

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY GARCIA and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 03-59; Submitted on the Record;
Issued April 29, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of total disability effective February 29, 2000 causally related to his 1982 accepted knee condition.

On June 25, 1982 appellant, then a 34-year-old letter carrier, injured his right knee when he stepped off a curb and into a drain causing his knee to twist to the right. The claim was accepted for an internal derangement of his right knee and later a right knee lateral meniscus tear. Appellant reinjured his right knee on several occasions. He sustained a recurrence on February 7, 1983 and new injuries in 1986 and 1989. Following the 1989 injury appellant remained off work until December 1994 when he returned to sedentary work four hours per day.

In a May 19, 1998 report, appellant's treating physician, Dr. Robert Liebenberg, a Board-certified orthopedist, wrote that barring surgery appellant's condition had reached maximum medical improvement. He indicated that appellant could work his sedentary job no more than four hours per day due to pain.

The Office of Workers' Compensation Programs referred appellant for a second opinion medical evaluation. In an August 6, 1998 report, Dr. Leonard Klinghoffer, a Board-certified orthopedist, found that appellant could work eight hours a day in a sedentary capacity. A conflict in the medical evidence was found and appellant was referred to an impartial medical specialist.

In an April 22, 1999 report, Dr. E. Balasubramanian, a Board-certified orthopedist selected as the impartial medical specialist, indicated that appellant presented as 6 feet tall and 307 pounds with constant pain in his right knee. Appellant indicated that his right knee gave out frequently and was swollen. Dr. Balasubramanian diagnosed appellant with degenerative arthritis of the right knee caused or aggravated by the 1982 and subsequent injuries and his obesity. Dr. Balasubramanian indicated that appellant could work eight hours per day in a sedentary capacity.

On January 27, 2000 appellant returned to work for eight hours a day in a modified clerk position consistent with Dr. Balasubramanian's restrictions of no more than six hours a day sitting, two hours reaching, one hour walking and one hour standing. On February 29, 2000 appellant returned to work four hours per day due to pain. On August 15, 2000 appellant filed a recurrence claim of disability commencing February 29, 2000.

In a February 29, 2000 report, Dr. Liebenberg wrote that appellant presented with increased symptoms since his work schedule increased, even though the job was sedentary. He indicated that appellant had increased pain, although his x-rays show no significant worsening of his osteoarthritis.

In letters dated September 19 and October 26, 2000, the Office requested additional information from appellant regarding his recurrence of disability claim. In a November 15, 2000 letter, appellant wrote that "his right knee is in poor condition, always painful, swells up and locks and arthritis." He believed his knee condition was related to the original injury because his right knee was injured in 1982, 1986, 1988, 1989, 1997 and February 29, 2000. He indicated that full-time work made his right knee painful to walk.

In a November 14, 2000 report, Dr. Liebenberg wrote that he treated appellant since September 12, 1997 when he diagnosed severe osteoarthritis with a medial meniscus tear. He stated that appellant had consistently refused his recommendation of surgery to repair his knee. Appellant had been treated with pain medications with some success. He indicated that appellant presented with swelling, crepitus, loss of range of motion and antalgic gait. Dr. Liebenberg stated:

"I can only state that this patient does have significant objective abnormalities in his knee. According to the history he presents to me, he has attempted to work eight hours a day, and this causes him too much pain. I find that consistent with his knee problem. It is my opinion and belief that [no] physician can predict with such accuracy the amount of pain an individual has with a given amount of arthritis and cartilage tear, that they can determine exactly how long an individual can work and what period of time that they can remain at work without pain."

In a February 20, 2001 report, Dr. Liebenberg wrote that appellant was feeling better walking though he had trouble sitting for a long period of time. He found the knee had less of an effusion than it usually did and indicated that appellant wanted no further treatment.

In a March 6, 2001 report, the Office medical adviser stated that appellant's medical file did not establish that he could only work four hours and that his complaint of increased pain was subjective. He added that there should be no more pain or stress in working four to eight hours in a sedentary position than he would have being sedentary at home.

In a June 12, 2001 decision, the Office denied appellant's recurrence of disability claim, finding the medical evidence failed to establish a causal relationship between appellant's current condition and the accepted injuries.

Appellant requested an oral hearing.¹ His representative argued that the only medical evidence submitted in the last two years supported that appellant could only work four hours a day due to pain. In support of his request appellant submitted a July 10, 2001 report from Dr. Liebenberg who wrote that appellant had postponed a planned arthroscopic surgery when his workers' compensation claim was denied. He said appellant found it very painful to work eight hours and that his knee had not changed with effusion and crepitus, especially laterally. He opined that arthroscopic surgery would help appellant though he eventually might need knee replacement.

In a January 30, 2002 report, Dr. Jonathan Bromberg, a Board-certified orthopedist, wrote that appellant presented with significant knee pain, no fluid but tenderness along the medial and lateral joint line and the patellofemoral joint. He indicated that appellant had a good range of motion but with crepitus and that appellant indicated he was satisfied with his job responsibilities.

In a June 18, 2002 decision, the hearing representative affirmed the June 12, 2001 decision finding the medical evidence did not contain sufficient evidence that appellant could work his light-duty job only four hours a day as of February 29, 2000.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability commencing February 29, 2000.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁵ Appellant failed to submit rationalized medical evidence

¹ Appellant's representative later withdrew the hearing request opting instead for a review of the written record.

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

In the present case, the medical evidence does not establish that appellant could only work four hours a day in his sedentary position as of February 29, 2000. The reports of Drs. Liebenberg and Bromberg, while generally supportive, are not based on objective criteria that explain how or why appellant's right knee condition worsened on or after February 29, 2000 and prevented him from working full-time duty in a sedentary capacity. In his February 29, 2000 report, Dr. Liebenberg noted that, while appellant experienced increased pain when working for eight hours, his x-rays indicated that his osteoarthritis had not worsened. In his July 10, 2001 report, Dr. Liebenberg indicated that appellant's condition had not changed. Dr. Bromberg wrote in his January 30, 2002 report that, while appellant exhibited tenderness along the medial and lateral joint line and the patellofemoral joint, the physical examination revealed no fluid and a good range of motion and that appellant was satisfied with his job responsibilities. Absent objective medical evidence and rationale explaining why or how his knee condition worsened to the point he could not work eight hours a day in a sedentary position, appellant has not met his burden of proof to establish that he sustained a recurrence of total disability effective February 29, 2000.

The decisions of the Office of Workers' Compensation Programs dated June 18, 2002 and June 12, 2001 are affirmed.

Dated, Washington, DC
April 29, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member