

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD D. CARR and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, OH

*Docket No. 03-1362; Submitted on the Record;
Issued January 26, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on August 17, 2001, causally related to his September 8, 1971 employment injury.

On September 8, 1971 appellant, a 19-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on that day he sustained a right knee injury in the performance of duty. Appellant stopped work on September 8, 1971, returned on September 11, 1971 and missed intermittent periods thereafter. The Office of Workers' Compensation Programs accepted appellant's claim for traumatic infrapatellar bursitis, right knee tear of the lateral and medial meniscus with surgery, post-traumatic osteoarthritis and chondromalacia.¹

Appellant subsequently participated in rehabilitation services and returned to work in a limited-duty capacity on December 2, 1989 as a part-time flexible postal clerk.² He subsequently filed several claims for recurrence. On July 21, 1995 the Office determined that appellant's actual earnings in the position of part-time flexible clerk fairly and reasonably represented his wage-earning capacity. On September 11, 2001 appellant filed a notice of recurrence alleging that he stopped work on August 17, 2001 due to weakness in his right knee and on the advice of his doctor, he did not return. By letter dated September 27, 2001, the Office informed appellant of the type of evidence needed to support his claim.

In support of his claim for recurrence, appellant provided a September 10, 2001 treatment note from Dr. John F.M. O'Leary, a Board-certified orthopedic surgeon and appellant's treating physician, who indicated that appellant was seen with persistent complaints of discomfort in his right knee. He noted that appellant was eight years post right total knee replacement and opined

¹ The record reflects that the Office accepted several recurrences of disability and appellant underwent several surgical procedures with a total right knee replacement performed in September 2003.

² Appellant received schedule awards totaling 54 percent for permanent impairment of the right leg.

that he did not believe appellant could return to work. Dr. O'Leary explained that, because of the amount of walking, manipulating and activity that appellant had to do at work, he could not return. Dr. O'Leary indicated that he recommended that appellant be off work for three months and continue with his nonsteroidal and anti-inflammatory medication.

In an attending physician's report dated September 28, 2001, Dr. O'Leary diagnosed right knee traumatic arthroplasty. He checked the box "yes" in response to the question regarding whether he believed appellant's condition was caused or aggravated by employment and estimated that appellant would be unable to work through December 10, 2001.

In a decision dated December 7, 2001, the Office denied appellant's claim for recurrence of disability beginning August 17, 2001 on the grounds that the medical evidence did not establish that he could no longer perform the light-duty position.

Appellant subsequently requested reconsideration on December 24, 2001 and March 25, 2002. In a decision dated March 19, 2002, the Office denied the claim for recurrence of disability. By decision dated March 27, 2002, the Office denied appellant's request for reconsideration. By letter dated April 7, 2002, appellant requested reconsideration. By decision dated April 23, 2002, the Office denied appellant's claim for recurrence. On June 4, 2002 appellant requested reconsideration. By decision dated August 13, 2002, the Office denied modification of its prior decision.

In support of his requests for reconsideration, appellant provided numerous reports from his treating physician, Dr. O'Leary, and several diagnostic reports. In a December 17, 2001 report, Dr. O'Leary stated that appellant had been seen by him since 1987. He explained that, in spite of ongoing problems, appellant was able to return to work at the employing establishment, but had ongoing and repeated episodes of discomfort in his knee due to an extensive amount of periarticular fibrosis that had developed as a result of his injuries. Dr. O'Leary indicated that appellant had significant difficulty with sitting with his knee bent at 90 degrees and opined that the extensive amount of walking, standing and sitting with the knee in the bent position gave appellant substantial discomfort such that it was the doctor's belief that appellant could not continue with the employing establishment. He opined that appellant's condition was the direct and proximate result of his knee injuries as documented back to 1987. Dr. O'Leary opined that appellant had a permanent disability due to the post-traumatic arthropathy of the right knee.

In a January 8, 2002 three-phase bone scan, Dr. John E. Baumert, Jr., Board-certified in nuclear medicine, made findings suggestive of a loosening of the tibial component of the right knee prosthesis and of the femoral component of the right knee prosthesis.

