

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. SHALL and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 03-1973; Submitted on the Record;
Issued December 8, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained or aggravated a bilateral knee condition in the performance of duty.

On May 2, 2002 appellant, then a 56-year-old mail handler, filed an occupational disease claim for degenerative joint disease and arthritis of both knees. Appellant alleged that his knee symptoms increased in severity while he was off work during the prior month as he did not have a prescribed knee brace. He alleged that the employing establishment removed the brace from his work area at some time after he was escorted from his duty station on April 2, 2002. Appellant first became aware of his knee condition in 1966 while serving in the U.S. Navy. On the reverse of the form, the employing establishment noted that appellant was "placed off duty on April 2, 2002" as he was "unable to fully perform the job of mail handler" and was denied permanent light duty. "[Appellant] [a]lso claimed to have been in a car accident on April 22, 2002 before his fact-finding for failure to perform his duties."¹ In support of his claim, appellant submitted an April 17, 2000 letter from Dr. Saul N. Schrieber, a Board-certified orthopedic surgeon, relating that appellant's long-standing bilateral knee pain worsened during the previous week, and noting that appellant had been fitted with an unloader knee brace and support sleeve.

Appellant submitted medical reports from several attending physicians. In an excerpt from a February 19, 1990 report, Dr. T.H. Taber, Jr., diagnosed inguinal and lower extremity contusions sustained in an unspecified April 12, 1989 accident from which appellant recovered with no permanent residuals, and preexisting "chondromalacia and early degenerative changes" of both knees. In a February 25, 1999 report, Dr. Steven R. Allsing, a Board-certified orthopedic surgeon, diagnosed degenerative joint disease of the left knee. In April 6 and 8, 2000 reports, Dr. Randi Germaine, an attending anesthesiologist, diagnosed left knee pain and released appellant to sedentary work as of April 8, 2000. In an April 28, 2000 letter, Dr. Neal L. Rockowitz, a Board-certified orthopedic surgeon, noted the 1966 and 1990 left knee surgeries,

¹ There is no corroboration of record of an April 22, 2002 car accident.

and recommended total arthroplasty of the left knee due to “severe end-stage degenerative joint disease ... with total loss of joint space in the medial compartment.” Dr. Gennaro Licosati, a Board-certified family practitioner, restricted appellant to sedentary duty with lifting from 20 to 30 pounds in form reports from May 8, 2000 to January 7, 2002.²

In a June 21, 2001 chart note, Dr. Bertram G. Kwasman, a Board-certified orthopedic surgeon, opined that appellant’s degenerative joint disease in the left knee required permanent sedentary job restrictions with “no frequent heavy lifting. Had prior surgery years ago but no records available to comment on cause and effect.” In a December 27, 2001 chart note, Dr. Kwasman noted that, while appellant could drive postal vehicles, he could not perform the prolonged standing, forward bending, kneeling, squatting, “awkward positions,” “torquing the lower limbs” and climbing stairs required of a mail handler.

In an October 19, 2001 chart note, Dr. Joseph. Kennedy, a Board-certified rheumatologist, noted bilateral degenerative arthritis of both knees worsening in the mid 1990s with an increase in right knee symptoms in 2000 due to overuse, compensating for the left knee problems. Dr. Kennedy characterized appellant’s left knee condition as “service related.”³

In a May 14, 2002 letter, the employing establishment controverted appellant’s claim, noting that the Office denied appellant’s three prior claims for a bilateral degenerative knee condition as no causal relationship was established.⁴ The Office asserted that appellant’s bilateral knee condition was due to a “traumatic military injury and nonwork-related motorcycle accident.” The employing establishment noted that appellant was on modified duty intermittently since 1990, and that he performed a “sit down type job” commencing May 2, 2001.⁵ Appellant stopped work on April 2, 2002. The employing establishment noted that administrative action was being taken against appellant at the time he was placed off work on April 2, 2002. The employing establishment also noted that it found no evidence that appellant’s knee brace was lost at the post office.

² The record contains March and April 2001 chart notes from an attending psychiatrist which do not address any causal relationship of appellant’s federal employment to the claimed knee condition. Therefore, these notes are not relevant to the present claim.

³ The record contains May 15, 2002 notes from a nurse practitioner, which do not appear to have been signed or reviewed by a physician. Therefore, these notes do not constitute medical evidence. *Ricky S. Storms*, 52 ECAB 349 (2001).

⁴ The employing establishment noted that the three denied claims were No. 13-1190052 filed on April 13, 1999, No. 13-1214793 filed March 26, 2000, and No. 13-2027681 filed May 2, 2001. The record also contains appellant’s April 11, 2000 claim form under Claim No. 13-2053155, the number assigned to the claim currently on appeal, alleging that he sustained severe bilateral knee and lower extremity pain, and “slight” right abdominal pain in the performance of duty. Appellant also filed a May 2, 2001 claim, assigned Claim No. 13-2053155, for degenerative joint disease and arthritis of the right knee in the performance of duty on or before January 1, 1999. As there are no final decisions of record regarding the April 11, 2000 and May 2, 2001 claims, these claims are not before the Board on the present appeal.

