

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH BOLDEN and U.S. POSTAL SERVICE,
NORTH SUBURBAN POSTAL FACILITY,
North Suburban, Ill.

*Docket No. 96-1424; Submitted on the Record;
Issued June 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability on and after March 28, 1986 causally related to her accepted employment-related condition.

On September 4, 1984 appellant, then a 57-year-old postal clerk, filed a claim for pain in her right leg, which was accepted by the Office of Workers' Compensation Programs as hamstring tendinitis of the right knee. Appellant was paid compensation benefits for intermittent periods of wage loss from September 6, 1984 through April 22, 1985 and returned to work on a light-duty basis.

In a medical report dated November 29, 1984, Dr. William R. Dobozi, a Board-certified orthopedic surgeon, noted first treating appellant on September 11, 1984 for complaints of pain in the right posterolateral aspect of the knee, especially when leaning on the right side at work. Dr. Dobozi described his clinical findings and diagnosed a biceps or hamstring tendinitis of the right knee.

Dr. Efren C. Adaya, a general practitioner and appellant's treating physician, for her knee condition, periodically submitted forms and notes indicating that appellant was capable of only light duty as a result of tendinitis in the right knee.

On June 6, 1985 Dr. Michael R. Treister, a Board-certified orthopedic surgeon, examined appellant for a second opinion evaluation. Examination findings were "benign." The x-rays showed a "minimal degree of degenerative osteoarthritis on the inferior aspect of the patella." Dr. Treister opined that, clinically, appellant had tendinitis of the lateral hamstring tendons, which "quite likely" came on as a result of her work. Dr. Treister opined that he would "ultimately [expect] this area to feel much better."

On January 13, 1986 Dr. Adaya submitted a note stating that “the tendinitis in [appellant’s] right knee has already improved and she can go back to her regular duty.”

On March 28, 1986 appellant voluntarily resigned her employment with the employing establishment citing personal reasons.¹

In a medical report dated July 15, 1987, Dr. Migdonia Del Los Santos, stated that appellant had been under treatment for emotional instability since March 1986 and may not be able to return to work anytime.

In a December 11, 1987 fitness-for-duty report, an employing establishment medical officer reviewed appellant’s medical records and noted her past history of a right knee condition, which had been aggravated by performing the duties of a postal clerk. The medical officer described his clinical findings, which included an x-ray reading of the right knee, which showed “degenerative joint disease medial compartment right knee and patellofemoral articulation.” The medical officer diagnosed arthritis in the right knee and opined that this would make appellant unsuitable for reinstatement in her former position.

In a medical note dated January 28, 1988, Dr. N.J. Dave, a Board-certified radiologist, wrote that appellant had right knee pains a few months ago, but that she presently felt fine with no pains or swelling. Right knee x-rays were negative.

In a medical note dated February 12, 1994, Dr. Irving Starkman, a Board-certified orthopedic surgeon, wrote that appellant had right knee pain since 1984 which was job related. On his February 7, 1994 examination, Dr. Starkman found a right lateral hamstring tendinitis, a right patella femoral arthritis, a right medial joint space narrowing and arthritis, a bilateral genu varus. Dr. Starkman stated that all these findings were related to and caused by appellant’s job sitting at a rest bar and sorting mail. He further found that appellant has a total body permanent disability of 35 percent. In a subsequent note dated July 1, 1994, Dr. Starkman reiterated his previous clinical diagnosis and opined that the above tendinitis and arthritis were directly due to appellant’s previous employment. Dr. Starkman further opined that this was a permanent condition and was unlikely to resolve without surgical intervention. He stated that appellant had a 75 percent permanent disability of the right leg.

In a notice of recurrence of disability filed May 13, 1994, appellant alleged that she sustained a recurrence of disability commencing on March 28, 1986 which she attributed to her 1984 employment-related right knee condition.

In a decision issued July 15, 1994, the Office denied appellant’s claim of recurrence of disability on the grounds that the evidence of record failed to demonstrate a causal relationship

¹ By letter dated February 3, 1987, appellant requested reinstatement with the employing establishment. The employing establishment assented so long as appellant dropped the discrimination complaint filed against them and was able to pass a physical examination. Appellant was not rehired when an employing establishment physician found that she was not capable of performing her job. Appellant worked in a part-time position as an elderly group aid from 1989 to 1990. Appellant has not been employed since 1990.

between any condition the appellant had suffered since March 1986 and the previously accepted right knee condition.

By letter dated August 1, 1994, appellant requested an oral hearing before an Office hearing representative.

On January 23, 1995 a hearing was held before an Office hearing representative at which time appellant testified. Appellant also submitted additional medical reports.

In a medical report dated February 14, 1995, Dr. William G. Raasch, an orthopedic surgeon, stated that he examined both of appellant's knees on January 3, 1995. He noted that appellant stated she had long-standing discomfort since 1984 and had been told that she had some tendinitis and arthritis. Dr. Raasch wrote that appellant's physical exam is consistent with severe degenerative arthritis in both knees. He opined that "this is all consistent with the same pain she has been experiencing these last 10 to 11 years. I feel this is a continuation of her original problem and should be treated as such."

In a progress note dated February 15, 1995, Dr. Mysore S. Shivaram, a Board-certified internist, wrote that appellant was seen for the purpose of updating her disability, with reference to her right knee. He noted the history of injury, appellant's subjective complaints and outlined his clinical findings of appellant's right knee. Dr. Shivaram opined that the appellant's continued symptoms along with the continued discomfort she had been experiencing for the last 10 years in her right knee, were consistent with biceps and hamstring tendinitis of the right knee and mild degenerative arthritis of the right knee.

