *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

The March 10, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 8, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member