

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN L. DECK and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 02-289; Submitted on the Record;
Issued August 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability.

On November 7, 1996 appellant, then a 44-year-old city carrier, filed a traumatic injury claim alleging that on that same date she wrenched her back, right leg and knee as she caught herself from falling when she walked on a slippery muddy board to get to boxes. The Office of Workers' Compensation Programs accepted the claim on January 15, 1997 for right knee strain and lumbar strain with right knee arthroscopy and authorized a right knee arthroscopy.¹

On April 27, 1997 appellant began performing the full duties of an acting supervisor. This was a seated office position within her work restrictions. In January 1998, her position became that of a modified letter carrier. While working as a modified letter carrier, appellant alleged that repeated standing and sitting while casing mail caused a worsening of her knee condition and stopped work on July 6, 1999.²

Appellant filed another claim for recurrence of disability on July 19, 1999.

On October 28, 1999 the Office expanded the claim, as a result of these work factors, to include aggravation of bilateral knee osteoarthritis.³

¹ The record reflects that appellant filed a claim for recurrence beginning December 4, 1996, which was also accepted. Additionally, a claim for recurrence was filed on July 19, 1999.

² The record reflects appellant returned to restricted duty on September 13, 1999.

³ Appellant was advised that the Office would continue to handle her right knee condition in conjunction with this claim.

By letter dated May 9, 2000, the Office advised appellant of a second opinion examination with Dr. Jerry Matlen, a Board-certified orthopedic surgeon.

In a May 24, 2000 report, Dr. Matlen noted appellant's history of injury and treatment. He noted signs and symptoms of active osteoarthritis of her knees bilaterally with patellofemoral syndrome. Dr. Matlen stated that she showed no clinical objective evidence of orthopedic disability related to a lumbar strain, radiculopathy or anything to suggest disc herniation. He opined that appellant's disability was strictly related to her advanced arthritis in her knees. Dr. Matlen said that, due to her obesity and young age, she was not a candidate for knee replacement.

By letter dated May 23, 2000, appellant indicated that, during her second opinion examination with Dr. Matlen, he forced her left leg to bend and that something popped inside her knee. As a result of the examination, she now had intermittent knee pain.

In a June 8, 2000 report, Dr. Nancy S. White, a Board-certified family practitioner, noted appellant's history of injury and treatment. She noted that appellant indicated that her pain had increased ever since the worker's compensation physician hyperflexed her left knee in May 2000. Dr. White diagnosed bilateral knee osteoarthritis, obesity and chronic pain. She indicated that appellant had had other emotional issues prohibiting her from losing weight and encouraged, again, weight reduction, as the primary source of her pain relief.

By letter dated June 12, 2000, appellant requested copies of Dr. Matlen's⁴ medical reports and indicated that she wished to have an expeditious decision on her claim for recurrence.

In a supplemental report dated June 14, 2000, Dr. Matlen stated that, in regard to appellant's low back, he found no evidence of an orthopedic disability and nothing in relationship to appellant's lower extremities in conjunction with her low back. He opined that her main problem, was that of active bilateral arthritis of her knees with her associated obesity. Dr. Matlen further opined that it was his opinion that her November 7, 1996 injury did not cause, aggravate, precipitate or accelerate the arthritis in her knees but he explained that the arthritis in her knees was permanent in nature.

In an August 21, 2000 duty status report (Form CA-17), Dr. White⁵ indicated that appellant had a recurrence of her November 7, 1996 work injury. She diagnosed a knee injury due to the injury and indicated that appellant could not return to her regular work. Dr. White stated that appellant could not return to her regular work and limited appellant's activities to a maximum of simple grasping, reaching above shoulder and fine manipulation for four hours a day.

On August 22, 2000 appellant filed a notice of recurrence of disability alleging that on August 21, 2000 she sustained a recurrence of her November 7, 1996 injury. She indicated that

⁴ She also requested a copy of Dr. Pollack's August 8, 1997 report.

⁵ The signature is illegible but it appears to be similar to Dr. White's signature.

she stopped work on August 21, 2000. Additional information followed appellant's request, including medical reports, a statement and physical therapy notes.

In a letter dated September 12, 2000, the Office advised appellant of the additional factual and medical information needed to establish her claim. Appellant was allotted 30 days to submit the requested evidence.

In a September 13, 2000 radiology report, Dr. Gordon H. Beute, a Board-certified diagnostic radiologist, indicated that examination of both knees revealed bilateral joint effusion with marked narrowing of the medial compartments bilaterally, possibly demonstrating slight progression since July 1999.⁶ Dr. Beute indicated that the medial compartments were essentially obliterated and definite spurs were present about the medial compartment. He indicated that small spurs were present about the lateral compartments with marked narrowing of the patellofemoral compartments bilaterally with large hypertrophic spurs forming, somewhat greater on the left than the right. Dr. Beute also indicated that there was also slight lateral subluxation of each patella.

In a September 13, 2000 attending physician's report (Form CA-20), Dr. White diagnosed severe osteoarthritis of both knees. She checked the box "yes" in response to whether appellant's condition was caused or aggravated by an employment activity, noting it was aggravated by work and indicated that appellant was totally disabled through November 1, 2000. Dr. White filled out the accompanying duty status report by indicating that appellant could not do any of the activities listed.