In a decision dated April 10, 1995, the Office hearing representative affirmed the Office's July 15, 1994 decision, on the grounds that the evidence of record failed to establish that appellant had any disabling condition affecting her right knee since March 28, 1986, which was causally related to her previously accepted condition or any factors of her federal employment.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on and after March 28, 1986 causally related to her accepted employment-related right knee condition.

In this case, the Office accepted that appellant sustained tendinitis of her right knee on September 4, 1984. After receiving compensation benefits, she returned to work on a light-duty basis until she voluntarily resigned on March 28, 1986. On May 13, 1994 appellant filed a notice of recurrence of disability beginning March 28, 1986 attributable to her September 4, 1984 knee condition.

When an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable and probative evidence that the recurrence of the disabling condition, for which he seeks compensation was causally related to the accepted employment injury.² As part of this burden, the employee must

² *Jessie Johnson, Jr.*, 39 ECAB 945 (1988).

submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related injury.³ Causal relationship is medical in nature and, generally, can be established only by medical evidence.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

In a recurrence of disability situation, generally no event other than the previous injury accounts for the disability.⁶ A recurrence of disability is a spontaneous return to disability due to the original employment injury with no intervening causes involved.⁷ In the instant case, appellant has not submitted rationalized medical opinion evidence establishing that her alleged disability beginning March 28, 1986, was causally related to her September 4, 1984 accepted employment-related knee condition.

The Board notes that although appellant is claiming disability beginning March 28, 1986, the medical evidence of record submitted around the date the claimed disability began contradicts her assertion. In a January 13, 1986 report, Dr. Adaya indicated appellant's condition had improved so that she could go back to her regular duty. It appears that appellant worked light duty until she voluntarily resigned on March 28, 1986. In a January 28, 1988 treatment note, Dr. Dave indicated that appellant suffered from right knee pains a few months prior, but now felt fine. He did not indicate that she had any condition or disability due to her employment.

Although a December 11, 1987 medical report, from an employing establishment physician, indicates that appellant had arthritis in her right knee the Board notes that the Office accepted the September 4, 1984 employment injury for hamstring tendinitis of the right knee only. Inasmuch as arthritis of the right knee constitutes a new condition, it is appellant's burden to establish causal relationship for conditions not accepted by the Office.⁸ Furthermore, the employing establishment physician did not indicate that appellant had any condition that was caused or aggravated by her accepted employment injury.

The Board also notes that, although appellant testified that she had continuing problems with her knee since 1984, the medical evidence submitted by appellant fails to establish definite bridging symptoms between the September 4, 1984 employment injury and her claimed recurrence of disability beginning March 28, 1986.⁹ The record does not reflect that appellant

³ *Id.*

⁴ *Armando Colon*, 41 ECAB 563, 565 (1990).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁶ *See William R. Lance*, 18 ECAB 422, 428 (1967).

⁷ *Stephen J. Perkins*, 40 ECAB 1193 (1989).

⁸ *Charlene R. Herrera*, 44 ECAB 361, 370 (1993).

⁹ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge*, 44 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

sought medical treatment regarding her right knee from January 28, 1988 until February 7, 1994. Following Dr. Dave's January 28, 1988 report, where he indicated that appellant felt fine the next medical evidence of record mentioning appellant's right knee is Dr. Starkman's February 12, 1994 medical report. Appellant submitted no contemporaneous medical evidence documenting any symptoms or treatment during the interim period.

Dr. Starkman diagnosed various ailments with appellant's right knee and stated that they were related to and caused by her previous job. Dr. Starkman did not explain with medical rationale, however, how the knee conditions he found were causally related to appellant's September 1984 accepted knee condition. As noted above, medical evidence is of diminished probative value where medical rationale is lacking.¹⁰ Dr. Starkman provides no basis for his opinion, which was rendered almost eight years after appellant resigned from the employing establishment. Moreover, Dr. Starkman's opinion does not appear to be based on a complete and accurate history¹¹ as there is no indication that he was aware of the original diagnosed condition, that appellant's treating physician, Dr. Adaya, found appellant fit to return to her regular duties in January 1986 and that appellant had stopped working for the employing establishment for personal reasons in March 1986. Therefore, Dr. Starkman's report is of little probative value in establishing a causal relationship to support appellant's claim of a recurrence of disability causally related to her 1984 employment injury.

In his February 14, 1995 medical report, Dr. Raasch indicated that appellant's physical examination was consistent with severe degenerative arthritis in both knees. Dr. Raasch opined that appellant had had this same condition for the past 10 to 11 years and that this is a continuation of her original problem. However, Dr. Raasch did not specifically address whether appellant's condition was caused or aggravated by the accepted hamstring tendinitis. To the extent that Dr. Raasch's report may be read as supporting causal relationship, it is of little probative value in establishing causal relationship as Dr. Raasch did not provide an explanation with medical rationale or base his opinion on a complete and accurate medical and factual history.¹²

Dr. Shivaram, in his progress note of February 15, 1995, indicated that appellant's symptoms and discomfort she had been experiencing over the last 10 years in her right knee, were consistent with tendinitis and arthritis. Dr. Raasch as well as Dr. Shivaram did not specifically address whether appellant's current condition was caused or aggravated by her accepted condition. Thus, his opinion is insufficient to establish that appellant had any work-related disability beginning on or after March 28, 1996 causally related to her accepted injury.

As appellant has not submitted the necessary rationalized medical evidence to establish a recurrence of disability due to the September 4, 1984 accepted employment injury, appellant has not met her burden of proof in this case.

¹⁰ See *Stockert*, *supra* note 5.

¹¹ See *Armando Colon*, *supra* note 4; see 20 C.F.R. § 10.110(a).

¹² See *Johnson*, *supra* note 2; *Stockert*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated April 10, 1995 is hereby affirmed.

Dated, Washington, D.C.
June 4, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member