

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. HAZELTON and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Bellmawr, NJ

*Docket No. 03-406; Submitted on the Record;
Issued April 3, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established a recurrence of disability causally related to his accepted work injury.

Appellant filed a claim on February 20, 1995 after he twisted his right knee moving mail carts, his claim was accepted for a strain. He underwent an arthroscopy on July 25, 1995 and returned to work on limited duty for four hours and regular duty for four hours, starting September 15, 1995. Appellant began full duty on November 1, 1995.

Appellant requested a schedule award. The Office of Workers' Compensation Programs issued a schedule award for a 22 percent permanent impairment of his right lower extremity on January 23, 1997, running from August 22, 1996 to November 8, 1997 at a rate of \$2,257.00 every four weeks. Following appellant's request for a hearing, the hearing representative affirmed the 22 percent rating.

On February 11, 1999 appellant filed a recurrence of disability claim alleging that his right knee condition had gradually worsened in the past six months and that he had constant pain while working. He had surgery to repair a medial meniscus tear in his right knee on March 5, 1999.

On August 16, 1999 the Office denied appellant's claim on the grounds that the medical evidence failed to establish the requisite causal relationship. He requested a hearing, which was held on February 1, 2000. The hearing representative remanded the claim on March 24, 2000 for the Office to refer appellant for a second opinion evaluation. He pointed out that appellant's physician, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, indicated a causal relationship between appellant's surgery and the February 1995 injury.

Based on the June 26, 2000 report of Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon, the Office again denied appellant's claim. The Office noted that

Dr. Maslow concluded that appellant's articular surface abnormality of the medial joint of the right knee in 1999 had nothing to do with the problems that required arthroscopy in 1995.

Appellant again requested a hearing and the hearing representative determined on June 25, 2001 that the case was not in posture for a decision. He added that Dr. Maslow's report was insufficiently reasoned and needed clarification.

On July 23, 2001 the Office asked Dr. Maslow to provide a supplemental report based on the statement of accepted facts, which noted that on February 19, 1995 appellant twisted his right knee, sustaining a strain and torn right lateral meniscus, thus contradicting Dr. Maslow's statement that appellant had reported no definite trauma to the knee.

On September 11, 2001 Dr. Maslow again examined appellant, finding normal range of motion with no patellar instability, effusion or synovitis. He had tenderness over the medial aspect and condyle, with some minimal patellofemoral crepitus at both knees.

A magnetic resonance imaging (MRI) scan dated January 12, 1999 showed a tear in the posterior horn of the medial meniscus. The March 1999 operative report indicated no tear of the medial meniscus but a chondroplasty for an osteochondral lesion was done. During his February 20, 1995 emergency room visit, appellant reported pain at the lateral aspect of the knee, but an x-ray was normal. Referring to the operative report, Dr. Maslow noted that appellant had arthroscopic treatment in 1995, which involved the lateral joint and debridement of a right lateral meniscus tear. Dr. Maslow concluded that the articular surface damage to the medial aspect of appellant's right knee was not causally related to the 1995 incident.

On October 22, 2001 the Office denied appellant's recurrence of disability claim on the grounds that Dr. Maslow's opinion represented the weight of the medical evidence. Appellant requested a hearing, which was held on March 13, 2002. The hearing representative affirmed the denial of benefits on August 12, 2002 on the grounds that the opinion of Dr. Maslow as referee physician selected to resolve the conflict in the medical evidence deserved special weight.

The Board finds that this case is not in posture for a decision, due to a conflict in the medical opinion evidence.

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.¹ A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted employment injury.² To meet this burden of proof, a claimant must furnish 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 reasoning.³

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b.(a)(1) (May 1997).

² *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

³ *Helen K. Holt*, 50 ECAB 279, 282 (1999).

Causal relationship is a medical issue⁴ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁵ The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

In this case, Dr. Robert H. Brown, a Board-certified orthopedic surgeon, examined appellant on July 3, 1995 and reviewed his medical and work history. He diagnosed an internal derangement, probably a lateral meniscus tear and possible patellofemoral dysfunction. Dr. Brown recommended the arthroscopic surgery, which appellant had on July 25, 1995. On August 29, 1995 he diagnosed a patellofemoral syndrome, which described a symptom complex where the posterior surface of the patella is irritated on anterior portion of the intercondylar groove. Dr. Brown stated that the patellofemoral syndrome was a direct result of the February injury.

On August 4, 1995 Dr. Craig Israelite, a Board-certified orthopedic surgeon, diagnosed a meniscus tear in the right knee and returned appellant to limited duty. Appellant sought further treatment with Dr. Israelite on March 31, 1997 and April 6, 1998.

On December 30, 1998 Dr. Berman, to whom appellant's physician had referred him, reported that appellant had experienced recurrent pain and had been treated with multiple cortisone injections and anti-inflammatory drugs over the past six months with little effect. Following surgery on March 5, 1999, Dr. Berman completed a medical form indicating that appellant's meniscus tear was a recurrence from 1995 and was caused or aggravated by employment activities.

In his June 26, 2000 report, Dr. Maslow stated that appellant developed articular surface abnormality in the medial joint at the right knee. He concluded: "Whether this is in some fashion job related or not [it] is impossible to state with certainty." Dr. Maslow added that appellant had reported no definite trauma to the right knee or any particular successions of activities that caused particular pain. The problems with the knee in 1999 had nothing to do with the problems in 1995 because there was no evidence of medial joint damage in 1995.

Dr. Maslow was asked to review the statement of accepted facts, which related that appellant reported a twisting injury in February 1995, continued to see his physician on occasion and by December 1998 was having constant pain in his right knee and clarify his opinion. Dr. Maslow concluded that appellant's articular surface damage at the medial aspect of his knee

⁴ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁵ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁶ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

was not causally related to the 1995 incident. He added: "I have no information that the present knee problems are causally related to the on-the-job injury."

The Board finds that Dr. Maslow's opinion is not entitled to the special weight accorded the report of a referee specialist because Dr. Maslow was selected as a second opinion physician, not as an independent medical examiner. Further, the Board finds that his conclusion that there is no causal relationship between appellant's knee condition in 1999 and the accepted work injury in 1995, creates a conflict in the medical opinion evidence with Dr. Berman, who attributed appellant's present knee condition to a recurrence. Because a conflict over the causal relationship of the herniated disc and the subsequent surgeries remains in the record, the Board will set aside the July 18, 2002 decision and remand the case for the Office to resolve the conflict in medical opinion evidence.⁷

On remand the Office should refer appellant, with the medical records and a statement of accepted facts, to an orthopedic specialist to resolve the conflict over whether appellant's 1999 knee condition was causally related to the accepted 1995 injury. After such further development as the Office deems necessary, a *de novo* decision shall be issued.

The August 12, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
April 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 5 U.S.C. § 8123(a) states in pertinent part: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."