United States Department of Labor
Employees' Compensation Appeals Board

JEROME L. BELL, Appellant	)	
and	)	**Docket No. 04-265**
U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AK, Employer	)	**Issued: July 22, 2004**

Appearances:
James E. Nickels, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 10, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 15, 2003 terminating his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation.

FACTUAL HISTORY

On April 1, 1995 appellant, then a 28-year-old distribution clerk, injured his left knee when his foot stuck between two floor mats causing the knee to twist. In an April 1, 1995 report, Dr. David Schmidt, an emergency room specialist, stated that appellant presented with acute pain and swelling in his left knee. On examination he found significant points of tenderness with effusion, but a full range of motion. Dr. Schmidt diagnosed hemarthrosis of the left knee

secondary to hemophilia. In an April 3, 1995 report, Dr. Doyne Dodd, a radiologist, stated that x-rays of appellant's left knee showed soft tissue swelling that appeared to be joint effusion, narrowing of the lateral aspect of the knee joint and sclerosis of the lateral aspect of the tibia. He diagnosed sclerotic change of the lateral tibial plateau with scattered subarticular cystic changes. He noted narrowing of the lateral aspect of the joint space that appeared to be due to degenerative changes. Dr. Dodd also diagnosed joint effusion that probably represented a hemarthrosis in view of appellant's history of hemophilia.

Appellant's relevant medical history includes injuring his left knee while in the military in 1990, chondromalacia and four arthroscopic arthrotomies on his left knee between 1990 and 1996. In addition, appellant has been treated for Severe Hemophilia A, or Factor 8 Deficiency, since he was 18 months old. As a result appellant has intermittent bleeding episodes that are both spontaneous and, more often, caused by trauma. When they occur he is infused with a clotting factor known as Recombinate.

After the April incident appellant was off work for two weeks, returned for one day before stopping due to pain. On May 16, 1995 the Office accepted appellant's claim for left knee strain and later left knee arthritis. In an August 25, 1997 report, Dr. Harold Chakales, a Board-certified orthopedic surgeon, noted that appellant had limited motion in his knee, including active flexion of approximately 100 degrees and loss of 20 degrees of extension actively. He noted appellant's range of motion was 80 degrees and there was pain in the joint, and he walked with an antalgic gait. Dr. Chakales reported atrophy of 3.5 cm of the left quadriceps and almost 2 cm of the left gastrocnemius, indicating a weak lower extremity. He added that appellant had rather severe osteonecrotic changes radiographically, was in near constant pain and had difficulty with activities. Dr. Chakales noted that appellant had lost considerable strength, though he could still walk. He added that appellant's problem would progress with age and was secondary to hemophilia with repetitive incidents of hemorrhage into the joint, in association with osteonecrosis of the joint causing loss of motion and atrophy of the calf and thigh. Dr. Chakales added that the work injury of April 1, 1995 permanently aggravated the left knee changes due to the hemophilia condition and noted that continued work and age would cause the condition to worsen.

In a July 31, 1996 report, Dr. Laurie Hughes, an orthopedic surgeon, stated that she had treated appellant for repeated bleeding into his left knee since November 1995. She reported that the bleedings, which occurred four to five times a month, were both spontaneous and caused by trauma and noted that appellant strained his left knee at work on April 1, 1995. Dr. Hughes added that she did not treat appellant for that injury but had reviewed the medical records related to it; and that it was clear that appellant developed a bleed into his joint at that time. Dr. Hughes wrote that a radionuclide synovectomy was performed on April 22, 1996 to control the bleeding, but early results showed no improvement. She stated that appellant continued to have chronic synovitis of the left knee secondary to his hemophilia; that he should not stand or walk for long periods and that he must spend the majority of his day sitting. Dr. Hughes also stated that she could not say, without a doubt, that appellant's frequent bleeds were directly related to the April 1, 1995 injury, as hemophiliac arthropathy is common in hemophiliacs. However, she added that any injury to appellant's left knee was a definite contributing factor to repeated bleeds into the joint.

In an October 23, 1997 decision, the Office found appellant entitled to a schedule award for 56 percent permanent impairment of his left lower extremity. On October 23, 1998 appellant filed a recurrence of disability claim, contending that he could no longer stand or walk for eight hours a day. The claim was accepted on January 22, 1999. On September 25, 2000 appellant was separated from the employing establishment as it found that he could not perform the essential elements of the job and no reasonable accommodation could meet his medical restrictions.[1]

In a March 20, 2002 report, Dr. Thomas Ward, a specialist in physical medicine and rehabilitation, stated that appellant's knee improvements had plateaued and he continued to have severe pain. He stated that appellant was developing moderate overuse syndrome with stretching in his leg muscles and some internal rotation and rocking which would ultimately result in meniscal osteoarthritis for further repetitive damage. Dr. Ward stated that he had treated appellant with injections of Botulinum Toxin which was a medical necessity to improve appellant's leg length discrepancy that was a by-product of his work-related injury subsequent to his hemophilia and hemarthrosis that occurred during a 1995 job description that required additional twisting and repetitive bending.

In an October 29, 2002 letter, the Office referred appellant for a second opinion. In a November 27, 2002 report, Dr. Thomas Rooney, a Board-certified orthopedic surgeon, stated that appellant had a long history of left knee problems dating to his military service in the 1990s. He stated that appellant had developed progressive discomfort and restricted use of his left lower extremity; noting that appellant could not squat or climb or stand for more than a couple of hours in one position. Dr. Rooney opined that appellant's current objective findings including limited motion, swelling and degenerative arthritic changes, were probably secondary to hemophilia arthropathy and which probably existed before the 1995 accepted work injury. Dr. Rooney added that in his opinion appellant did not suffer a knee strain in April 1995, but a temporary aggravation of his preexisting arthropathy. He opined that appellant's condition would be the same if the injury had not occurred as appellant had knee problems prior to the accepted injury. Dr. Rooney stated that the nonwork factor of hemophilia severely impacted and altered the normal baseline pathology of appellant's accepted strain and that his current medical restrictions were due to the severe arthritis in the knee.

