

**United States Department of Labor
Employees' Compensation Appeals Board**

HOWARD STEVENSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Langhorne, PA, Employer**

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**Docket No. 05-91
Issued: March 23, 2005**

Appearances:
Thomas R. Uliase, for the appellant.
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 6, 2004 appellant filed a timely appeal from a July 6, 2004 merit decision of an Office of Workers' Compensation Programs' hearing representative decision, affirming a July 11, 2002 decision which denied a recurrence of disability as of September 12, 2001. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability as of June 1, 1998 causally related to his accepted employment injuries; and (2) whether the Office abused its discretion by denying appellant authorization for left knee replacement surgery.

FACTUAL HISTORY

This is the second appeal before the Board. On August 11, 1997 appellant, a 49-year-old letter carrier, injured his left knee while delivering mail. The Office accepted the claim for left knee sprain. Appellant returned to limited duty on September 2, 1997 and filed a claim for a recurrence of disability which was accepted for arthroscopy of the left knee. Appellant

underwent a magnetic resonance imaging (MRI) scan dated September 9, 1997 which revealed degeneration and a linear tear of the medial meniscus. Dr. Bernard J. Amster, an osteopath, performed arthroscopic surgery on September 26, 1997 which revealed degenerative joint disease in appellant's left knee. Appellant returned to full-time, full-duty work on October 14, 1997 and full-time duty with permanent restrictions on November 4, 1997.

In an October 13, 1997 progress report, Dr. Amster stated that "we know [appellant] has advanced degenerative joint disease which is tricompartmental of his left knee. We know this is an ongoing process which will continually wear." In a June 11, 1998 Form CA-17 duty status report, Dr. Amster wrote "no work of any kind" and diagnosed appellant with "advanced degenerative joint disease left knee." Appellant stopped work and filed a claim for a recurrence of disability beginning June 1, 1998, alleging that he was unable to walk or drive and could not perform his regular duties at work. Dr. Amster requested authorization for total knee replacement of the left knee.

In order to determine whether the surgery was to be performed to correct a condition causally related to an accepted condition, the Office referred appellant to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon. In a report dated June 5, 1998, Dr. Salem diagnosed findings of preexisting arthritis of the knee but opined that the injury did not totally cause appellant's symptoms and findings. Dr. Salem advised that the type of knee sprain or knee strain which appellant sustained should be resolved within three to four months.

In a June 19, 1998 memorandum, the Office medical adviser recommended that the Office deny authorization for the requested knee surgery because it was being proposed for the purpose of repairing degenerative joint disease, which was not an accepted condition. The Office medical adviser stated that, because degenerative joint disease was neither an accepted condition nor causally related to the accepted knee sprain, the proposed surgery did not constitute treatment for an accepted condition. Appellant underwent total knee replacement surgery on June 17, 1998, which was not authorized by the Office.

Dr. Frank L. Cuce, an osteopath, stated in an August 3, 1998 report that appellant had long-standing arthritis of the left knee caused by walking as a postal carrier for 17 years. He opined that appellant's 1997 employment injury aggravated the long-standing arthritis that he has experienced. In a Form CA-17 dated September 17, 1998, Dr. Cuce stated that appellant had sustained a twisting injury of the left knee at work which aggravated his degenerative joint disease caused by years of walking and carrying mail at work.

By decision dated November 20, 1998, the Office denied appellant's claim for a recurrence of disability and terminated his compensation. By letter dated October 20, 1999, appellant's attorney requested reconsideration and submitted a September 20, 1999 report from Dr. Cuce, who opined:

"It is obvious that [appellant's] job description as a mail carrier requires primarily walking, carrying mail, stooping and bending. This type of activity, as well as his injury that occurred on August 11, 1997 aggravated a preexisting degenerative joint disease of the knee that was asymptomatic up to that point. It can be said with a reasonable degree of medical certainty that the twisting injury that he

sustained, as well as his job description, was the cause of his acute flare of his arthritis of that joint....

“Again, as stated in a previous letter, the total knee replacement was the logical next course of action given his tricompartmental disease. The high tibial osteotomy alluded by Dr. Salem wouldn’t address the patellofemoral joint. The knee replacement was obviously the appropriate course of action.

“Again, just let me reiterate that secondary to this twisting injury at work along with years of ‘wear and tear’ with his walking, carrying, stooping and bending were the causes of his ongoing pain necessitating the subsequent surgeries.”

