

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY MARTIN and U.S. POSTAL SERVICE,
POST OFFICE, Georgetown, SC

*Docket No. 01-94; Submitted on the Record;
Issued October 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly rescinded acceptance of appellant's claim for a traumatic injury to her left knee on May 28, 1999.

On June 18, 1999 appellant, then a 46-year-old city carrier, filed a claim for an occupational injury to her left knee. She indicated that she first realized her condition was related to her employment on June 8, 1999. Appellant stated that she believed the injury occurred during training when she was exiting and entering the rear door of a postal vehicle. She noticed her knee was sore and was painful when she put her full weight on it. Appellant reported that her knee became more painful as she walked on her route. She indicated that a physician diagnosed a torn ligament in the knee. Appellant noted that the postmaster had advised her to start walking long distances before she began working. She indicated that she did so, without any pain in her knee.

On July 29, 1999 appellant filed a claim for a traumatic May 28, 1999 employment injury. She stated that, on that date, she was stepping out of the rear door of a postal vehicle when she lost her footing and twisted her left knee. Appellant stated that she sustained a torn ligament and required surgery. Her supervisor wrote on the claim form that appellant did not know exactly when or where she injured her leg. The employing establishment noted that appellant began work on May 24, 1999 on temporary status. She worked on regular duty until June 14, 1999 when she first sought medical attention. Appellant was then placed on limited duty from June 14 to August 3, 1999, at which time she resigned without giving a reason.

In an August 11, 1999 letter, appellant discussed the problems she encountered when she submitted a claim for an occupational injury instead of a traumatic injury as she intended. She stated that her injury occurred because, during training, she had to step from the rear of a flatbed truck that was at least three feet off the ground, filled with packages and mail. Appellant commented that, when she stepped out of the truck, she had to step over mail and could not see where she was stepping. She stepped onto a curb and twisted her knee. Appellant stated that she further injured her knee when the postmaster had her deliver mail for two days from her car,

which was low to the ground. She reported that she had no prior orthopedic injuries and had never been diagnosed with arthritis. Appellant related that on June 10, 1999 she informed a supervisor that she took longer on her route because her left knee was hurting. She indicated that she requested and received sick leave on June 15, 1999 for an examination of her knee. Appellant related that she called the postmaster after the examination and indicated that she had a torn ligament. She claimed that when she told the postmaster that the torn ligament was work related, he became hostile.

In an undated letter, received by the Office on September 27, 1999, appellant again described her injury as occurring when she stepped out of the back of a postal vehicle while training and stepping on a curb, twisting her left knee. She indicated that she delayed reporting the injury because she thought the knee pain was from excessive walking. In a June 14, 1999 report, Dr. Wright S. Skinner, III, a Board-certified orthopedic surgeon, stated that appellant had a several-month history of having developed increasing left knee pain associated with swelling, giving way and locking. He indicated that appellant was working part time as a mail carrier and since that time had begun having considerable pain in her knee. Dr. Skinner noted that appellant denied any past history of pain or trauma associated with the knee. He diagnosed mild to moderate osteoarthritis with a probable meniscal tear and recommended an arthroscopy of the knee.

Appellant disputed Dr. Skinner's history of knee pain for several months. She stated that the knee pain started only after she began to work for the employing establishment, approximately two weeks before he examined her. Appellant commented that when she questioned Dr. Skinner about the history, he responded that she was mistaken that she had told him that she had had knee pain for months.

In a September 9, 1999 report, Dr. Skinner diagnosed osteochondritis disease of the left knee involving the femoral condyle and lateral tibial plateau, anteromedial synovial plica of the left knee and tear of the left lateral meniscus. He indicated that surgery involved chondroabrasion of the lateral tibial plateau, partial lateral meniscectomy and synovial resection.

In a January 5, 2000 letter, the Office accepted appellant's claim for a left meniscus tear.

In a January 24, 2000 investigative memorandum, a postal inspector noted Dr. Skinner's report that appellant had a several-month history of knee pain prior to his examination. He indicated that these medical notes were received by the employing establishment on January 14, 2000. The postal inspector submitted a June 30, 1999 statement from one of appellant's supervisors that she told him in a conversation between June 19 and June 24, 1999 that she did not know exactly when or where she injured her leg but it did not start hurting until later. He submitted a report from an employing establishment official that appellant was in training for the first week of her employment and did not carry a route until May 29, 1999 when she rode in the back of a postal vehicle part of the time and walked with a regular carrier during the other part of the day. The postal inspector compared the claim forms submitted by appellant and indicated that, in the first form, she did not report losing her footing while exiting the postal vehicle, but gave that history in her second claim form.