In a January 14, 2003 letter, the Office requested that Dr. Ward comment on Dr. Rooney's report, but he failed to respond. In a June 2, 2003 letter, the Office proposed terminating appellant's compensation relying on Dr. Rooney's report that appellant's strain and temporary aggravation had ceased. In a June 26, 2003 letter, appellant argued, through his representative, that Dr. Rooney did not have access to or knowledge of appellant's full medical history and his report lacked sufficient rationale to carry the weight of the medical evidence.

In a July 21, 2003 decision, the Office finalized the termination finding the weight of the medical evidence rested with Dr. Rooney's November 27, 2002 report. The Office noted that appellant had failed to submit new medical evidence.

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[1] Appellant's medical restrictions were 1 hour a day walking, pushing, carrying, lifting, bending, squatting, kneeling and twisting, 2 hours maximum standing and no lifting over 55 pounds.

In a July 24, 2003 letter, appellant requested reconsideration and submitted a July 8, 2003 report from Dr. Ward who stated:

> "If … [appellant's] knee and other joint areas had no specific documented injuries with resulting documented changes of the joint and of the motion of the joint, then I would state that [appellant's] knee injury from 1995 as a sole response to his work injury is a primary injury of the variety that his preexisting condition of hemophilia has caused otherwise unexpected events to be present. He would suffer far greater injury in any subsequent time frame to this joint given its initial injury, and if previously injured, his injury as of a consequence of his work at the [employing establishment] in 1995 acted as a direct aggravation and would definitely produce an acceleration of already present deterioration."

* * *

> "Subsequent to several episodes of bleeding into the knee joint over the years, the structures around the knee and the skin of the knee proper has not got the normal tolerances for injury in the future…."

In an August 1, 2003 decision, the Office denied modification of the July 21, 2003 decision, finding the weight of medical evidence remained with Dr. Rooney.

In an undated letter, received on September 2, 2003, appellant requested reconsideration arguing that Dr. Rooney's report was unrationalized and based on an outdated statement of accepted facts. Appellant also submitted an August 29, 2003 letter from Dr. Ward, who stated that appellant had permanent disability due to left knee contracture, fixed joint arthritis and subsequent fusion to the knee joint on the left side. Dr. Ward added that there was no doubt that these conditions were not as they were in 1995 and that there is no doubt in his mind that appellant suffered a permanent aggravation to the knee at the time of the original injury. In an October 15, 2003 decision, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[2] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[3] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[4] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

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[2] 5 U.S.C. § 8101 *et seq.*

[3] *Charles E. Minniss,* 40 ECAB 708, 716 (1989); *Vivien L. Minor,* 37 ECAB 541, 546 (1986).

[4] *Id.*

[5] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

Section 8123(a) of the Act provides in pertinent part: "If there is 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."[6] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.[7]

ANALYSIS

The Board finds a conflict in the medical evidence between Dr. Rooney, who served as an Office referral physician, and Dr. Ward, appellant's attending physician, regarding whether or not appellant's accepted April 1, 1995 injury had resolved. In a March 20, 2002 report, Dr. Ward stated that appellant's knee improvements had plateaued and he continued to have severe pain and was developing moderate overuse syndrome. He added that he treated appellant to improve his leg length discrepancy, a by-product of his work-related injury subsequent to his hemophilia and hemarthrosis that occurred during a 1995 job description that required additional twisting and repetitive bending. In a July 8, 2003 report, Dr. Ward stated that appellant would suffer greater injury in any subsequent time frame to his knee given its initial injury, and if previously injured, his injury as of a consequence of his work at the employing establishment in 1995 acted as a direct aggravation and would produce an acceleration of already present deterioration. He noted that after to several episodes of bleeding into the knee joint it did not have the normal tolerances for injury in the future.

In an August 29, 2003 letter, Dr. Ward stated that he had documented the level of appellant's left contracture and the level of fixed joint arthritis and subsequent fusion to the knee joint on the left side that constituted a permanent disability of appellant's knee. He indicated that the accepted injury permanently aggravated appellant's left knee condition.

In a November 27, 2002 report, Dr. Rooney noted that appellant had a long history of left knee problems dating back to his military service and that appellant's current objective findings were secondary to hemophilia arthropathy and existed before the 1995 work injury. Dr. Rooney stated that in his opinion appellant did not suffer a knee strain in April 1995, but rather a temporary aggravation of his preexisting hemophilia arthropathy and that appellant's current condition would be the same if the injury had not occurred, as appellant had knee problems prior to the accepted injury. Dr. Rooney concluded that appellant's current medical restrictions were due to severe arthritis in the knee related to his hemophilia.

Dr. Rooney and Dr. Ward, both Board-certified specialists, are in disagreement on the critical issue of whether appellant's residual disability is causally related to the accepted condition. The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation due to an unresolved conflict of medical opinion.

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[6] 5 U.S.C. § 8123(a).

[7] *William C. Bush*, 40 ECAB 1064, 1975 (1989).

CONCLUSION

The Office did not meet its burden of proof to terminate appellant's compensation.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 15, August 1 and July 21, 2003 are reversed.

Issued: July 22, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member