By decision dated January 24, 2000, the Office denied modification of its November 20, 1998 decision. In an August 14, 2001 decision,¹ the Board reversed the Office’s recurrence and termination decisions. The Board found that, although Dr. Cuce’s report did not fully explain how appellant’s underlying degenerative joint disease was aggravated by the 1997 work injury and his employment duties as a letter carrier, it was sufficient to require further development of the evidence. The Board found that the medical evidence appellant submitted; *i.e.*; Dr. Cuce’s September 20, 1999 report attributing his current knee condition to the 1997 work injury and continuous employment activities, required remand to the Office to determine whether appellant’s work stoppage on June 1, 1998 and subsequent surgery were caused or aggravated by his employment. The Board further found that the Office did not meet its burden to terminate appellant’s compensation. The Board found that the Office had improperly relied on Dr. Salem’s June 5, 1998 report in terminating benefits, as Dr. Salem did not rule out that appellant’s knee condition was at least partially related to his accepted employment injury and was permanent. The complete facts of this case are set forth in the Board’s August 14, 2001 decision and are herein incorporated by reference.

The Office found that there was a conflict in the medical evidence regarding whether: (a) the diagnosed condition was medically connected to the work injury and/or factors of employment as described in the statement of accepted facts either by direct cause, aggravation, precipitation, or acceleration; and (b) whether appellant’s left total knee replacement of June 1998 was medically connected to the 1997 left knee injury and/or appellant’s employment as a letter carrier.

The case file was referred to Dr. Marvin N. Kallish, Board-certified in orthopedic surgery, for an independent medical evaluation to resolve the conflict in medical evidence. While thoroughly reviewing the medical evidence of record, Dr. Kallish noted that appellant had undergone arthroscopy of the left knee on September 26, 1997 because of changes in the ligaments and meniscus alluded to in a September 1997 MRI scan. Dr. Kallish further noted that all of the changes recorded in the arthroscopic operative report were degenerative, wearing, or osteoarthritic changes, and were not the ligament/meniscus changes noted in the MRI scan. He explained that therefore appellant’s diagnosis in September 1997 following the arthroscopic procedure was sprain/strain of the left knee, with preexisting changes. Some 10 months later, however, an x-ray taken of appellant’s knee one day prior to the June 17, 1998 knee replacement

¹ Docket No. 00-1805 (issued August 15, 2001).

surgery showed a satisfactory lateral compartment with minimal changes in the patellofemoral compartment and advanced changes with marked narrowing in the medial compartment. He stated that this x-ray was not consistent with the findings in the knee which were noted during the prior arthroscopic evaluation. Dr. Kallish explained that these degenerative changes were not unusual for appellant because he was minimally bowlegged.

Dr. Kallish confirmed a diagnosis of left knee arthritis, which reflected long-standing changes. He advised that appellant's August 11, 1997 work injury was that of a twisting injury, which may have sustained an acute affect on the knee; however, he believed that the knee was already compromised and that his long-standing arthritis was not the appropriate diagnosis to derive from the injury. Dr. Kallish stated that the appropriate diagnosis from the injury was a traumatic synovitis with a sprain, and that the MRI scan alluded to changes in the ligaments and meniscus which were not confirmed by arthroscopy. Therefore, his diagnosis was a sprain/strain of the knee, left side, which had preexisting changes. Dr. Kallish commented that these changes would have been acute in nature, and these changes would have been relatively short-lived and would have responded with further treatment to enable appellant to return to his preexisting ability to function. He advised that continued, more aggressive and conservative treatment was never carried out; he believed that this should have been carried out before any consideration was given to total knee replacement. With regard to the question of whether the total knee replacement was medically connected Dr. Kallish stated:

“[H]e certainly had some changes in the medial joint, but in regard to its direct connection or causal relation of the August 11, 1997 injury is of serious doubt. It is my opinion that the injury to the knee in August 1997 was an aggravation of and would have been short-lived and would have responded to more conservative treatment and enabled [appellant] to return to his normal functions. I believe that the degenerative changes in the knee which were present, have been present for ... long periods of time, and there is certainly no question that these areas would have continued to undergo demise and eventually total knee replacement may have been necessary, but it would have been necessary as a result of degenerative knee changes and not as a result or causally connected to the injury in August of 1997.”

