

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA J. BROWN and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Newark, NJ

*Docket No. 00-2584; Submitted on the Record;  
Issued May 16, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issues are: (1) whether appellant has met her burden of proof in establishing that she had a recurrence of disability causally related to her accepted September 30, 1987 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for medical benefits to undergo knee surgery.

On September 30, 1987 appellant, then a 33-year-old postal clerk, developed pain in her back and left arm after pulling down a heavy sack of mail. She stated that the sack became caught in a bar and she had to lift it higher. As appellant did so, she felt a pop in her back. She stopped working on October 1, 1987. The Office accepted appellant's claim for cervical, thoracic and lumbar myositis with left arm and left leg radiculopathy. Appellant received continuation of pay from October 1 to November 14, 1987 and temporary total disability compensation from November 15, 1987 until she returned to work on September 28, 1988. Appellant filed a claim for recurrence of disability effective November 1, 1988. She returned to work, four hours a day on January 9, 1989 and received compensation for the time she lost from work. Appellant stopped working again on November 7, 1989. The Office initially denied appellant's claim for recurrence of disability and several requests for modification of that decision. However, in a December 6, 1990 decision, the Office vacated its prior decisions and accepted appellant's recurrence claim retroactively to November 7, 1989. Appellant returned to work, four hours a day, on April 10, 1992. She stopped working again on August 17, 1992. The Office accepted the claim for recurrence of disability and began payment of temporary total disability.

In a January 14, 1998 letter, the employing establishment offered appellant a position as a modified distribution clerk, four hours a day. The Office informed appellant that it found the offered position to be suitable. Appellant accepted the position and returned to work on February 4, 1998. The Office paid compensation for the hours appellant did not work.

Appellant stopped working on May 14, 1999 and filed a claim for recurrence of disability. In a February 15, 2000 decision, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of record did not establish a change in the nature or extent of her injury-related disability or in the nature or extent of her light-duty position. The Office also denied appellant's request for authorization of left knee surgery on the grounds that she had not established that the knee condition was causally related to the employment injury. Appellant requested a written review of the record by an Office hearing representative. In an extensive July 19, 2000 decision, the Office hearing representative affirmed the Office's February 15, 2000 decision.

The Board finds that appellant has not established that she sustained a recurrence of disability, effective May 14, 1999, that was causally related to her September 30, 1987 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that 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 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.<sup>1</sup>

In her claim for recurrence of disability, appellant stated that she was still symptomatic with neck and back pain with spasms, stiffness and numbness in the left arm and leg with occasional tingling. She related that she had to walk a long distance from her car to the employing establishment which caused her leg to swell and lock or give way. Appellant noted that on May 2, 1999, she felt total numbness in her left leg for the first time extending from the pelvis to the toes.

In a May 1, 1989 report, Dr. Marvin H. Soalt, an osteopath, reported that an electromyogram of appellant's left arm and left leg were within normal limits. In a November 19, 1990 report, Dr. Paul A. Foddai, a Board-certified orthopedic surgeon, noted that sensory examination of appellant's arms and legs showed decreased sensation in nonanatomical distribution. Dr. Foddai concluded that appellant had a history consistent with a chronic cervical and lumbosacral sprain. He noted that appellant had subjective symptoms that were far in excess of objective clinical findings. Dr. Foddai reported that x-rays and a magnetic resonance imaging (MRI) scan were negative. He concluded that appellant should attempt to return to work for four hours a day.

In a May 22, 1995 report, Dr. Lori B. Abend and Dr. Jesse M. Cohen, a Board-certified radiologist, reported that an MRI scan of the cervical spine showed a "hard" disc at C5-6 and, to a lesser extent, at C6-7. An MRI scan of the lumbar spine was normal with no disc herniation, nerve root compression or spinal stenosis. In a July 18, 1995 report, Dr. Michael J. Brien, a physiatrist, indicated that an electromyogram (EMG) showed evidence of irritability in the C6

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<sup>1</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

nerve root on the left but no evidence of peripheral neuropathy or myopathy in the left leg. Dr. Brien reported that a December 3, 1987 MRI scan showed cervical degenerative changes and a normal lumbosacral spine. He diagnosed traumatic sprains of the cervical and lumbosacral regions of the spine and cervical radiculopathy.