In a February 24, 2000 decision, the Office rescinded its acceptance of appellant's claim on the grounds that the claimed medical condition was not causally related to appellant's employment. The Office pointed out that Dr. Skinner did not give a history of a May 28, 1999 employment injury but rather reported that appellant had a several-month history of increasing knee pain and denied any trauma associated with the knee. The Office also found that appellant was in training on May 28, 1999 and, therefore, could not have been injured on the day she cited.

In a May 9, 2000 letter, appellant requested reconsideration. She submitted training records to show that she was in training at the employing establishment from May 24 through May 26, 1999 and completed training on June 3, 1999. Appellant stated that, on the other days, she worked at the employing establishment, riding in the back of a postal vehicle on May 28, 1999. She again disputed Dr. Skinner's history that she had a several-month history of increasing left knee pain prior to his June 14, 1999 examination. Appellant pointed out that he also stated that her knee pain had begun after she began work at the employing establishment. She also submitted an April 4, 1999 report of a preemployment examination which stated that she had no physical limitations.

In an August 1, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that she had not submitted any new and relevant medical evidence nor advanced a valid legal argument that would provide a basis for reopening her case.

The Board finds that the Office did not meet its burden of proof in rescinding its acceptance of appellant's claim for a meniscus tear of the left knee.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Federal Employees' Compensation Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.¹ However, the power to annul an award is not an arbitrary one and an award of compensation can be set aside only in the manner provided by the compensation statute.² It is well established that once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.³ This holds true where, as here, the Office later decides that it erroneously accepted a claim. To justify rescission of acceptance, the Office must establish that its prior acceptance was erroneous based on new or different evidence, or through new legal argument or legal rationale.⁴

The Office based its decision to rescind on two findings, that appellant was not riding in a postal vehicle as she alleged on May 28, 1999 and that Dr. Skinner noted that appellant had a several-month history of prior knee pain. The first finding was based on new evidence submitted by the Office, a statement by an employing establishment official that appellant was in training on May 28, 1999 and did not ride in a postal vehicle until May 29, 1999. Appellant, however,

¹ *Eli Jacobs*, 32 ECAB 1147 (1981).

² *Shelly J. Rycroft*, 44 ECAB 795 (1993); *see also Lorna R. Strong*, 45 ECAB 470 (1994).

³ *See Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Harold S. Gough*, 36 ECAB 332 (1984).

⁴ *Doris J. Wright*, 49 ECAB 230 (1997).

submitted evidence that showed she was in training from May 24 to May 26, 1999, and June 3, 1999, which contradicted the statement of the employing establishment official. Also, appellant and the employing establishment official's description of appellant's riding with a coworker were similar. Both stated that appellant accompanied a letter carrier, riding in the back of a postal vehicle. Appellant stated that she was injured when she stepped down from the vehicle and twisted her left knee. The only difference between the accounts was that appellant dated the incident as occurring on May 28, 1999 while the employing establishment official stated that appellant rode with a coworker on May 29, 1999. The one day difference on the date of the incident, by itself, is not sufficient to contradict appellant's claim that she was injured in the manner she alleged, when the other parts of her account are not contradicted by the evidence of record.

The Office indicated that Dr. Skinner, in his June 14, 1999 report, stated that appellant had a several-month history of knee problems prior to his examination, which would preexist appellant's claim injury. This report, however, is not new evidence. The report was originally submitted by appellant and received by the Office on September 27, 1999, three months prior to its acceptance of appellant's claim. At the time appellant submitted the report, she disputed the accuracy of Dr. Skinner's history that she had several months of knee pain. In addition, as appellant pointed out, while Dr. Skinner stated that appellant had a history of left knee pain for several months prior to his examination, he also indicated that the knee pain began after appellant started working for the employing establishment. As appellant started work on May 24, 1999, Dr. Skinner's history is internally inconsistent. Therefore, his statement that appellant had a history of several months of left knee pain cannot be considered sufficiently probative or reliable to justify rescission of the acceptance of appellant's claim. The Office, therefore, has not established by the weight of new evidence or new legal argument or rationale that it erroneously accepted appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs, dated August 1 and February 24, 2000, are hereby reversed.

Dated, Washington, DC
October 12, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member