Dr. Kallish stated that, regarding the question of whether appellant's diagnosed osteoarthritis was causally related to his 17 years of working as a mail carrier, he did not believe there was any connection. He concluded:

“It is, in my opinion, within a reasonable degree of medical certainty that diagnosis of osteoarthritis of the knee is appropriate. It is further my opinion that the total knee replacement which was carried out was done without sufficient conservative treatment prior to carrying out this procedure and is not related to the injury of August 1997. The total knee replacement which was done by Dr. Amster was done as a result of arthritis of the knee and the arthritis of the knee is not related in any way to the injuries of August 1997. I do not believe [there was] any substantive aggravation either by the injuries which would have necessitated a knee replacement.”

Dr. Kallish concluded that osteoarthritis was a “fortuitous event” which occurred under normal conditions and that it could not be related to his work as a mail carrier because any standing or walking due to normal daily activities could also have potentially caused the condition.

By decision dated May 31, 2002, the Office denied the claim for recurrence of disability, finding that Dr. Kallish’s impartial medical opinion represented the weight of the medical evidence. By letter dated June 4, 2002, appellant’s attorney requested a hearing, which was held on March 18, 2004. Appellant did not submit any additional medical evidence.

By decision dated July 6, 2004, an Office hearing representative affirmed the May 31, 2002 Office decision.

LEGAL PRECEDENT -- ISSUE 1

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.²

The Act at section 8123(a) provides that, 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. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical back ground, must be given special weight.³

ANALYSIS

The Office properly determined that a conflict existed in the medical evidence which required appellant’s referral to an impartial medical specialist. Dr. Amster, the attending physician, performed arthroscopic surgery on September 26, 1997 which revealed degenerative joint disease in appellant’s left knee. He advised in an October 13, 1997 progress report that appellant had advanced degenerative joint disease which was tricompartmental of his left knee, an ongoing process which would continue to wear. Appellant stopped work and filed a claim for a recurrence of disability beginning June 1, 1998; Dr. Amster requested authorization for total knee replacement of the left knee. In a report dated June 5, 1998, Dr. Salem, an Office second opinion specialist, agreed that appellant had preexisting arthritis of his knee but opined that this injury did not totally cause his symptoms and his findings. He also stated that the type of knee sprain or knee strain appellant sustained should be resolved within three to four months. In Dr. Cuce’s September 20, 1999 report, he indicated that the continual walking, mail carrying, stooping and bending in which appellant engaged in his job, in addition to the injury he sustained

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

³ *Gloria E. Godfrey*, 52 ECAB 486 (2001).

on August 11, 1997, aggravated a preexisting degenerative joint disease of the knee that was asymptomatic up to that point. Dr. Cuce opined that the twisting injury that he sustained on August 11, 1997, as well as his job description, was the cause of his acute flare of his arthritis of that joint. Therefore, the total knee replacement was the next logical, appropriate course of action given his tricompartmental disease. The Board found that Dr. Cuce's opinion required further development of the medical evidence, and on remand the Office properly referred appellant to Dr. Kallish for an impartial medical evaluation.

The Office based its decision denying a claim for recurrence of disability as of June 1, 1998, on the May 10, 2002 report of Dr. Kallish, the impartial medical examiner. After stating findings on examination and thoroughly reviewing the medical evidence of record, Dr. Kallish concluded that appellant's primary condition was long-standing osteoarthritis of the left knee, which was what led to the total knee replacement performed by Dr. Amster in June 1998. Dr. Kallish disputed appellant's need for the knee replacement in 1998, noting that additional conservative treatment should have been offered first.

In evaluating appellant's condition as of June 1, 1998, he stated that appellant's left knee arthritis was not related in any way to the injuries of August 1997. In reviewing the medical record, Dr. Kallish carefully explained that appellant had several long-standing degenerative conditions which were visible during the arthroscopic procedure in September 1997. He further stated that there was no substantive aggravation of the arthritic condition caused by the accepted injury because findings made during the arthroscopic procedure performed in September 1997 were no longer present, just prior to the knee replacement in June 1998.

Furthermore, regarding the issue of disability, Dr. Kallish explained that the work appellant had been performing had always been appropriate. This opinion was supported by the fact that there were no objective residual findings from appellant's 1997 work injury sufficient to prevent him from working.

The Board holds that the Office properly found that Dr. Kallish's referee opinion negated a causal relationship between appellant's claimed condition and disability as of August 17, 1998 and his accepted August 15, 1997 employment injury. Therefore, the Office acted correctly in according his opinion the special weight of an impartial medical examiner.⁴ Accordingly, the Board finds that Dr. Kallish's opinion constituted sufficient medical rationale to support the Office's May 31, 2002 decision which found that he did not sustain a recurrence of disability for work as of June 1, 1998 causally related to his accepted August 11, 1997 injury. Appellant has therefore failed to discharge his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury. The Board therefore affirms the Office's July 6, 2004 decision, which affirmed the May 31, 2002 decision denying benefits based on a recurrence of disability.

