

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

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**ELAINE B. SPANN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Richmond, VA, Employer**

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**Docket No. 06-326  
Issued: June 14, 2006**

*Appearances:*  
*Elaine B. Spann, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 31, 2005, which denied modification of a June 21, 2002 decision which found that appellant failed to establish a recurrence of disability causally related to her accepted employment injury. 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 appellant met her burden of proof to establish a recurrence of disability beginning in October 2001 or March 20, 2002 causally related to an April 5, 1999 employment injury.

## **FACTUAL HISTORY**

This case has previously been on appeal before the Board.<sup>1</sup> In a March 18, 2003 decision, the Board affirmed the Office's June 22, 2002 decision which found that appellant did not establish a recurrence of disability on March 20, 2002 causally related to her April 5, 1999 employment injury.<sup>2</sup> The facts and the history contained in the prior appeal are incorporated by reference.

By letter dated April 7, 2003, appellant requested reconsideration. In support of her request, appellant submitted an October 29, 2002 report from her treating physician, Dr. William R. Beach, a Board-certified orthopedic surgeon. Appellant indicated that she was scheduled for surgery to remove the staples or hardware. In the October 29, 2002 report, Dr. Beach noted that appellant was post anterior cruciate ligament (ACL) reconstruction of her left knee from June 1999 and advised that he saw her for popping of the left knee on the medial and lateral aspect of her patella. She experienced pain and swelling over the incision area of the anterior aspect of the left knee. He determined that appellant did not have any locking, giving way or instability. Dr. Beach conducted a physical examination and noted that appellant did not have any echymosis or erythema, although there was some tenderness to palpation along the medial aspect of the longitudinal scar on the proximal left tibia. He also explained that there was no crepitation with range of motion on her left knee. Diagnostic reports showed that appellant had maintenance of an interference screw in the proximal tibia as well as three staples which were distal to the screw, along with an endo button on the lateral cortex of the distal femur. Dr. Beach opined that appellant was post ACL reconstruction and that "most likely" her pain was "due to software catching over the staples." He advised that removal of appellant's staples was warranted.

By letter dated April 14, 2003, appellant repeated her request for reconsideration. By letter dated April 23, 2004, appellant again requested reconsideration.

By decision dated July 6, 2004, the Office denied appellant's request for reconsideration for the reason that it was not timely filed and failed to present clear evidence of error. On April 6, 2005 the Board issued an order remanding case setting aside the July 6, 2004 decision, noting that appellant had filed a timely reconsideration request. The Board directed the Office to issue an appropriate decision.<sup>3</sup>

By decision dated August 31, 2005, the Office denied modification of the June 21, 2002 decision. The Office found the evidence insufficient to establish that appellant sustained a recurrence of disability related to the April 5, 1999 employment injury. The Office noted appellant's March 30, 2002 recurrence claim form indicated that her recurrence began

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<sup>1</sup> Docket No. 03-300 (issued March 18, 2003). Appellant also has a separate recurrence claim related to an accepted claim for thoracic outlet syndrome. That case was also appealed to the Board. Docket No. 05-78 (issued June 2, 2005).

<sup>2</sup> The Board also affirmed the October 9, 2002 decision of the Office, finding that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

<sup>3</sup> Docket No. 05-79 (issued April 6, 2005).

approximately six months prior to the date of filing. The Office determined that this would be “approximately October 2001.”

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office’s regulations provides that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup>

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.<sup>5</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>6</sup>

### **ANALYSIS**

The Office accepted appellant’s claim for left meniscal and ACL tears of the knee for which she underwent surgery. Appellant filed a notice of recurrence of disability on March 30, 2002 and alleged that her recurrence of disability began approximately six months prior to the date of filing and alleged that it was due to her April 5, 1999 employment injury. By letter dated April 23, 2002, the Office advised appellant of the evidence needed to establish her claim.

In support of her claim for a recurrence, appellant submitted the October 29, 2002 report of her treating physician, Dr. Beach, a Board-certified orthopedic surgeon. He noted that appellant was post ACL reconstruction of her left knee from June 1999. Dr. Beach explained that appellant was seen for follow up related to popping of the left knee on the medial and lateral aspect of her patella and for pain and swelling over the incision area of the anterior aspect of the left knee. He noted that appellant did not have any locking, giving way or instability and conducted a physical examination. Dr. Beach noted some tenderness to palpation along the medial aspect of the longitudinal scar on the proximal left tibia. He determined that diagnostic reports showed that appellant had maintenance of an interference screw in the proximal tibia and three staples which were distal to the screw, and opined that “most likely” her pain was “due to software catching over the staples,” and recommended removal. The Board finds that, while

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<sup>4</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB \_\_\_\_ (Docket No. 04-887, issued September 27, 2004).

<sup>5</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

<sup>6</sup> *Walter D. Morehead*, 31 ECAB 188 (1986).

Dr. Beach's report addressed residuals from her knee surgery, which was authorized by the Office, it is equivocal as the physician stated that appellant's pain "most likely" was due to catching over the surgical staples.<sup>7</sup> Moreover, he did not specifically address the relevant issue of disability, beginning October 2001. Dr. Beach did not provide any medical rationale to support the causal relationship between the accepted condition and the period of claimed recurrent disability.<sup>8</sup>

As appellant has not submitted sufficient medical evidence establishing that she sustained a recurrence of disability in October 2001 causally related to the April 5, 1999 employment injury, she has not met her burden of proof.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability in October 2001 causally related to the April 5, 1999 employment injury.<sup>9</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 31, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> See *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

<sup>8</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>9</sup> Following the issuance of the Office's August 31, 2005 decision, appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).