

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DELPHIA Y. JACKSON and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, IL

*Docket No. 02-276; Submitted on the Record;  
Issued November 1, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied authorization for knee surgery.

Appellant filed a traumatic injury claim for injury to her knees and ankles resulting from a fall at work on December 14, 1978; she also filed an occupational claim on October 3, 1986 alleging that her job duties as a mailhandler aggravated her bilateral knee and ankle conditions. The Office accepted bilateral knee and ankle contusions, as well as a permanent aggravation of bilateral knee degenerative arthritis. Appellant retired from federal employment on September 29, 2000.

In a form report dated September 16, 2000, Dr. Dhoran Paul, an attending internist, stated that appellant required bilateral knee replacement surgery. The Office referred appellant, a statement of accepted facts, and medical records, to Dr. Julie M. Wehner, an orthopedic surgeon. The Office requested that Dr. Wehner provide an opinion as to whether appellant continued to have employment-related residuals and whether appellant should undergo the knee replacement surgery.

By decision dated October 18, 2001, the Office denied authorization for knee surgery.<sup>1</sup> The Office found that the medical evidence established that appellant's osteoarthritis condition was not employment related.

The Board finds that the Office improperly denied authorization for surgery.

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty

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<sup>1</sup> The record also contains a decision dated January 9, 2001 from an Office hearing representative regarding a recurrence of disability commencing March 8, 2000. Appellant did not request review of this decision or the recurrence of disability issues.

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 the period of disability, or aid in lessening the amount of the monthly compensation.”<sup>2</sup>

The Office denied authorization for surgery based on reports dated May 3 and August 22, 2001 from the second opinion physician, Dr. Wehner. With respect to surgery, Dr. Wehner had stated in the May 3, 2001 report that appellant did have bilateral knee osteoarthritis and did need replacement surgery. Dr. Wehner also opined that the surgery was not employment related, stating “I do not believe the osteoarthritis that she has at the present time is a direct result of the contusion of her knees from 1978.” The Office recognized that Dr. Wehner appeared to limit her opinion to the 1978 traumatic injury and did not address appellant’s job duties. The Office requested that Dr. Wehner provide an opinion as to whether appellant’s job duties contributed to her osteoarthritis. In her August 22, 2001 report, Dr. Wehner stated that she did not believe someone who performs the job duties of a mailhandler should develop osteoarthritis. She explained that the job duties do not provide a stress to cause articular breakdown and subsequent osteoarthritis.

The record clearly establishes that appellant’s claim was accepted for a permanent aggravation of knee arthritis. In requesting clarification from Dr. Wehner, the Office noted that permanent aggravation of bilateral osteoarthritis had been accepted, but then posed a question as to causal relationship. Once the Office accepted a permanent aggravation, the issue with respect to authorization for surgery is whether surgery is necessary for the accepted condition, not whether the condition is causally related to employment.<sup>3</sup>

It is well established that a physician’s opinion must be based on the accepted facts in the case.<sup>4</sup> Dr. Wehner did not base her opinion on an accepted employment-related permanent aggravation of knee arthritis; her opinion appears to be that neither the December 1978 injury nor appellant’s job duties contributed to the arthritis condition. There is no indication that the Office rescinded acceptance of a permanent aggravation prior to the October 18, 2001 decision. Since Dr. Wehner did not provide an opinion based on the accepted facts in the case, it is of diminished probative value with respect to authorization for surgery. The case will be remanded to the Office for further development of the medical evidence on appellant’s need for surgery.

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> See *Donald G. Aitken*, 42 ECAB 237 (1990) (the Office accepted a permanent aggravation of atherosclerotic heart disease; the questions on causal relationship posed to the impartial medical specialist were improper, and the impartial medical specialist failed to base his opinion on the accepted facts in the case).

<sup>4</sup> See, e.g., *Jack R. Smith*, 41 ECAB 691 (1990).

The decision of the Office of Workers' Compensation Programs dated October 18, 2001 is set aside and the case remanded to the Office.

Dated, Washington, DC  
November 1, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member