

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIM R. KISER and U.S. POSTAL SERVICE,  
POST OFFICE, Prescott, AZ

*Docket No. 00-2442; Oral Argument Held January 24, 2002;  
Issued March 5, 2002*

Appearances: *Steven E. Brown, Esq.*, for appellant; *Thomas Giblin, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation effective October 26, 1998; and (2) whether the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

On February 7, 1998 appellant filed a traumatic injury claim (Form CA-1) alleging that she injured her knee when her leg was struck by a cart. The Office accepted the claim for a left knee contusion. On October 1, 1997 appellant filed an occupational injury claim (Form CA-2) alleging that her job duties as a clerk contributed to her bilateral knee conditions. The Office accepted the claim for temporary aggravation of left knee degenerative joint disease.

By letter dated September 18, 1998, the Office notified appellant that it proposed to terminate her compensation on the grounds that the weight of the medical evidence established that her employment-related condition had resolved. The Office indicated that the weight of the evidence was represented by Dr. Joseph S. Gimbel, an orthopedic surgeon, serving as a second opinion referral physician. In a decision dated October 26, 1998, the Office terminated compensation for wage loss and medical benefits.

In a decision dated July 28, 1999, an Office hearing representative affirmed the termination decision. By decision dated February 4, 2000, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Board finds that the Office did not meet its burden of proof to terminate compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>1</sup>

In this case, the Office determined that the weight of the evidence was represented by the March 9 and May 29, 1998 reports of Dr. Gimbel. In his March 9, 1998 report, Dr. Gimbel concluded that “[appellant’s] degenerative changes in her knee are not related to her employment. It is felt that this is a progressive change occurring over years and cannot be related to one specific incident.” The issue is whether the aggravation of left knee degenerative joint disease caused by appellant’s federal work duties had resolved and he did not address this issue. The Office attempted to secure a clarifying report, but the May 29, 1998 report is also of diminished probative value. In this report, Dr. Gimbel stated that he did not agree that appellant’s work duties temporarily aggravated or contributed to the left knee degenerative joint disease. Dr. Gimbel did not fully explain this statement. The Board notes that the Office accepted a temporary aggravation; the issue is whether the aggravation had resolved.

Dr. Gimbel further stated that appellant’s “ongoing problems are based on her progressive degenerative change and her type of work had *little if anything* to do with her progressive degenerative changes found.” He did not provide further explanation. It is well established that a claimant does not have to show a significant contribution from work factors to establish causal relationship.<sup>2</sup> Workers’ compensation law draws a clear distinction between “little” and “no” contribution and Dr. Gimbel’s statement is of little probative value without further explanation.

The Board finds that the record does not contain a reasoned medical opinion establishing that appellant’s employment-related left knee condition had resolved by October 26, 1998. It is the Office’s burden to terminate compensation and the Board finds that the Office did not meet its burden of proof in this case.

The Board further notes that appellant has submitted additional medical evidence with respect to her bilateral knee condition. In an August 20, 1999 report, Dr. Janet Whirlow, an orthopedic surgeon, provided a history and diagnosed bilateral knee osteoarthritis. Dr. Whirlow opined that “the job duties described, continuous weightbearing and ambulation, repetitive stooping, squatting, carrying, pushing and pulling with repetitive axial compression loads and torque resulted in aggravation and worsening of patient’s documented osteoarthritic changes of the knees ... resulting in serious diminution in her ability to carry out job duties.” This medical evidence is sufficient to require the Office to further develop the record with respect to

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>2</sup> *See Beth P. Chaput*, 37 ECAB 158 (1985); 5 A. Larson, *The Law of Workers’ Compensation* § 90.04 (2000) (nothing is better established in compensation law than the rule that, when industrial injury precipitates disability from a latent prior condition, the entire disability is compensable and no attempt is made to weigh the relative contribution of the accident and the preexisting condition to the final disability or death).

appellant's right knee condition. While appellant has the burden of proof to establish her claim, the Office shares responsibility in the development of the evidence.<sup>3</sup>

On return of the case record, the Office should further develop the medical evidence. After such further development as is deemed necessary, it should issue an appropriate decision with respect to the right knee.

In view of the Board's disposition of the first issue, the reconsideration issue is moot.

The February 4, 2000 decision of the Office of Workers' Compensation Programs is set aside, the July 28, 1999 decision is reversed and the case remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, DC  
March 5, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> *William J. Cantrell*, 34 ECAB 1233 (1983).