In a report dated September 20, 2000, Dr. Allaaddin Mollabashy, a Board-certified orthopedic surgeon, discussed appellant's history of injury and treatment. He noted a five-year history of bilateral knee pain as well as prior surgeries for a thyroidectomy in 1977, a bladder suspension in 1998 and removal of a fibroid from her uterus in 2000. Dr. Mollabashy discussed treatment options with appellant and advised that she was too young to undergo total knee arthroplasty because she had a high potential of undergoing multiple revisions for these knee arthroplasties, although there was an option of undergoing a staged bilateral total knee arthroplasty. He instructed her to undertake weight loss regimens to improve the mechanical forces that go across her bilateral knee joints.

In her October 13, 2000 statement, appellant indicated that ever since her second opinion evaluation with Dr. Matlen on May 22, 2000 she had increased pain and difficulty walking on her left knee and that her right knee worsened as a result of favoring the left knee. She stated that she also began to have increased difficulty sleeping at night and sought treatment at the Henry Ford Center for Behavioral Health and was placed on antidepressants. Appellant stated that she was unable to drive for a few days while she adjusted to the medication and had her disability extended until November 1, 2000 when she was to be referred to a joint replacement specialist, and was awaiting knee replacement.

On October 30, 2000 the Office received a duty status report dated January 20, 1999.

⁶ Dr. Beute noted a comparison with a July 6, 1999 report.

In an undated report received by the Office on November 3, 2000, Dr. White indicated that she last saw appellant on September 13, 2000 and placed appellant off work through October 31, 2000 so that she could be examined by one of their joint replacement specialists and resume strengthening exercises. She noted that, at the time, appellant demonstrated significant loss of motion and her x-rays showed complete obliteration of the joint spaces. Dr. White diagnosed severe degenerative arthritis of bilateral knees with poor response to conservative and arthroscopic measures.

In a November 16, 2000 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a recurrence of disability on August 21, 2000 causally related to the November 7, 1996 accepted employment injury.⁷

The Board finds that appellant has not established that she sustained a recurrence of disability beginning August 21, 2000 due to her accepted November 7, 1996 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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.⁸

In the instant case, appellant has not presented any evidence to show that she sustained a recurrence of total disability and that there was a change in her condition such that she could no longer work her restricted-duty assignment. In her October 13, 2000 statement, she noted increased pain and difficulty in walking since her May 22, 2000 second opinion examination, however, she did not allege nor establish that there was a change in her light-duty position that she was assigned at the time of the claimed recurrence nor did she provide any medical evidence to establish her allegation.

The medical evidence in this case includes the duty status report of January 20, 1999. However, this is irrelevant as it is prior to the alleged recurrence of August 21, 2000. Physical therapy reports were also part of the record. The Board has held that health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Federal Employees' Compensation Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.⁹

⁷ The record reflects that with respect to appellant's earlier claim for a recurrence on July 6, 1999, the Office determined that a conflict existed between the second opinion examiner and appellant's treating physician, Dr. White. However, with respect to the August 21, 2000 claim for recurrence, the Office found that the evidence was insufficient to establish a recurrence.

⁸ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁹ *Jan A. White*, 34 ECAB 515, 518 (1983).

In a September 13, 2000 radiology report, Dr. Beute examined both knees and discovered bilateral joint effusion with marked narrowing of the medial compartments bilaterally, possibly demonstrating slight progression since July 1999. He did not provide any type of explanation regarding appellant's condition or ability to perform light duty. This report is not sufficient to show whether this slight progression since July 1999 represented a worsening or change in appellant's condition.¹⁰ He did not discuss appellant's November 7, 1996 employment injury nor did he provide a factual and medical background of appellant. Additionally, he did not attempt to explain the nature of appellant's condition to the specific employment factors.¹¹ Dr. Beute did not provide any opinion regarding appellant's disability status or explanation to show that appellant sustained a recurrence of total disability after returning to light duty.¹²

Dr. White in her September 13, 2000 report, indicated that appellant was totally disabled and that appellant had a long-term history of osteoarthritis of both knees. In her undated report received by the Office on November 3, 2000, she diagnosed severe degenerative arthritis of both knees. However, she did not offer any opinion in either of her reports, regarding appellant's disability status or an explanation to show that appellant sustained a recurrence of total disability after returning to light duty.¹³

In his September 20, 2000 report, Dr. Mollabashy noted a five-year history of bilateral knee pain and discussed total knee arthroplasty; however, he did not offer any opinion regarding appellant's disability status or an explanation to show that appellant sustained a recurrence of total disability after returning to light duty.¹⁴

Appellant has not provided any medical reports, based on objective findings, which establish that there has been a change in the nature and extent of her condition such that she can no longer perform her light-duty job and also has provided no evidence to establish that there has been a change in the nature and extent of her light-duty job requirements. On September 12, 2000 the Office advised appellant of the type of medical and factual evidence needed to establish her claim for a recurrence of disability; however, appellant has not submitted such evidence.

As appellant has not submitted competent medical evidence showing that she was disabled beginning August 21, 2000, due to her accepted employment injury, she has not met her burden of proof.¹⁵

¹⁰ Appellant has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and show that she cannot perform such light duty. *See Richard E. Konnen*, 47 ECAB 388 (1996).

¹¹ *Charles E. Burke*, 47 ECAB 185 (1995).

¹² *See Richard E. Konnen*, *supra* note 10.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Following the issuance of the Office's November 16, 2000 decision, appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal.

The decision of the Office of Workers' Compensation Programs dated November 16, 2000 is hereby affirmed.

Dated, Washington, DC
August 6, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member