In an April 5, 2002 disability certificate, Dr. O'Leary advised that he did not believe that appellant could return to work as the activities of daily living along with excessive activity at work such as walking and manipulating had caused subsequent loosening of his right knee prosthesis/implant. Appellant also submitted Dr. O'Leary's treatment notes dating from October 4, 2000 to January 15, 2002 in which he described his diagnoses and treatment. In the September 1, 2001 note, he advised that appellant was seen for persistent complaints of discomfort in the right knee and opined that he did not believe that appellant could return to work because of the amount of walking, manipulating and activity that he has to do at work and

recommended that he be off for three months. In the January 15, 2002 note, Dr. O'Leary advised that there was a significant possibility "that appellant had micro motion and loosening in his implant. In an April 30, 2002 treatment note, Dr. O'Leary indicated that appellant was seen for post right knee arthroplasty and recommended a nonsteroidal anti-inflammatory, a low impact activity program and a possible revision. In his July 22, 2002 treatment note, Dr. O'Leary noted that he had discussed options for care and treatment with appellant. He reiterated that he might have micro motion of the femoral component status post bone scan, but that appellant did not show signs of gross loosening and did not have any sign of metal on metal problems or complete demarcation or failure of the polyethylene. Appellant, therefore, did not wish to have surgical intervention.

In a December 11, 2002 white blood cell prep, white blood cell scan and bone marrow image, Dr. Bruce Thaler, a Board-certified diagnostic radiologist, opined that there was no evidence for infection, nor was there sufficient activity on the bone marrow imaging to suggest loosening or arthritis.

On February 7, 2003 appellant was seen in the emergency room of Marion General Hospital for a complaint of knee pain and right hip contusion that occurred when his knee gave out and he fell. In a February 19, 2003 bone scan, Dr. Baumert diagnosed probable loosening of the tibial component of the right knee prosthesis.

By letter dated March 1, 2003, appellant's representative requested reconsideration.

In a March 18, 2003 treatment note, Dr. O'Leary recommended proceeding with a revision to appellant's total knee arthroplasty.

By letter dated March 25, 2003, the Office accepted mechanical complication right knee implant/prosthesis and authorized surgery and authorized a revision of the right knee arthroscopy due to loosening prosthesis. The Office also authorized preadmission testing with appellant's primary care physician and the use of a continuous passive motion machine for one month and biweekly blood testing for four weeks.

By decision dated March 26, 2003, the Office denied modification of the prior decisions.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on August 17, 2001, causally related to his September 8, 1971 accepted employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.³

³ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

At the time of his claimed recurrence of disability on August 17, 2001, appellant worked as a modified flexible clerk. His particular duties included sorting in a sitting position.⁴

In support of his claim for recurrence, appellant provided numerous reports from his treating physician, Dr. O'Leary. In his September 10, 2001 treatment note, Dr. O'Leary opined that appellant could not return to work for three months due to walking, manipulating and activities at work. However, he did not explain what aspects of appellant's position caused or contributed to the accepted employment injury. In his September 28, 2001 report, Dr. O'Leary simply checked a box "yes" in response to whether appellant's condition was caused or aggravated by his employment and indicated that appellant would be unable to work through December 10, 2001. However, the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁵ In his December 17, 2001 report, he indicated that appellant's knee problems were a result of his accepted injury and opined that appellant could not continue to work through December 2001. However, there were no further details as to how these conditions were related to appellant's work injury or that the light-duty requirements had changed. Although he opined that there may be loosening of the hardware in his April 5, 2002 disability certificate, a subsequent diagnostic report, dated December 11, 2002 from Dr. Thaler, showed no loosening or infection. He also provided numerous treatment notes concerning appellant's condition dating to March 18, 2003; however, none of the doctor's various treatment notes and reports provides a clear and rationalized explanation attributing appellant's current condition to his accepted employment injury.

Appellant provided diagnostic reports from Drs. Baumert and Thaler; however, they did not offer any opinion with respect to appellant's employment-related condition or his light-duty requirements. Further appellant provided discharge papers concerning a February 7, 2003 emergency room visit; however, they did not offer any opinion with respect to appellant's employment-related condition or his light-duty requirements. Additionally, they were unsigned. The Board has consistently held that unsigned medical reports are of no probative value.⁶

⁴ The Office accepted his claim for traumatic infrapatellar bursitis, right knee tear of the lateral and medial meniscus with surgery, post-traumatic osteoarthritis and chondromalacia. The Office also accepted several recurrences of disability and appellant underwent several surgical procedures with a total right knee replacement performed in September 2003. Additionally, the Office authorized a revision of the right knee arthroplasty due to loosening of the prosthesis and added they were accepting his claim for mechanical complication of the right knee implant/prosthesis.

⁵ *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

⁶ *See Merton J. Sills*, 39 ECAB 572 (1988).

The March 26, 2003, August 13 and April 23, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.⁷

Dated, Washington, DC
January 26, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Subsequent to the appeal, appellant submitted additional evidence. The Board may not consider evidence that was not before the Office at the time of the Office's final decision. *Michael A. Grossman*, 51 ECAB 673 (2000); *Kimberly Kelly*, 51 ECAB 582 (2000); *Caroline Thomas*, 51 ECAB 451 (2000); *Sherry L. McFall*, 51 ECAB 436 (2000).