

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE H. BARKER and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 98-1683; Submitted on the Record;
Issued February 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability, commencing December 14, 1995, causally related to his accepted September 21, 1995 left knee strain.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he sustained a recurrence of disability, commencing December 14, 1995, causally related to his accepted September 21, 1995 left knee strain.

On September 21, 1995 appellant, then a 47-year-old mailhandler, filed a traumatic injury claim for a left knee injury, which the Office of Workers' Compensation Programs accepted on October 16, 1995 for left knee strain. On January 12, 1996 appellant filed a claim for recurrence of disability.¹ Appellant alleged that he sustained a recurrence of disability commencing December 14, 1995 causally related to his accepted September 21, 1995 employment-related injury. The Office denied appellant's claim on March 6, 1996 finding that the evidence of record failed to establish a causal relationship between the injury of September 21, 1995 and the claimed recurrence of December 14, 1995. By letter dated March 13, 1996, appellant's representative requested a hearing before an Office hearing representative. By decision dated October 17, 1996, the hearing representative affirmed the March 6, 1996 decision, finding that the evidence of record failed to causally relate appellant's claimed recurrence of disability to the accepted September 21, 1995 injury. By letter dated December 6, 1996, appellant's representative requested reconsideration of the hearing representative's October 17, 1996 decision.

By _____ decision

¹ On December 30, 1995 appellant filed a notice of traumatic injury for the same period as the claimed recurrence. The claim was assigned A9-411260. The Office determined that the claim should be developed as a recurrence claim. Therefore, A9-411250 was deleted and the claim was adjudicated under A9-407014.

dated April 8, 1998, the Office, after a merit review,² denied appellant's claim finding that the evidence of record failed to causally relate appellant's claimed recurrence to the accepted September 21, 1995 injury.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was filed within the applicable time limitations of the Act.⁴ An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,⁵ that the injury was sustained while in the performance of duty,⁶ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁸

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.⁹

The medical evidence submitted in support of appellant's claim for recurrence of disability commencing December 14, 1995 consists of a December 14, 1995 medical certificate by Dr. Audley M. Mackel, a Board-certified orthopedic surgeon; a December 22, 1995 patient work excuse from St. Vincent Hospital; December 14, 1995 notes from St. Vincent Hospital; progress notes by Dr. Mackel dated July 3 and December 18, 1995 and February 1, 1996; a March 28, 1996 report by Dr. Mackel; an October 12, 1995 report of x-rays by Dr. Garron G. Weiker; and a workers' compensation medical questionnaire completed by Dr. Mackel on September 17, 1996.

² The Office noted that the evidence submitted did not address the relevant issue and was insufficient to warrant review. However, due to a delay in adjudicating appellant's request for reconsideration the Office conducted a merit review to protect appellant's appeal rights.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁶ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *Steven R. Piper*, 39 ECAB 312 (1987).

⁸ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Lourdes Davila*, 45 ECAB 139 (1993); *Louis G. Malloy*, 45 ECAB 613 (1994).

On the December 14, 1995 medical certificate, Dr. Mackel diagnosed internal derangement of the left knee and indicated appellant could return to work with restrictions on December 21, 1995. Dr. Mackel did not address the issue of causal relationship between appellant's diagnosed condition and the accepted September 21, 1995 left knee strain. Dr. Mackel's December 14, 1995 medical certificate is insufficient to establish appellant's recurrence of disability claim.

On the December 22, 1995 patient work excuse from St. Vincent Hospital from a doctor whose signature is illegible, diagnosed rule out torn meniscus and recommended working with restrictions and to see his private physician. The patient work excuse failed to provide a firm diagnosis, or to causally relate appellant's claimed recurrence of disability to his accepted September 21, 1995 left knee strain. Therefore, it is insufficient to establish appellant's recurrence of disability claim.

In December 14, 1995 notes from St. Vincent Hospital, a doctor whose signature is illegible stated that appellant stated that he injured his knee somehow at work. The doctor diagnosis ruled out torn meniscus and follow-up with Dr. Mackel. The notes failed to provide a firm diagnosis or to causally relate the claim recurrence of disability to the accepted September 21, 1995 left knee strain. The notes are insufficient to establish appellant's recurrence of disability claim.

In progress notes dated July 3, 1995, which predate the claimed recurrence of disability, Dr. Mackel stated that "[Appellant] was seen at the Cleveland Clinic approximately one year ago where he had arthroscopic debridement of the partial tear to his medial meniscus on the left knee. Dr. Mackel failed to provide a firm diagnosis and was unable to address a causal relationship between the claimed recurrence of disability and the accepted September 21, 1995 left knee strain, since the notes predate the claimed recurrence.

Dr. Mackel's December 18, 1995 and February 1, 1996 progress notes diagnosed "internal derangement left knee, rule out lateral meniscal tear." Neither addressed a causal relationship between the claimed recurrence of disability and the accepted September 21, 1995 left knee strain. The notes are insufficient to establish appellant's recurrence of disability claim.

In a March 28, 1996 report, Dr. Mackel indicated that he began seeing appellant on July 3, 1995 for degenerative joint disease of the right knee. He also indicated that between December 15 and December 21, 1995 he saw appellant for osteoarthritis of his right knee and complaint of pain about his left knee. Dr. Mackel noted that "[Appellant] is noted to have previous arthroscopic examination of the left knee and he has noted some aching over the past weekend with locking that subsequently resolved over the past three-day weekend." Dr. Mackel diagnosed internal derangement of the left knee. Dr. Mackel failed to address a causal relationship between the claimed recurrence of disability and the accepted September 21, 1995 left knee strain. Dr. Mackel's March 28, 1996 report is insufficient to establish appellant's recurrence of disability claim.

In October 12, 1995 notes, Dr. Weiker indicated that x-rays of appellant's left knee "appears to be essentially normal." Dr. Weiker's report predated the claimed recurrence of December 14, 1995 and, therefore, does not provide an opinion on a causal relationship between appellant's claimed recurrence of disability on December 14, 1995 to the accepted September 21,

1995 left knee strain. Dr. Weiker's notes are insufficient to establish appellant's recurrence of disability claim.

On a September 17, 1996 workers' compensation medical questionnaire, Dr. Mackel discussed appellant's right knee. Dr. Mackel failed to provide a diagnosis regarding appellant's left knee and failed to address a causal relationship between the claimed recurrence of disability and the accepted September 21, 1995 left knee strain. The medical questionnaire is insufficient to establish appellant's recurrence of disability claim.

By letter dated February 1, 1996, the Office advised appellant of the specific type of evidence needed to establish his recurrence of disability claim, specifically, a detailed narrative medical report, which discussed the medical connection between the claimed recurrence and the original September 21, 1995 injury; but such evidence was not submitted. The Board finds that appellant failed to meet his burden of proof.

In summary, none of the medical evidence submitted provided a rationalized medical opinion explaining how a claimed recurrence of disability commencing December 14, 1995 was causally related to appellant's accepted September 21, 1995 left knee strain. It should be pointed out that Dr. Mackel, in his December 18, 1995 report, diagnosed osteoarthritis of the right knee, internal derangement of the left knee and rule out meniscal tear. Dr. Mackel stated that he told appellant that "I believe he is over using this knee to compensate for his arthritic right knee." This statement suggest the current left knee condition is not causally related to the accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated April 8, 1998 is affirmed.

Dated, Washington, D.C.
February 16, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member