

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY F. O'BRIEN, JR. and U.S. POSTAL SERVICE,
POST OFFICE, West Palm Beach, Fla.

*Docket No. 97-270; Submitted on the Record;
Issued May 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained disability causally related to his April 21, 1992 employment injury.

On April 21, 1992 appellant, then a 37-year-old clerk, sustained an aggravation of a left patellar subluxation in the performance of duty while bending to pick up mail from a hamper.

In clinical notes dated June 17, 1992, Dr. W.J. Gogan, an orthopedic surgeon, related that appellant could return to full duty.

In a form report dated August 21, 1992, Dr. Richard L. Weiner, a Board-certified orthopedic surgeon, diagnosed degenerative arthritis of the knee and obesity and checked the block marked "yes" indicating that the knee condition was caused or aggravated by his employment.

In a disability certificate dated October 6, 1992, Dr. Weiner indicated that appellant had been unable to work since October 3, 1992 due to exacerbation of left knee synovitis but could return to work on October 8, 1992.

By letter dated March 21, 1994, Dr. Weiner advised the Office that appellant had never returned to his pre-April 21, 1992 injury condition regarding his left knee and he stated his opinion that appellant needed a total knee replacement. He stated that appellant continued to have severe symptoms with swelling and pain but continued to work to the best of his ability with physical restrictions. He noted that appellant was making an effort to lose weight to make himself a better candidate for left total knee replacement.

By letter dated September 23, 1994, the Office referred appellant, along with copies of medical records and a statement of accepted facts, to Dr. Bruce M. Fishbane, a Board-certified orthopedic surgeon, for an examination and opinion as to whether appellant had any continuing

disability or medical condition causally related to his April 21, 1992 aggravation of a left patellar subluxation.

In a report dated October 17, 1994, Dr. Fishbane provided a history of appellant's condition and findings on examination. He stated that appellant had osteoarthritis in both knees and, although the osteoarthritis on the left clearly preexisted the 1992 employment injury, it appeared to have been provoked by a bending incident. Dr. Fishbane indicated that appellant could have experienced a lateral patellar subluxation but that he did not believe that this was a significant diagnosis in this situation. He stated his opinion that appellant's symptoms were permanent and that he would require a total knee replacement once he was able to lose sufficient weight to become an operative candidate. Dr. Fishbane stated: "I do not believe that this is work related, although his symptoms appeared to have been provoked while at work. [The] underlying cause is primarily his endogenous morbid obesity. It is difficult to attribute the etiology of his symptoms to a minimal bending event."

By letter dated June 4, 1996, the Office advised appellant that it found a conflict of medical opinion and that he would be examined by Dr. Jeffrey L. Kugler, a Board-certified orthopedic surgeon and an impartial medical specialist, in order to resolve the conflict in medical opinion between Dr. Weiner, appellant's physician, and Dr. Fishbane, the Office referral physician as to whether he had any remaining employment-related disability.

In a narrative report dated June 20, 1996, Dr. Kugler provided a history of appellant's condition and findings on examination. He indicated that appellant's weight, at 450 pounds, had caused considerable stress on his knees resulting in the formation of degenerative arthritis of both knees. Dr. Kugler stated his opinion that appellant's employment injury in April 1992 was not related to the severe pain appellant was experiencing in 1996. He stated:

"[Appellant's] current diagnosis is degenerative arthritis [of the] left knee. This is a permanent condition. It is unrelated to the incident of 1992.

"During the course of the incident of 1992, there was an aggravation of a preexisting degenerative condition. The expected time for resolution of an acute knee strain/patellar subluxation would be approximately four to six weeks of restricted of weightbearing, use of a knee sleeve, anti-inflammatory medication, physical therapy and rehabilitation.

"[Appellant] has returned to his baseline level of function since that incident of April 1992."

By decision dated July 29, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the weight of the medical evidence of record failed to establish that appellant had any continuing need for medical treatment or any disability causally related to his April 21, 1992 employment injury.

The Board finds that appellant has not sustained disability related to his April 21, 1992 employment injury.¹

In this case, appellant sustained an aggravation of a left patellar subluxation at work on April 21, 1992 in the performance of duty. In notes dated June 17, 1992, Dr. Gogan, an orthopedic surgeon, related that appellant could return to full duty. However, in a report dated March 21, 1994, appellant's attending Board-certified orthopedic surgeon, Dr. Weiner opined that appellant continued to have symptoms attributable to his April 21, 1992 employment-related left knee condition. In a report dated October 17, 1994, Dr. Fishbane, a Board-certified orthopedic surgeon and Office referral physician, examined appellant and stated his opinion that appellant's knee problems at that time were not related to the 1992 employment injury. In order to resolve the conflict in medical opinion, the Office referred appellant to Dr. Kugler, a Board-certified orthopedic surgeon and impartial medical specialist.²

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict in the medical opinion evidence, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

In his report dated June 20, 1996, Dr. Kugler provided a history of appellant's condition and findings on examination and indicated that appellant's weight of 450 pounds had caused considerable stress on his knees resulting in the formation of degenerative arthritis of both knees. He stated his opinion that appellant's employment injury in April 1992 was not related to the severe pain appellant was experiencing in 1996. Dr. Kugler stated:

“[Appellant's] current diagnosis is degenerative arthritis [of the] left knee. This is a permanent condition. It is unrelated to the incident of 1992.

“During the course of the incident of 1992, there was an aggravation of a preexisting degenerative condition. The expected time for resolution of an acute knee strain/patellar subluxation would be approximately four to six weeks....

“[Appellant] has returned to his baseline level of function since that incident of April 1992.”

The Board finds that the June 20, 1996 report of impartial medical specialist Dr. Kugler is based upon a complete and accurate factual background and is well rationalized and is therefore entitled to special weight regarding the issue as to whether appellant has disability causally related to the 1992 employment injury. His report establishes that appellant had no

¹ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

² Section 8123(a) of the Federal Employees' Compensation 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.” 5 U.S.C. § 8123(a).

³ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

remaining employment-related disability and therefore the Office properly found that appellant's aggravation of his preexisting condition was temporary and had ceased.

The decision of the Office of Workers' Compensation Programs dated July 29, 1996 is affirmed.

Dated, Washington, D.C.
May 12, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member