U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN GUYTON and U.S. POSTAL SERVICE,
WHITE STATION, Memphis, TN

*Docket No. 01-1973; Submitted on the Record;*
*Issued December 16, 2002*

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DECISION and ORDER

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

The issue is whether appellant's chondromalacia of the knees and his need for right knee surgery are causally related to his June 2 or December 13, 1995 employment injuries.

The Office of Workers' Compensation Programs accepted that appellant sustained an injury to his left knee when he stepped into a hole on June 2, 1995 and that this injury resulted in a torn lateral meniscus of the left knee. The Office authorized surgery and an arthroscopic partial lateral meniscectomy was performed on appellant's left knee on August 31, 1995.

Appellant's employment at the employing establishment was terminated effective January 5, 1996, when his transitional appointment expired and was not renewed.

On July 7, 1997 the Office issued appellant a schedule award for a 10 percent permanent loss of use of his left leg.

In a report dated April 1, 1998, appellant's attending physician, Dr. Rommel G. Childress, a Board-certified orthopedic surgeon, recommended arthroscopic surgery on appellant's right knee. In a January 29, 1998 report, Dr. Childress stated that appellant was favoring his right knee to the extent that it was wearing excessively.

By letter dated April 7, 1998, the Office advised appellant that it could not authorize surgery on appellant's right knee without further evidence on causal relation to his accepted injury, as it had accepted only a left knee condition. Appellant submitted additional reports from Dr. Childress. In a report dated April 6, 1998, Dr. Childress stated: "I do feel that because of his left knee problem, he has been using his right knee more and that he has used it excessively to the extent that he is having tendency for chondromalacia and swelling in the right knee." In a report dated April 13, 1998, Dr. Childress stated that appellant's "symptoms of pain and swelling are that of chondromalacia and I feel that he has developed this in direct relation to protection of his left knee."

On April 30, 1998 an Office medical adviser reviewed the medical evidence and opined that the requested surgery was for chondromalacia of the right knee and that it was "highly unlikely that this occurred as a result of 'favoring' the left knee -- there is no such thing. Chondromalacia results from abnormal mechanical alignment or a direct injury."

On May 6, 1998 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. J.T. Galyon, a Board-certified orthopedic surgeon, for a second opinion whether his right knee condition and recommended surgery were causally related to his June 2, 1995 employment injury. In a report dated May 19, 1998, Dr. Galyon, after setting forth appellant's history and findings on physical examination, concluded:

> "[Appellant] has chondromalacia of both knees. The right knee is now more symptomatic than the left. I believe that when the left knee was operated on, almost three months after his injury, he was found to have Grade III chondromalacia of the patello-femoral joint. I believe this did not develop in the three months from the injury to the time he had arthroscopic surgery but was preexisting based upon patello-femoral tracking and the size of the patient. I do not believe the chondromalacia was caused by stepping in a hole.
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> "Regarding the right knee, which is now symptomatic, I believe he also has chondromalacia of this knee based on the same mechanisms of patello-femoral mal-alignment and the large size of the patient. I do not believe stepping in a hole and twisting his left knee on June 2, 1995 caused the chondromalacia present in his right knee.
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> "In answer to your third question, I believe that arthroscopic debridement is a reasonable recommendation for his right knee, however, this is generally a degenerative process that will likely deteriorate with time."

By decision dated December 4, 1998, the Office found that the medical evidence failed to establish that the current condition of appellant's knees was causally related to his employment injury.

Appellant requested a hearing, which was held on July 28, 1999. He testified that in December 1995, he sustained an injury to his right knee that was approved by the Office. Appellant submitted a report dated July 21, 1999 from Dr. Childress, who noted that appellant "had an incident where he hit his leg at work on a truck" and that appellant developed symptoms of chondromalacia that were related to his June 1995 injury.

By decision dated September 22, 1999, an Office hearing representative found that the case was not in posture for a decision, as there was a conflict of medical opinion between Drs. Galyon and Childress regarding the cause of appellant's knee problems.

To resolve this conflict, the Office referred appellant, the case record and a statement of accepted facts to Dr. Owen B. Tabor, a Board-certified orthopedic surgeon. In a report dated November 3, 1999, Dr. Tabor, after setting forth appellant's history and his findings on

examination, diagnosed bilateral mild degenerative arthritis of the patellofemoral and medial tibiofemoral joints and recurrent synovitis of both knees by history. Dr. Tabor stated:

> "In my opinion, [appellant] has greatly exaggerated his symptoms and his responses are magnified. He has, from an objective point of view, a minimal amount of low-grade pathology in both knees, which is reflective of his age and mild degenerative process and is in no way in my opinion related to his alleged injuries, neither of which seem severe. In similar fashion, I doubt very seriously that the radial tear noted [that] in his lateral meniscus at the time of his arthroscopy was either caused by his initial twisting injury, or was responsible for much of his complaint. I suspect that may well have been a preexisting, but perhaps asymptomatic, bit of pathology in a 50-year-old man."

