

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT A. PYLES and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

Docket No. 03-1696; Submitted on the Record;
Issued August 28, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or about April 8, 2002 causally related to his October 10, 2000 employment injury.

On October 10, 2000 appellant, then a 29-year-old part-time flexible letter carrier, injured his left knee while walking up stairs to deliver mail. He caught his left foot on the stair tread and tripped, twisting his left knee and landing on his right knee. The Office of Workers' Compensation Programs accepted his claim for strain and meniscus tear of the left knee. Arthroscopy on November 14, 2000 showed the meniscus to be normal. The surgeon performed chondroplasty of the involved areas and reported that appellant most likely experienced a transient subluxation on the patella and bruised or injured the undersurface of the kneecap and the trochlear groove extending out to the lateral femoral condyle. The Office accepted appellant's claim for dislocation of the left patella and paid compensation for temporary total disability. On December 29, 2000 appellant returned to limited duty.

On April 23, 2002 appellant filed a claim alleging a recurrence of disability on or about April 8, 2002. In addition to fighting the steadily worsening pain in his left knee, appellant stated that the amount of work expected of him had caused him stress. In November 2001 he was hospitalized on two occasions for chest pains and a possible heart attack, but in both instances it was determined that his condition was caused by anxiety and stress. "I finally broke down on the workroom floor and had to leave," he stated. "My doctor and the EAP [Employee Assistance Program] counselor have diagnosed anxiety and depression due to my injury."

The Office requested clarification. On June 4, 2002 the Office advised appellant that he had not made it clear whether he was claiming that his knee had worsened, that he had an emotional condition caused by knee pain or that he had an emotional condition caused by work. Depending on the nature of his claim, he needed to submit additional documentation, which the Office described.

Appellant submitted reports from a licensed social worker/therapist, who noted that appellant came into treatment on referral from his primary care physician “due to an increase in his emotional distress because of a work[-]related injury and his inability to cope with the physical and emotional demands of performing his job.” The social worker stated that appellant had received a principal diagnosis of: (1) mood disorder with depressive features due to a knee injury; and (2) panic disorder without agoraphobia. His symptoms, she reported, were related to the intensity of anxiety and depression he experienced during his workday trying to keep up with the demands of his job, as well as the physical exhaustion and sleep deprivation experienced after prolonged periods of sleep disturbance. The social worker advised: “These psychological symptoms are directly related to his knee injury.” Further, appellant’s psychological conditions were preventing him from performing his limited-duty job, insomuch as he was experiencing panic attacks, exhaustion and poor concentration and felt overwhelmed in his ability to cope with the demands of his position. She recommended that he be granted sick leave from May 15 to August 15, 2002.

On May 28, 2002 Dr. George G. Ellis, Jr., a specialist in internal medicine, completed a form report diagnosing acute stress reaction with anxiety and depression and feeling of stress with anxiety due to knee pain. With an affirmative mark Dr. Ellis attributed appellant’s condition to the October 10, 2000 employment injury.

In a decision dated July 3, 2002, the Office denied appellant’s claim of recurrence of disability. The Office found that appellant submitted no evidence that his knee condition had worsened to the point that it disabled him from his limited-duty job and evidence concerning his emotional condition was of little or no probative value because it came from an internist and social worker, not a psychologist or psychiatrist.

Appellant, through his attorney, requested an oral hearing before an Office hearing representative. At the hearing, which was held on March 24, 2003, appellant testified that the duties he performed in his limited-duty job made his leg swell. “It was too much,” he stated. “I would have creases in my leg over an inch deep from the brace digging into my leg, because my leg was so swelled.” Appellant alleged that he was made to work outside his medical restrictions. He clarified the nature of his claim by explaining that his left knee condition worsened because he worked outside his restrictions. Appellant also explained that he had just filed an occupational disease claim, filling it out the same way he did his claim of recurrence. Appellant added that he was claiming an emotional condition consequential to the pain caused by working outside his restrictions.

In a decision dated June 2, 2003, the hearing representative affirmed the denial of appellant’s claim of recurrence on the grounds that the nature of his claim was that of a new occupational injury, not a recurrence of disability. Appellant had implicated exposure to new work factors, not a spontaneous change in his accepted injury. As appellant had filed an occupational disease claim to address his worsening condition and as the evidence failed to support that he suffered a recurrence of disability, the hearing representative affirmed the Office’s July 3, 2002 decision.

The Board finds that the evidence fails to support that appellant sustained a recurrence of disability on or about April 8, 2002 causally related to his October 10, 2000 employment injury.

A “recurrence of disability” means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured. Office procedures further stated: “If a new work-related injury or exposure occurs, Form CA-1 [notice of traumatic injury] or Form CA-2 [notice of occupational disease or illness] should be completed accordingly.”²

With the help of his attorney, appellant clarified at the March 24, 2003 hearing that his work stoppage on or about April 8, 2002 was the result of having to work outside of his restrictions. This caused swelling and pain and eventually an emotional condition. Because he attributed the disability claimed to a new injury, to his exposure to new work factors and not to a “spontaneous change” in his accepted injury, his claim is not one of a recurrence of disability. Rather, it is in the nature of an occupational disease or illness, which should be handled through the filing of a Form CA-2. The Board, therefore, will affirm the denial of appellant’s claim.³

¹ 20 C.F.R. § 10.5(x) (1999).

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b (January 1995).

³ The Office correctly found that the medical opinion of a licensed social worker working as a therapist was of no probative value. *Kurt R. Ellis*, 47 ECAB 505 (1996) (social worker is not a “physician”); *see 5 U.S.C. § 8101(2)* (the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law); *see also Barbara J. Williams*, 40 ECAB 649, 657 (1988) (physical therapists); *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979) (physician’s assistant). The opinion of the attending internist, Dr. Ellis, on appellant’s emotional condition is of diminished probative value because he does not specialize in the field of psychology or psychiatry and because he offered no medical reasoning to support that appellant’s emotional condition was causally related to the October 10, 2000 employment injury. *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

The June 2, 2003 and July 3, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 28, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member