⁵ In a June 8, 2001 letter, the employing establishment approved appellant’s request for an extension of light duty through June 30, 2001, with lifting limited to 30 pounds intermittently and 70 pounds occasionally, no climbing or kneeling, limited stooping, bending, twisting, pushing and pulling, no more than 30 minutes sitting, standing or walking per hour, and no repetitive motion with the right knee.

In a May 22, 2002 letter, the Office advised appellant that the record was insufficient to establish his claim. The Office afforded appellant 30 days in which to submit a detailed statement of the employment factors that he believed caused or aggravated his knee condition, and a complete description of all nonemployment activities. The Office also requested that appellant submit a comprehensive report from his attending physician explaining how and why the identified employment factors would cause the claimed bilateral knee condition.

Appellant submitted a June 13, 2002 chart note from Dr. Richard M. Mendlick, a Board-certified orthopedic surgeon, who noted that appellant obtained some symptomatic relief as he “[j]ust got new left knee Townsend unloader knee brace.” Dr. Mendlick noted that appellant had worked in the postal service for 16 years, and was a “mail handler and is on feet most of every day.” Dr. Mendlick reviewed x-rays, performed an examination and diagnosed bilateral degenerative joint disease of the knees, worse on the left. Dr. Mendlick opined that appellant “work[ing] on feet for years has most likely accelerated the osteoarthritis disease in knees. *There is a relationship between work and the arthritic knees.*” (Emphasis in the original.)

By decision dated August 2, 2002, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office found that appellant did not submit specific medical evidence or identify any specific factors of employment which he felt aggravated his condition. Appellant filed his appeal with the Board on July 31, 2003.

The Board finds that appellant has not established that he sustained or aggravated a bilateral knee condition in the performance of duty.

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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

Regarding the first element of this burden of proof, there is ample evidence of record that appellant has severe osteoarthritis in the left knee, and degenerative changes in the right knee. Regarding the second element, appellant alleged that his left knee condition worsened as his knee brace was allegedly taken from his work area. The employing establishment asserted that there was no evidence his assertion was true. The Board finds that appellant has not established this allegation as factual.⁷ Regarding the third element, appellant has not submitted sufficient medical evidence to establish that his knee condition was caused or aggravated by any factors of his federal employment.

⁶ Gary J. Watling, 52 ECAB 278 (2001); Charles E. Burke, 47 ECAB 185 (1995).

⁷ The Board notes that the record contains duty status reports providing a detailed list of the physical demands of appellant’s light-duty position as of May 2000 and May 2001.

Several of appellant's physicians did not address causal relationship in their reports. Drs. Allsing and Germaine did not mention appellant's duties. Dr. Licosati provided detailed work restrictions, but did not link any of appellant's job duties with the claimed knee condition. Dr. Schreiber noted that appellant's duties were "primarily sedentary," but did not attribute the diagnosed osteoarthritis of both knees to any work factors. Similarly, Dr. Rockowitz mentioned that appellant worked as a mail handler and diagnosed severe degenerative joint disease of the left knee, but did not explain how and why appellant's job duties would cause or aggravate the diagnosed left knee condition. Dr. Kwasman explained that appellant required sedentary duty as his bilateral knee condition made it difficult or impossible for him to perform various job requirements, but did not state that any work factors caused or aggravated the bilateral degenerative joint disease.

Dr. Kennedy, an attending Board-certified rheumatologist, submitted an October 19, 2001 chart note explaining that appellant's right knee problems were due to overuse due to the left knee problem. However, Dr. Kennedy did not attribute this overuse to work factors. Instead, Dr. Kennedy opined that appellant's right knee condition was "secondary to his service-connected left knee condition." Thus, Dr. Kennedy attributes appellant's left and right knee conditions to nonoccupational factors.

The only physician of record to address a causal relationship between work factors and appellant's bilateral knee condition is Dr. Mendlick, an attending Board-certified orthopedic surgeon. In a June 13, 2002 report, Dr. Mendlick stated that appellant had worked for the employing establishment for 16 years, and as a mail handler was "on feet most of every day." Dr. Mendlick opined that appellant's bilateral degenerative knee disease was "most likely accelerated" by "work on feet for years." Dr. Mendlick emphasized that there was a "*relationship between work and the arthritic knees.*" (Emphasis in the original). However, Dr. Mendlick did not explain how and why prolonged standing over 16 years of employment as a mail handler would cause or aggravate the diagnosed bilateral osteoarthritis of the knees. This lack of medical rationale diminishes the probative value of Dr. Mendlick's opinion.⁸ Also, Dr. Mendlick did not discuss appellant's two left knee surgeries, or any effects of the April 12, 1989 accident. Therefore, the probative value of Dr. Mendlick's opinion is further diminished by the lack of a complete factual history.⁹

Consequently, appellant has not established that he sustained a bilateral knee condition or aggravation thereof in the performance of duty, as he submitted insufficient medical evidence explaining a pathophysiologic causal relationship between any factors of his federal employment and the claimed knee condition.

⁸ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁹ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

The decision of the Office of Workers' Compensation Programs dated August 2, 2002 is hereby affirmed.

Dated, Washington, DC
December 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member