

Board noted that appellant underwent surgery on her right knee to remove loose bodies around the right knee joint. Dr. David Rubenstein, a Board-certified orthopedic surgeon, diagnosed degenerative joint disease and associated synovitis, and multiple loose bodies. Appellant returned to full-time work on January 11, 1999. The Office referred appellant to Dr. Andrew J. Collier, a Board-certified orthopedic surgeon, for a second opinion. In a March 3, 1999 report, Dr. Collier stated that appellant had preexisting degenerative arthritis of the right knee which was aggravated by the May 26, 1998 employment injury. He concluded that appellant had no employment-related residual effects of the right knee but had returned to her preexisting status. Dr. Rubenstein concurred in Dr. Collier's report. In a June 10, 1999 decision, the Office terminated appellant's medical benefits on the grounds that the medical evidence established that she had no residuals from the employment injury. Appellant requested a hearing before an Office hearing representative. At the hearing, appellant submitted a March 24, 1999 report from Dr. Ronald J. Potash, an orthopedic surgeon, who diagnosed a strain and sprain of the right knee with chondral fracture and fragment, chronic diffuse joint synovitis, and status post arthroscopic removal of the loose fragment. Dr. Potash related appellant's condition to the employment injury and stated that appellant had a 21 percent permanent impairment of the right leg. The Office hearing representative, in a February 2, 2000 decision, affirmed the Office's decision. The Board found that Dr. Potash had only given a conclusory statement on the issue of causal relationship. The Board indicated that Dr. Potash did not provide any medical rationale or reasoning to support his conclusions. The Board concluded that Dr. Potash's report was insufficient to create a conflict in the medical evidence. It therefore affirmed the February 2, 2000 decision of the Office hearing representative.

On January 31, 2001 appellant filed a claim for a schedule award. Her attorney subsequently submitted medical reports that primarily discussed appellant's claim for a back condition which she related to the May 26, 1998 employment injury. In a November 13, 2000 report, Dr. A. Palmaccio indicated that a magnetic resonance imaging scan showed chondromalacia of the patella, no evidence of a meniscal tear and mild to moderate joint effusion. In a December 12, 2002 letter, the Office informed appellant's attorney that appellant had filed a claim for a November 21, 1998 back injury. The Office noted that the claim was denied on January 13, 1999. It stated that the back condition could not be considered under the May 26, 1998 employment injury to the right knee. It also indicated that the issue of a schedule award had been resolved by the Board's November 27, 2001 decision. In a January 23, 2003 response, appellant's attorney requested that the Office issue a schedule award determination.

In a February 3, 2003 decision, the Office denied appellant's claim for a schedule award. Appellant requested a hearing before an Office hearing representative which was conducted on October 22, 2003. In a January 20, 2004 report, the Office hearing representative affirmed the Office's February 3, 2003 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act has the burden of establishing the essential elements of her claim by the weight of reliable, probative, and substantial evidence, including that she sustained an injury in the performance of

duty as alleged and that her disability, if any, was causally related to the employment injury.² Before appellant can receive a schedule award, she must first establish that the permanent impairment for which she seeks a schedule award is causally related to an employment injury.

ANALYSIS

The previous decision by the Board found that the weight of the medical evidence rested with Dr. Collier who concluded that appellant's May 26, 1998 aggravated preexisting arthritis in the right knee but the effects of employment injury had ceased. Dr. Collier stated that appellant's disability was due to the preexisting right knee condition without any residuals from the employment injury. Dr. Rubenstein concurred in Dr. Collier's conclusion. Dr. Polito found that appellant had a 21 percent permanent impairment of the right leg. However, as the Board found previously, Dr. Polito's statement that appellant's right knee condition was causally related to the employment injury was not supported by any medical rationale that explained how the May 26, 1998 employment injury would have caused a permanent impairment of the right leg. His report, therefore, has limited probative value and is insufficient to overcome the probative value of Dr. Collier's report or even create a conflict in the medical evidence with Dr. Collier's report

CONCLUSION

Appellant has failed to meet her burden of proof in establishing that she has a permanent impairment of the right leg that was causally related to the May 26, 1998 employment injury.

² *Annette M. Dent*, 44 ECAB 403, 407 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the hearing representative of the Office of Workers' Compensation Programs, dated January 20, 2004, is hereby affirmed.

Issued: December 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member