

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

V.H., Appellant)
)
and) **Docket No. 09-1725**
) **Issued: May 4, 2010**
U.S. POSTAL SERVICE, CIRCLE BRANCH)
POST OFFICE, Trenton, NJ, Employer)
)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 16, 2009 appellant, through her attorney, filed a timely appeal of the May 1, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on July 13, 2007.

FACTUAL HISTORY

On May 29, 1996 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim alleging on that date she hit her right knee on a mail case.¹ Dr. David M. Anapolle, a Board-certified orthopedic surgeon, examined her on April 21, 1998 and provided a history of injury. He diagnosed chondrocalcinosis of the left knee exacerbated by an acute sprain.

¹ The record indicates that appellant had arthroscopic surgery of both knees in 1993 or 1994.

Dr. Anapolle stated, "This injury appears to represent only an exacerbation of her clearly preexisting condition on chondrocalcinosis with has been exacerbated by a mild sprain or contusion-type injury." He released appellant to return to full duty on April 27, 1998. The Office accepted this claim for contusion and sprain of the right knee.

Appellant filed a second claim on July 29, 2002 alleging that as she was coming down a step her right knee buckled on July 27, 2002. Her attending physician, Dr. Ronald M. Krasnick, a Board-certified orthopedic surgeon, completed reports on April 1 and 10, 2003 and recommended bilateral knee replacements. The Office referred appellant for a second opinion evaluation with Dr. Michael Mandarino, a Board-certified orthopedic surgeon, on July 7, 2003. In a report dated July 23, 2003, Dr. Mandarino found that she had degenerative changes involving both her knees and a temporary aggravation of her knees as a result of her employment injuries. He did not recommend total knee replacement and found that appellant was capable of light-duty work. Dr. Mandarino stated that she was not disabled due to work-related condition. On September 2, 2003 the Office accepted appellant's claim for temporary aggravation of degenerative disease of both knees ending July 23, 2003.

Under a separate claim number, the Office accepted that appellant sustained sprain of the right hand, contusion of the lip and right thumb sprain on September 7, 2006. It accepted the additional condition of derangement of meniscus on May 8, 2007.

On May 7, 2007 the employing establishment offered appellant a light-duty assignment based on her July 27, 2002 employment injury. Appellant accepted this position on that date.

Appellant filed a notice of recurrence of disability on July 19, 2007 alleging on July 13, 2007 she sustained a recurrence. In a report dated July 19, 2007, Dr. Krasnick found effusions, varus deformities, severe crepitus and limited flexion in both knees. He found that x-rays demonstrated progression of recurrent tricompartmental arthrosis with narrowing in the medial compartments and progressive chondral calcinosis in the lateral compartments. Dr. Krasnick opined that appellant was a candidate for total knee arthroplasties.

The Office requested additional factual and medical evidence by letter dated September 14, 2007. By decision dated November 9, 2007, it denied appellant's claim for recurrence finding that she failed to submit the necessary factual and medical evidence.

In a report dated October 29, 2007, Dr. Krasnick stated that appellant's symptoms had exacerbated and that she experienced pain going down stairs. He found moderate to severe patellofemoral crepitus and limited flexion.

In a letter dated November 14, 2007, the employing establishment stated that as appellant's recurrence was denied by the Office her entitlement to light duty was terminated. On November 19, 2007 it requested medical documentation of appellant's light-duty requirements. The employing establishment stated, "Until you furnish the requested information you will remain on annual/sick leave status."

Dr. Krasnick completed a report on November 26, 2007 and stated that the arthrosis in appellant's knees was progressing. He attributed this condition to walking in the performance of duty as well as aggravation by her accepted employment injuries. Dr. Krasnick found that

appellant was partial disabled and recommended bilateral total knee arthroplasties. On January 7, 2008 he stated that she was partially disabled due to tricompartmental arthrosis in both knees and provided work restrictions.

Appellant requested an oral hearing on January 7, 2008. By decision dated July 16, 2008, the Branch of Hearings and Review denied her request for an oral hearing as untimely.

Appellant's attorney requested compensation beginning November 19, 2007 based on the employing establishment's withdrawal of appellant's light-duty job assignment. On February 8, 2008 the employing establishment denied her request for light duty as she had not provided medical evidence.