In a supplemental report dated November 3, 1999, Dr. Tabor stated:

> "In response to the question posed, it is my opinion that the bilateral chondromalacia and early degenerative arthritis is not a result of either the initial alleged work injury to the left knee in June, 1995 or the secondary direct blow to the right knee in December, 1995. He has, by x-ray and examination, a rather minimal problem in both knees and reflects the aging process together with his moderate overweight status and a low threshold for pain."

By decision dated November 17, 1999, the Office found that the weight of the medical evidence established that appellant's current condition of the knees was not causally related to his employment injuries.

Appellant requested a hearing, which was held on May 28, 2001. He submitted a report dated June 19, 2000 from Dr. Childress, who stated that appellant had an 18 percent permanent impairment of his left knee and that "The injury that [appellant] sustained to his right knee is consistent with the type of injury that he described to me on December 19, 1995."[1] Dr. Childress stated that he wanted to perform an arthroscopic procedure for the recurrent swelling and difficulty and suspected post-traumatic chondromalacia of appellant's right knee before giving a rating to that knee. Dr. Childress concluded: "On the basis of post-traumatic chondromalacia, I would estimate that [appellant] may have an additional five to seven percent impairment for chondromalacia symptoms from the trauma that he sustained that was severe enough to cause discoloration in the leg and which has bothered him with tendencies for recurrent pain, swelling and difficulty."

By decision dated July 23, 2001, an Office hearing representative found that the weight of the medical evidence, which was constituted by the report of Dr. Tabor, the impartial medical specialist resolving a conflict of medical opinion, established that appellant's current knee problems were not related to his employment.

[1] In a December 19, 1995 report, Dr. Childress noted that appellant had bumped his leg against his work truck and that he had discoloration and pain the next day.

The Board finds that the weight of the medical evidence establishes that appellant's chondromalacia of the knees and his need for right knee surgery are not causally related to his June 2, 1995 or his December 13, 1995 employment injury.

There was a conflict of medical opinion on the cause of appellant's chondromalacia of the knees is causally related to his June 2, 1995 employment injury. His physician, Dr. Childress, opined that appellant's chondromalacia of the left knee was related to his June 2, 1995 injury and that the chondromalacia of his right knee was related to appellant protecting the injured left knee. The Office's referral physician, Dr. Galyon, concluded that the left knee chondromalacia did not develop in the time between appellant's injury and the time it was seen on arthroscopic surgery and that it was not caused by stepping in a hole, the mechanism of the June 2, 1995 injury. He attributed the chondromalacia of both knees to patellofemoral malalignment and to appellant's size.

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,[2] referred appellant to Dr. Tabor, a Board-certified orthopedic surgeon, who concluded that "the bilateral chondromalacia and early degenerative arthritis is not a result of either the initial alleged work injury to the left knee in June 1995 or the secondary direct blow to the right knee in December 1995." He stated that appellant had, "from an objective point of view, a minimal amount of low-grade pathology in both knees, which is reflective of his age and mild degenerative process and is in no way in my opinion related to his alleged injuries, neither of which seem severe."

In situations where there are 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 on a proper factual background, must be given special weight.[3] Dr. Tabor's report was based on a proper factual background and was sufficiently rationalized to constitute the weight of the medical evidence on whether appellant's chondromalacia of the knees and his need for right knee surgery are causally related to his June 2, 1995 employment injury.

Although appellant's attending physician, Dr. Childress referred to "an incident where he hit his leg at work on a truck," he did not indicate in this report, which was dated July 23, 1999, that this incident caused the chondromalacia of appellant's right knee. Instead Dr. Childress again attributed this chondromalacia to appellant's June 1995 injury. In a report dated June 19, 2000 report, Dr. Childress stated that "The injury [appellant] sustained to his right knee is consistent with the type of injury that he described to me on December 19, 1995" and also estimated that appellant had "an additional five to seven percent impairment for chondromalacia symptoms from the trauma that he sustained that was severe enough to cause discoloration in the leg and which has bothered him with tendencies for recurrent pain, swelling and difficulty." This report does not contain rationale explaining why the physician believes that appellant's

[2] 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[3] *James P. Roberts*, 31 ECAB 1010 (1980).

chondromalacia of the right knee was caused by his December 19, 1995 injury and thus it is insufficient to outweigh the report of the impartial medical specialist.

The July 23, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 16, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member