⁴ Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. *Gary R. Seiber*, 46 ECAB 215 (1994); *Aubrey Belnavis*, 37 ECAB 206 (1985).

As the Office properly relied on Dr. Kallish's impartial medical opinion which constituted sufficient medical evidence to negate any connection between the claimed condition and disability as of June 1, 1998 and the accepted employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability. As appellant has not submitted sufficient medical evidence to establish that the claimed condition and disability as of June 1, 1998 was caused or aggravated by his employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability. The Board therefore affirms the July 6, 2004 Office decision affirming the May 31, 2002 denial of compensation based on a recurrence of his work-related disability.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Act⁵ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.⁶ In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁷

ANALYSIS -- ISSUE 2

In this case, the Office accepted that appellant had sustained the condition of left knee sprain and authorized arthroscopic surgery in September 1997. Dr. Amster, the osteopath who performed the surgery, diagnosed advanced, tricompartmental degenerative joint disease of the left knee, and on June 17, 1998 performed surgery for total left knee replacement. Dr. Salem opined in his June 5, 1998 report that the injury did not totally cause his preexisting arthritic symptoms, and on June 19, 1998 the Office medical adviser recommended that the Office deny authorization for surgery because it was being proposed to repair a nonaccepted condition, degenerative joint disease. Since degenerative joint disease was neither an accepted condition nor causally related to the accepted knee sprain, the Office medical adviser determined that it did not constitute treatment for an accepted condition. As noted above, the Board found that Dr. Cuce's September 20, 1999 report created a conflict in the medical evidence regarding whether appellant's degenerative arthritis condition in his left knee was work related, and the Office referred the case file to Dr. Kallish to resolve the conflict in medical evidence.

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ 5 U.S.C. § 8103.

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).

In his May 10, 2002 report, Dr. Kallish stated that an x-ray taken of appellant's knee prior to the day knee replacement surgery was performed on June 17, 1998 showed a satisfactory lateral compartment with minimal changes in the patellofemoral compartment and then changes in the medial compartment. He stated that this x-ray was not consistent with the findings in the knee which Dr. Amster noted during his arthroscopic evaluation. Dr. Kallish stated that Dr. Amster's arthroscopic evaluation indicated an equal amount of degenerative change both medially and laterally, which was not reflected by the x-ray taken nearly 10 months after Dr. Amster performed his surgery in September 1997. He noted that the lateral joint appeared to be quite satisfactory, and the medial joint appeared to be rather advanced with marked narrowing.

Dr. Kallish opined that appellant's August 11, 1997 work injury caused an acute affect on the knee, but stated that the knee was already compromised and that appellant's long-standing arthritis was not the appropriate diagnosis to conclude from the 1997 injury. Dr. Kallish stated that the appropriate diagnosis from the injury was a traumatic synovitis with a sprain, and that the MRI scan alluded to changes in the ligaments and meniscus which were not confirmed by arthroscopy. He believed that the effects of the 1997 injury would have been relatively short-lived and would have responded with further treatment to enable appellant to return to his preexisting ability to function. Dr. Kallish opined that continued, more aggressive conservative treatment was never carried out, and that this should have been carried out before any thoughts of total knee replacements were done. He further opined that the degenerative, arthritic changes in appellant's medial joint had been present for an extended period of time, but were the result of degenerative knee changes and were not causally related to the August 1997 work injury or his 17 years of working as a mail carrier. He therefore concluded that the total knee replacement which Dr. Amster performed on appellant was not related in any way to the August 1997 work injury, and was neither warranted nor necessitated as a result of the accepted work injury.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. Dr. Kallish, the impartial medical examiner, properly found that the medical evidence was not sufficient to establish a causal relationship between appellant's left knee condition and factors of his employment. Therefore, given the fact that the medical evidence of record indicates that appellant's osteoarthritic left knee condition is not work related, the Office did not unreasonably deny appellant's request for surgery to ameliorate this condition. The Office did not abuse its discretion to deny appellant authorization for left knee replacement surgery.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of June 1, 1998 causally related to his accepted left knee condition. The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization for left knee replacement surgery.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member