In a report dated February 25, 2008, Dr. Craig L. Israelite, a Board-certified orthopedic surgeon, noted appellant's history of employment-related falls and found small effusions in both knees, loss of range of motion and pain and crepitus. He diagnosed moderately advanced osteoarthritis of both knees and recommended work restrictions.

Appellant filed a notice of recurrence of disability on March 10, 2008 alleging that she sustained a recurrence of total disability on November 19, 2007 when the employing establishment withdrew her light-duty position.² Dr. Krasnick examined her on May 30, 2008 and diagnosed end-stage arthrosis in both knees. He recommended joint replacement surgery.

Appellant, through her attorney, requested reconsideration on July 23, 2008. By decision dated October 20, 2008, the Office denied her claim for recurrence on July 13, 2007. Appellant's attorney requested reconsideration on March 16, 2009 and submitted an additional report from Dr. Krasnick. On February 19, 2009 Dr. Krasnick listed appellant's employment injuries and opined that she had sustained "significant direct anterior trauma to both knees...." He concluded that she had permanent disability and was a candidate for knee replacement surgery.

By decision dated May 1, 2009, the Office denied modification of its prior decisions finding that Dr. Krasnick's reports were not sufficiently rationalized to meet appellant's burden of proof.

On appeal, appellant's attorney asserts that the medical evidence submitted is sufficient to meet appellant's burden of establishing a recurrence of disability on July 13, 2007.

LEGAL PRECEDENT

A recurrence of disability is the 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 which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or

² The Office has not issued a final decision on this issue in this claim. Therefore, the Board may not address it on this appeal. 20 C.F.R. § 501.2(c). The Board has issued a companion case, Docket No. 10-960.

her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³ When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden of establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁴

ANALYSIS

Appellant alleged that she sustained a recurrence of disability on July 13, 2007. In support of her claim for a change in the nature and extent of her injury-related condition, she submitted a series of reports from Dr. Krasnick, a Board-certified orthopedic surgeon. On July 19, 2007 Dr. Krasnick found effusions, varus deformities, severe crepitus and limited flexion in both knees. He found that x-rays demonstrated progression of recurrent tricompartmental arthrosis with narrowing in the medial compartments and progressive chondral calcinosis in the lateral compartments. Dr. Krasnick opined that appellant was a candidate for total knee arthroplasties. In this report he supported that her condition had changed as he found progression of her recurrent tricompartmental arthrosis demonstrated on x-ray. Dr. Krasnick did not however offer any detailed findings explaining the nature of the progression and did not find that appellant was totally disabled. Therefore, this report is not sufficient to meet her burden of proof.

In reports dated October 29 and November 26, 2007, Dr. Krasnick stated that appellant's symptoms had exacerbated and that she experienced pain going down stairs and stated that the arthrosis in her knees was progressing. He attributed this condition to walking in the performance of duty as well as aggravation by her accepted employment injuries. Dr. Krasnick found that appellant was partially disabled and recommended bilateral total knee arthroplasties. He attributed the change in her condition to an additional employment duty, walking, suggesting that a new occupational disease claim might be appropriate. Again Dr. Krasnick did not explain the nature and extent of the change in appellant's condition, did not offer medical reasoning relating this change to her employment injuries and did not find that she was totally disabled due to this condition. For these reasons these reports are not sufficient to meet appellant's burden of proof.

On January 7, May 20, 2008 and February 19, 2009 Dr. Krasnick repeated his conclusion that appellant required joint replacement surgery and diagnosed end-stage arthrosis in both knees. He concluded that she had permanent disability. These reports failed to provide the necessary medical opinion that appellant had sustained a change in the nature and extent of her injury-related condition on July 13, 2007 as alleged. Dr. Krasnick merely repeated his findings

³ 20 C.F.R. § 10.5(x).

⁴ *Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

and recommendation and did not offer any reasoning in support of his opinion. As his reports were not well rationalized, he failed to establish that appellant sustained a recurrence of disability on July 13, 2007 as alleged.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to meet her burden of proof in establishing a recurrence of disability on July 13, 2007 and that the Office therefore properly denied her claim.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board