

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SELENA ANN SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Mount Clemens, MI

*Docket No. 98-1658; Submitted on the Record;
Issued March 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether appellant met her burden of proof to establish that her claimed left knee condition on and after September 13, 1994 is causally related to her November 23, 1992 employment-related left knee strain; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet her burden of proof to establish that her claimed left knee condition on and after September 13, 1994 is causally related to her November 23, 1992 employment injury.

When an employee claims a recurrence of disability causally related to an accepted employment-related injury, he or she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the claimed recurrence of disability is causally related to the accepted injury.¹ This burden includes the necessity of 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 supports that conclusion with sound medical rationale.² An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relationship.³

This case has previously been on appeal before the Board. By decision dated May 21, 1997, the Board affirmed a June 8, 1995 decision in which an Office hearing representative

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

affirmed an October 6, 1994 Office decision denying compensation benefits on and after September 13, 1994. The facts of this case are more fully set forth in the Board's May 21, 1997 decision and are herein incorporated by reference.⁴

Following the Board's May 21, 1997 decision, appellant, by letter dated July 24, 1997, requested reconsideration of the denial of her claim. By decision dated August 12, 1997, the Office denied modification of its June 8, 1995 decision. By decision dated September 5, 1997, the Office denied appellant's request for further merit review of her claim.

By letter dated September 6, 1997, appellant requested reconsideration of her claim and submitted additional evidence. By decision dated November 12, 1997, the Office denied modification of its August 12, 1997 decision.

By letter dated November 14, 1997, appellant requested reconsideration of the denial of her claim and submitted additional evidence. By decision dated January 7, 1998, the Office denied appellant's claim for compensation benefits on and after September 13, 1994.

By letter dated February 11, 1998, appellant requested reconsideration but submitted no new evidence or argument. By decision dated April 7, 1998, the Office denied appellant's reconsideration request.

In this case, the Office accepted that appellant sustained a left knee sprain in the performance of duty on November 23, 1992 and left knee surgery was authorized and performed on April 12, 1993.

In its May 21, 1997 decision, the Board noted that in two reports dated September 13, 1994, Dr. Sidney Goldman, appellant's attending orthopedic surgeon, stated that appellant had "fully improved," was "asymptomatic" as of August 1994 and that her examination on that date showed no pain, swelling, tenderness or erythema with full flexion and extension. The Board noted that Dr. Goldman stated that appellant had returned to her regular job activities without restriction, that he had discharged her from his care and that he did not indicate that she had any residuals from the accepted November 23, 1992 employment-related left knee sprain. The Board also noted in its May 21, 1997 decision that the arthroscopy performed by Dr. Goldman on April 12, 1993 did not reveal any observable intra-articular pathology according to his April 12, 1993 notes. Dr. Goldman's April 12, 1993 notes also stated that he could not document the exact nature of appellant's injury. The Board further noted in its May 21, 1997 decision that in a June 16, 1994 report Dr. Goldman stated that no pathology was found in arthroscopic examination except for a slight stretch injury to an anterior cruciate ligament.⁵

⁴ Docket No. 95-2482 (issued May 21, 1997). The Board notes that, as explained in its May 21, 1997 decision, the Office issued several decisions, in response to appellant's requests for reconsideration, subsequent to appellant's filing her first appeal with the Board on July 5, 1995. As those decisions were issued on the same issue pending before the Board, they were held by the Board to be null and void. In its May 21, 1997 decision, the Board was limited to a review of the evidence of record considered by the Office at the time of its June 8, 1995 decision.

⁵ The Board notes, however, that in the actual operative report for the April 12, 1993 arthroscopic surgery, Dr. Goldman indicated that the anterior cruciate ligament was normal.

In a report dated July 13, 1995, Dr. Goldman related that she was experiencing pain in her left knee. He stated that a magnetic resonance imaging (MRI) scan was abnormal, showing laxity of the anterior cruciate ligament and fluid in the knee. However, Dr. Goldman did not provide a definite diagnosis nor an explanation as to how appellant's condition or claimed disability in 1995 was causally related to the 1992 employment injury. Dr. Goldman did not explain how findings in 1995 which were not noted at the time of the arthroscopic surgery he performed in 1993 could be due to appellant's employment injury. Because he failed to provide sufficient medical rationale explaining how appellant's condition in 1995 was causally related to her 1992 employment injury, this report is not sufficient to establish that she was disabled on and after September 13, 1994 due to her 1992 employment injury.

