

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARITY GUNTER and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, NJ

*Docket No. 00-2015; Submitted on the Record;
Issued May 24, 2001*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on October 6, 1994 causally related to her November 6, 1992 employment injury.

Appellant, a 49-year-old mailhandler, filed a notice of traumatic injury alleging on that date she injured her left knee and back when she fell in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for contusion left patella and low back syndrome on December 30, 1993. On December 6, 1994 appellant filed a notice of recurrence of disability and alleged that on October 6, 1994 she sustained a recurrence of her left knee symptoms. By decision dated March 9, 1995, the Office denied her claim. Appellant requested an oral hearing. By decision dated September 29, 1995, the Branch of Hearings and Review found that appellant had abandoned her request for an oral hearing. Appellant requested review by the Board and the Board remanded appellant's claim for an oral hearing.¹ By decision dated September 22, 1999 and finalized September 24, 1999, the hearing representative affirmed the Office's March 9, 1995 decision. Appellant requested reconsideration on January 24, 2000 and by decision dated February 25, 2000, the Office denied modification of its prior decisions.

The Board finds that appellant has failed to meet her burden of proof in establishing a recurrence of disability.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing October 6, 1994 and her November 6, 1992 employment injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and

¹ There is no copy of this order in the record.

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

In support of her claim, appellant submitted reports from Dr. Allen S. Glushakow, a Board-certified orthopedic surgeon. On November 28, 1994 Dr. Glushakow noted physical findings of patella femoral tenderness and crepitation. He noted appellant's history of injury and diagnosed internal derangement of the left knee. Dr. Glushakow performed surgery on March 13, 1995. He found severe degenerative arthritic changes involving the medial femoral condyle and the lateral femoral condyle. Patellofemoral arthritis was severe with loose bodies. Appellant also had severe arthritic changes involving the lateral joint. Dr. Glushakow stated, "Some of her changes were degenerative and some of the changes were traumatic."

On April 24, 1995 Dr. Glushakow noted operating on appellant's left knee and stated:

"Findings were consistent with the history given. Traumatic arthritis with some degenerative changes were noted. Some of her changes were degenerative and some of the changes were traumatic. This would corroborate her history. It is my opinion that her left knee condition is cause related to the fall down on November 6, 1992 and an aggravation of a previous condition."

In a report dated January 10, 2000, Dr. Glushakow again noted appellant's history of injury and diagnosed internal derangement of the left knee, and traumatic arthritis of the left knee. Dr. Glushakow stated: "It is my opinion that her left knee condition is cause related to the fall down incident on November 6, 1992 and an aggravation of a previous condition."

In a report dated June 20, 1996, Dr. Arthur T. Canario, a Board-certified orthopedic surgeon and employing establishment physician, noted appellant's history of injury. Dr. Canario performed a physical examination and diagnosed osteoarthritis of the knee. He stated that appellant did not sustain a meniscal tear or other internal derangement which would result in a worsening of her osteoarthritis as a result of her employment injury." Dr. Canario found that there was no causal relationship between appellant's current knee condition and her employment injury.

Appellant has not submitted sufficient medical evidence to meet her burden of proof. Although Dr. Glushakow provided his opinion that appellant's employment injury resulted in traumatic arthritis to her left knee, he did not provide any medical reasoning explaining how he distinguished traumatic and degenerative changes during appellant's surgery and why he attributed these traumatic changes to appellant's employment injury. This medical opinion evidence is necessary given that Dr. Canario opined that appellant's condition was degenerative with no traumatic component.

As appellant has failed to submit the necessary rationalized medical opinion evidence, she has failed to meet her burden of proof and the Office properly denied her claim.

³ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

The decisions of the Office of Workers' Compensation Programs dated February 25, 2000 and September 24, 1999 are hereby affirmed.

Dated, Washington, DC
May 24, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member