In a June 5, 1997 report, Dr. Robin Innella, an osteopath, indicated that a recent lumbar MRI scan showed early disc desiccation at L5-S1. A cervical MRI scan showed mild anterior cervical spondylosis at C6-7 and minimal disc bulges at C5-6 and C6-7 with loss of cervical lordosis. Dr. Innella diagnosed cervical sprain and strain with cervical radiculopathy and chronic lateral epicondylitis. In a January 20, 1998 note, she indicated that appellant had been offered a light-duty job which she should take. In an August 13, 1998 report, Dr. Innella diagnosed chronic cervical sprain and strain with spondylosis at C6-7, disc bulges at C5-6 and C6-7 with right-sided cervical radiculopathy, chronic lumbar sprain and strain with disc desiccation at L4-5 with facet arthritic changes. She made no comment on appellant's ability to work.

In a May 19, 1999 report, Dr. Innella stated that appellant was unable to work due to pain in her back with pain in the cervical, thoracic and lumbosacral regions of the spine as well as pain in the left leg. She repeated her statement in subsequent reports. In a series of office notes, Dr. Innella discussed appellant's continued pain. In a July 23, 1999 report, she recommended physical therapy for appellant for her persistent symptomatology despite conservative care.

In a June 9, 1999 report, Dr. Howard Kessler, a Board-certified radiologist, stated that an MRI scan of the lumbar spine showed facet arthrosis at L4-5 and L5-S1 and disc desiccation at L5-S1. Dr. Kessler noted that disc herniation, spinal stenosis or foraminal encroachment was not seen.

The employing establishment referred appellant to Dr. Carl F. Mercurio, a Board-certified orthopedic surgeon, for a fitness-for-duty examination. In a June 20, 1999 report, Dr. Mercurio diagnosed chronic pain syndrome, resolved soft tissue injuries as a result of the employment injury, mild stable multiple myofascitis, obesity, deconditioning with symptom magnification, and age-related degenerative changes in the lumbosacral region and the left knee. He concluded that appellant could return to light and sedentary work for eight hours a day. Dr. Mercurio commented that appellant's complaints were mainly soft tissue and subjective. He noted that some features of appellant's examination were consistent with the presence of significant and nonorganic component to her symptom complex.

While Dr. Innella stated that appellant was unable to work due to pain, she did not state that appellant's inability to work was due to the September 30, 1987 employment injury. She did not discuss whether appellant's symptoms and physical findings were caused by the employment injury, particularly as the first MRI scan only showed degenerative cervical disc disease and a normal lumbar spine. Dr. Innella did not provide any explanation on how appellant's employment injury could cause a recurrence of disability almost 12 years later, particularly as the MRI scans did not show any evidence of a herniated disc. While physicians reported results of MRI scans and EMG tests over the years, none of the physicians discussed in detail how these results were causally related to the employment injury. Appellant therefore has not submitted any rationalized medical evidence that showed a change in her injury-related

condition to the extent that she was no longer able to perform her light-duty position. She has not submitted any medical evidence that would explain how her recurrence of disability was causally related to the employment injury 12 years previously. As a result, appellant has not established that she had a recurrence of disability causally related to the employment injury.

The Board also finds that the Office properly denied appellant's request for authorization for surgery on her left knee.

“The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.”<sup>2</sup>

In interpreting section 8103, the Board has long recognized that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services under the Federal Employees' Compensation Act.<sup>3</sup> The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest period of time. The Office therefore has broad administrative discretion in choosing means to achieve this objective. The statutory requirement for medical benefits, however, is that the injury must be sustained in the performance of duty before a claimant is entitled to medical benefits for that injury.

The first mention of appellant's left knee condition was in the November 30, 1992 report of Dr. William Vonroth, a Board-certified orthopedic surgeon, who stated that an MRI showed a torn meniscus of the left knee. In an October 20, 1994 report, Dr. Vonroth recommended surgery for the torn cartilage in the left knee. He did not discuss the cause of appellant's knee condition. In an April 12, 1995 report, Dr. Brien stated that the October 13, 1992 MRI scan showed a tear of the body and posterior horn of the medial meniscus and lateral subluxation of the patella in the left knee. He also did not discuss the cause of appellant's knee condition. In a September 3, 1997 report, Dr. Innella diagnosed mild degenerative joint disease of the left knee with a probable torn meniscus. In an August 13, 1998 report, she recommended that appellant undergo arthroscopic surgery to her left knee. However, Dr. Innella did not discuss the cause of appellant's left knee condition. Appellant has not submitted any evidence which would show that her left knee condition is causally related to her employment injury or is otherwise related to her employment. The Office therefore properly denied appellant's request for authorization for left knee surgery.

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> *James R. Bell*, 49 ECAB 642 (1998).

The decision of the Office of Workers' Compensation Programs dated July 19, 2000 is hereby affirmed.

Dated, Washington, DC  
May 16, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member