

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS F. GAUGEL and DEPARTMENT OF AGRICULTURE,
NATIONAL BEEF PACKING, Liberal, KS

*Docket No. 02-962; Submitted on the Record;
Issued April 3, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed a right knee condition due to his employment duties.

Appellant, a 49-year-old meat inspector, filed a notice of occupational disease on December 11, 2000 alleging in September 1999, he noticed discomfort in his right knee while performing lateral movements in the course of his inspecting duties. Appellant stated that in September 1999, he began to experience discomfort in his right leg. He stated that on February 24, 2000 he felt burning and shooting pains down his right leg. Appellant underwent surgery on June 6, 2000.

Appellant's supervisor indicated that appellant's work duties included standing eight to nine hours a day, six days a week, as well as lateral movement, twisting and turning.

The Office of Workers' Compensation Programs requested additional factual and medical evidence from appellant by letter dated February 5, 2001. By decision dated March 16, 2001, the Office denied appellant's claim. Appellant requested an oral hearing and by decision dated November 13, 2001, the hearing representative denied appellant's claim finding that he failed to submit the necessary medical evidence to establish a causal relationship between his right knee condition and the accepted factors of employment.

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed a right knee condition due to his employment duties.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In this case, appellant reported that he had a right knee condition of long-standing as he had part of his patella removed in 1964. Dr. Marc-Andre Bergeron² completed a report on March 9, 2000 and noted that appellant had a fracture of his right patella when he was 13-years-old requiring surgery. Dr. Bergeron stated that two months after onset of employment, appellant started to experience discomfort over the distal thigh. He stated that appellant's employment duties consisting of moving sideways to follow the carcasses in his chain required him to move to the right, to put more weight and pivot on the right lower extremity, stressing this distal thigh and knee. He also noted that appellant underwent surgery in 1987 and 1999, on his left knee. Dr. Bergeron found definite quadriceps atrophy, full range of motion and no effusion. He diagnosed "dysfunction of quadriceps mechanism, 30 years in duration for highly comminuted fracture of the patella." Dr. Bergeron did not discuss the relationship between his diagnosis and appellant's employment duties.

On April 13, 2000 Dr. Bergeron again noted appellant's history of injury and employment duties. He recommended further diagnostic testing prior to surgery. In a May 8, 2000 note, Dr. Bergeron stated that appellant wished to change employment and noted that "with previous work and not requiring the same type of motion of the floor, he was not symptomatic at all." While Dr. Bergeron intimated that there was a relationship between appellant's symptoms and his employment, he did not provide a clear diagnosis nor an opinion on the causal relationship between appellant's condition and his employment duties.

Dr. Robert A. Shively, a Board-certified orthopedic surgeon, completed a report on May 30, 2000 and noted appellant's history of patella fracture in 1964, as well as his increase in symptoms due to job requirements that he stand more and move to the right. Dr. Shively recommended surgery. On June 7, 2000 he performed a right patellectomy with extensor mechanism repair due to right patellofemoral arthritis. On February 14, 2001 he performed additional surgery to repair a recurrent dislocation of the right extensor mechanism. Dr. Shively did not offer an opinion on the causal relationship between appellant's diagnosed condition of right patellofemoral arthritis and his employment duties of standing and moving to the right. Without medical opinion evidence addressing the relationship between appellant's condition and his employment duties and explaining how appellant's duties caused or aggravated his condition, appellant has failed to meet his burden of proof.

The medical evidence from Drs. Shively and Bergeron is not sufficient to meet appellant's burden of proof as neither physician offered an opinion that appellant's employment duties including standing and moving to the right caused or contributed to his diagnosed

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

² Dr. Bergeron does not have a medical specialty.

condition of arthritis. Furthermore, neither physician offered an opinion, supported with medical rationale, that appellant's employment activities aggravated the diagnosed condition. As appellant has failed to submit the necessary rationalized medical opinion evidence explaining the relationship, if any, between his employment and his diagnosed condition, he has failed to meet his burden of proof and the Office properly denied his claim.

The November 13 and March 16, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member