

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EMMANUEL J. THOMAS and U.S. POSTAL SERVICE,  
POST OFFICE, Detroit, MI

*Docket No. 02-1230; Submitted on the Record;  
Issued December 6, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on September 18, 2001 causally related to the March 2, 2001 employment injury.

On March 2, 2001 appellant, then a 30-year-old supervisor, sustained an employment-related right torn meniscus. On June 6, 2001 he underwent an authorized surgical repair and received appropriate compensation. Appellant returned to limited duty on September 4, 2001 and on October 4, 2001 submitted a recurrence claim, stating that he stopped work on September 18, 2001 because his knee "just started hurting." By letter dated October 12, 2001, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim. In a decision dated January 24, 2002, the Office denied the claim, finding the medical evidence insufficient to establish that appellant sustained a recurrence of disability. The instant appeal follows.<sup>1</sup>

The Board finds that appellant has not established that he sustained a recurrence of disability on September 18, 2001 causally related to the March 2, 2001 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 of record establishes that he or she 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 show that he or she cannot perform such light duty. As part of this burden, the

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<sup>1</sup> The Board notes that on January 28, 2002 appellant requested a hearing before the Branch of Hearings and Review of the Office, that was held on June 4, 2002. The Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction; *see Noe L. Flores*, 49 ECAB 344 (1998).

employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>2</sup>

Causal relationship is a medical issue<sup>3</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

The relevant medical evidence in the instant case includes reports from appellant's treating Board-certified orthopedic surgeon, Dr. Raimonds Zvirbulis. In a treatment note dated August 28, 2001, he advised that appellant could return to work on September 4, 2001 with a 2-month restriction of no repetitive squatting, bending or lifting greater than 15 pounds. In a September 5, 2001 report, Dr. Zvirbulis reiterated that appellant could return to work on September 4, 2001 for five to six hours per day with the above restrictions.<sup>5</sup> In a treatment note dated October 3, 2001, he diagnosed right knee pain, patellofemoral syndrome and stated:

"This 31-year-old gentleman still complains of intermittent catching and pain in the right knee. He had [an] exacerbation last week. [Appellant] has not been working since September 24[, 2001]. Today I see no gross warmth or erythema. He continues to have mild patellofemoral crepitus. No other pathology is noted. I feel [appellant] will benefit from physical therapy[,] primarily quadriceps strengthening. He should continue his restrictions of no unnecessary squatting, bending or climbing. [Appellant] will see me again in follow-up on November 5. He is given a work note. No work September 24 through October 8[, 2001]."

In a treatment note dated November 6, 2001, Dr. Zvirbulis advised:

"Examination today reveals no effusion, gross warmth or erythema. There is mild patellofemoral crepitus. There is no evidence of varus-valgus stress. Anterior and posterior drawer signs are negative. Lachman[']s test is negative. There is no pivot-shift phenomenon. [Appellant] did have exacerbation of his knee symptoms on September 17[, 2001] to the point where he had so much pain and swelling that he was unable to go to work and was off until October 8[, 2001]. He was seen by me on October 3[, ] 2001. At that time there was still residual swelling and

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<sup>2</sup> *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> The Board notes that these restrictions were incorporated into a limited-duty job offer that was signed by appellant on September 14, 2001.

patellofemoral crepitus. [Appellant] was to initiate physical therapy for quad strengthening and was to return to work on October 8[, 2001]. The reason he was off for three weeks, because of the increased pain and swelling. It was advisable for [appellant] to maintain elevation and rest the right knee.”

In a disability slip also dated November 6, 2001, Dr. Zvirbulis advised that appellant could return to work on November 7, 2001 with restrictions of no repetitive squatting, bending, lifting or climbing. By letter dated January 3, 2002, he advised that appellant was off work from September 17 to October 8, 2001 “because of exacerbation of his right knee symptoms.” Dr. Zvirbulis diagnosed patellofemoral syndrome, exacerbation with pain effusion right knee and concluded that “it was advisable for him to maintain elevation of the right knee to combat swelling and initiate appropriate physical therapy for quadriceps strengthening.”

The Board finds that the medical evidence fails to establish that appellant’s employment-related condition worsened to the degree that he could not perform his limited-duty assignment, finding that Dr. Zvirbulis provided somewhat contradictory reports. While in his November 6, 2001 report, Dr. Zvirbulis advised that, on September 17, 2001, appellant had exacerbation of his knee symptoms to the point where he had so much pain and swelling that he was unable to return to work until October 8, 2001, the only physical finding mentioned by him, in his report dated October 3, 2001, was patellofemoral crepitus with no other pathology noted. Furthermore, in the report dated October 3, 2001, Dr. Zvirbulis indicated that appellant should continue the restrictions provided, which his limited-duty position followed, but then stated that appellant could not work. Lastly, the Board further notes that Dr. Zvirbulis did not examine appellant between August 28, 2001, when he advised that appellant could return to work with restrictions, and October 3, 2001.

As appellant failed to submit rationalized medical evidence that demonstrated that he could not perform his light-duty position, he failed to discharge his burden of proof and the Board finds that he failed to establish a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated January 24, 2002 is hereby affirmed.

Dated, Washington, DC  
December 6, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member