In a report dated September 18, 1995, Dr. Goldman stated that appellant had a partial tear and laxity of the anterior cruciate ligament in her left knee and possible torn cartilage. He stated his opinion that her condition was causally related to her 1992 employment injury. Dr. Goldman stated:

"The fact that [appellant] had no symptoms prior to 1992 and was found to have abnormal hyperextension of the knee during examination under anesthesia and now has evidence of laxity of the anterior cruciate ligament on MRI, supports my impression that she did injure herself and has ongoing problems from that injury."

However, Dr. Goldman did not indicate any periods of disability and he failed to provide sufficient medical rationale explaining how appellant's condition in 1995 was causally related to her 1992 employment injury. Therefore, this report does not discharge appellant's burden of proof.

In a report dated March 26, 1996, Dr. Goldman related that he had reexamined appellant's left knee on that date and stated that her symptoms pointed to a possible torn medial meniscus. He stated:

"It is my opinion that [appellant's] current symptoms relate directly to the [1992 employment] injury when [she] slipped delivering the mail and badly twisted [her] left knee. [Appellant] has denied any subsequent injury and [has] had symptoms increasing since the time of [the] accident, despite a negative arthroscopic exam[ination] in 1993."

However, he provided insufficient medical rationale explaining how appellant's possible torn medial meniscus in 1995 was causally related to the 1992 injury. Such rationale is particularly important in light of the fact that he had determined in September 1994 that she had no residuals from the 1992 employment injury. Therefore, this report is not sufficient to establish any employment-related disability after September 13, 1994.

In a report dated September 30, 1997, Dr. Goldman noted that x-rays of appellant's left knee showed calcification at the femoral origin of the medial collateral ligament. He stated:

"This ... is her area of maximal tenderness and in reviewing my note of her first visit in March of 1993, this was also the area of maximal tenderness. At that time, however, there was no calcification....

"I think that [appellant] originally injured the femoral origin of her medial collateral ligament of the left knee. She has gone on to develop heterotopic calcification of the femoral origin of that ligament and this explains her ongoing medical symptoms.... Currently, she is disabled from returning to work.... There is no question in my mind that her ongoing left knee symptoms relate directly to her original injury of February 1993."

However, Dr. Goldman failed to provide sufficient medical rationale explaining why he believed that appellant's condition was causally related to the 1992 employment injury in light of the fact that he had determined in September 1994 that she had no residuals from that injury. Therefore, this report does not establish that appellant had any disability or medical condition on and after September 13, 1994 causally related to her 1992 employment injury.

In a report dated November 19, 1997, Dr. Goldman stated:

"[Appellant's] original and accepted diagnosis was knee strain. As you know, a strain is a ligamentous injury. With the passage of time, [appellant] has developed calcification at the femoral origin of her medial collateral ligament. This calcification is objective evidence of injury to the origin of the ligament, *i.e.*, the strained ligament....

"I continue to think that it is noteworthy that my first examination of [appellant] in March 1993 showed an area of maximal tenderness at the femoral origin of the medial collateral ligament. This is the exact and same area which has gone on to develop pathologic calcification."

However, Dr. Goldman provided insufficient rationale explaining why he felt that appellant's condition was causally related to her 1992 employment injury in light of his September 1994 reports in which he discharged her from care and did not indicate that she had any residuals due to her accepted 1992 injury and in light of the fact that he indicated at the time of the arthroscopic surgery in April 1993 that he could not document the exact nature of appellant's injury. Therefore, this report is not sufficient to establish that appellant had any medical condition or disability on and after September 13, 1994 causally related to her November 23, 1992 employment injury.

As appellant failed to provide medical evidence with a sufficiently rationalized explanation as to how her claimed disability on and after September 13, 1994 was causally related to her 1992 employment injury, the Office properly denied her claim.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or a fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶

With her February 11, 1998 request for reconsideration, appellant did not submit any evidence or legal argument not previously considered by the Office, nor did she show that the Office erroneously applied or interpreted a point of law. Therefore, the Office properly denied her reconsideration request.

The decisions of the Office dated April 7 and January 7, 1998 and November 12, September 5 and August 12, 1997 are affirmed.

Dated, Washington, D.C.
March 1, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁶ 20 C.F.R. § 10.138(b)(2).