

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY CALLAHAN and DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, Braintree, MA

*Docket No. 99-1170; Submitted on the Record;
Issued October 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained a recurrence of disability on May 27, 1998 causally related to the employment injury of August 9, 1995.

On August 14, 1995 appellant, then a 37-year-old safety and health clerk, filed a notice of traumatic injury and claim for compensation alleging that on August 9, 1995 she injured herself at work after slipping on steps and twisting her right knee. The Office of Workers' Compensation Programs accepted the claim for right knee tendinitis and paid compensation benefits. Appellant was off work until September 18, 1995, when she returned to part-time duty. Appellant gradually increased her hours and began working eight hours a day on December 6, 1995 with restrictions that she not fully squat or kneel.

In a report received by the Office, on September 11, 1995, Dr. Leonid Dabuzhsky, a Board-certified orthopedic surgeon, noted that appellant was seen for complaints of knee pain beginning approximately one week ago when she tried to prevent herself from falling down and twisted her knee. He indicated on physical examination that there was a moderate degree of effusion and opined that appellant might have a meniscus tear. Dr. Dabuzhsky, therefore, ordered a series of x-rays and a magnetic resonance imaging (MRI). He also prescribed a course of physical therapy.

An MRI performed on August 17, 1995 revealed no meniscus tear but there was noted to be evidence of chondromalacia.

In a September 13, 1995 report, Dr. Dabusky noted that appellant had been under his care for knee pain. He stated that, while in the course of her physical therapy for chondromalacia, appellant developed symptoms related to acute greater trochanteric bursitis.

Appellant next came under the care of Dr. Frank Bunch, a Board-certified general practitioner. Because Dr. Bunch was not convinced by appellant's earlier MRI that she did not

have a meniscus tear, he ordered a second MRI. The second MRI was performed on November 1, 1995 but was read as normal. Dr. Bunch diagnosed bursitis/tendinitis, which he attributed to appellant's work injury. He eventually approved appellant for full-time duty effective December 6, 1995 pursuant to an (OWCP-5) work evaluation form.

Appellant later filed a claim alleging that she sustained a recurrence of disability beginning April 9, 1996.

In a report dated May 1, 1996, Dr. Shantanu Basu, Board-certified surgeon, indicated that appellant had a history of pain in the popliteal fossa area since August 1995. He noted that appellant complained on that date of pain and swelling in the right ankle and tenderness in the right calf. Dr. Basu diagnosed bilateral ankle edema and referred appellant for bilateral femoral venous ultrasound with doppler analysis on May 9, 1996. The analysis demonstrated that appellant had incompetent valves but no evidence of deep venous thrombosis.

In an (OWCP-5c) work evaluation form dated May 29, 1996, Dr. Bunch indicated that appellant was under medical restrictions of limited kneeling, squatting and climbing that were to apply indefinitely.

In a decision dated June 27, 1996, the Office denied appellant's claim for a recurrence of disability on the grounds that causal relationship had not been established.

Appellant requested reconsideration on July 15, 1996.

In a July 25, 1997 decision, the Office denied modification following a merit review.

On June 29, 1998 appellant filed a notice of recurrence of disability alleging that she sustained a recurrence of disability on May 27, 1998. She indicated on the CA-2a claim form that she was kneeling at home in the yard when her right knee started to feel very tight upon bending her leg. Appellant was off work from June 22 to 24, 1998.

By letter dated July 15, 1998, the Office advised appellant of the factual and medical evidence necessary to establish her claim.

Appellant subsequently submitted a personal statement and copies of medical evidence that was already part of the record relevant to her original claim.¹

In a report dated August 28, 1997,² Dr Bunch, a general practitioner, noted that appellant was treated by him for a work injury on August 9, 1995 when she twisted her right knee and was diagnosed with pes anserinus bursitis of the right knee. He stated that appellant was seen for complaints of pain and swelling over the bursa consistent with bursitis. Dr. Bunch also stated, "my initial impression is that she has chronic pes bursitis due to an injury sustained on

¹ Appellant's evidence was previously considered by the Office in a decision denying reconsideration dated July 25, 1997.

² The Office mistakenly identified this report as being dated August 28, 1998.

August 9, 1995. She has developed a secondary right greater trochanteric bursitis from her antalgic gait.”

She next submitted medical records from South Shore Hospital dating from June 21 and 22, 1998, which indicated that appellant had right knee effusion and tiny spurs involving the medial joint consistent with “very early osteoarthritis.”³ Dr. Daniel A. Muse, Board-certified in emergency medicine, treated appellant at the hospital and noted that she complained of right knee pain, caused by kneeling that began three weeks prior to her visit.

In a report dated June 30, 1998, Dr. Bunch noted that appellant had an effusion related to kneeling on her right knee and that her knee had been recently drained of fluid. He noted appellant’s complaints of swelling and knee pain and physical findings including the possibility of a Baker’s Cyst. Dr. Bunch opined that appellant suffered from tendinitis and recommended an injection of cortisone.

In a decision dated January 4, 1999, the Office denied appellant’s claim for a recurrence of disability.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on May 27, 1998 causally related to the employment injury of August 9, 1995.⁴

Initially, the Board notes it only has jurisdiction over those final decisions issued by the Office within one year of appellant’s appeal. Since appellant filed her appeal on February 16, 1999, the only decision before the Board in this appeal is the January 4, 1999 Office decision denying appellant’s claim for a recurrence of disability beginning May 27, 1998.⁵

A person 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 reasoning.⁶ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant’s unsupported belief of causal relationship.⁷

³ This diagnosis was confirmed by an x-ray dated June 21, 1998 and not an MRI as referred by the Office.

⁴ Appellant submitted evidence subsequent to the Office’s January 4, 1999 decision. However, the Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c).

⁵ 20 C.F.R. §§ 501.3(d)(2).

⁶ *Carolyn F. Allen*, 47 ECAB 240 (1995); *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁷ *Ausberto Guzman*, 25 ECAB 362 (1974).

In the instant case, because appellant resumed full duty following her work injury effective December 6, 1995, she bears the burden of establishing a causal relationship between her alleged recurrence of disability and the original work-related injury. Appellant, however, has provided no medical evidence identifying or supporting any causal relationship between her condition on and after May 27, 1998 and her accepted employment injury of August 9, 1995.

The Board notes that the medical records pertaining to appellant's treatment with Dr. Muse for a right knee effusion on June 21, 1998 do not attribute appellant's condition to her prior work injury. In fact, those records clearly state that appellant's symptoms of right knee pain and swelling began after she was kneeling at home, apparently performing yard work. An x-ray taken at the time of appellant's hospital visit also confirmed that appellant suffers from early osteoarthritis, which is a possible explanation for appellant's ongoing knee complaints.

Additionally, the only medical report of record addressing causation is a report from Dr. Bunch predating appellant's alleged recurrence of disability. In his August 28, 1997 report, he stated that appellant's persistent pain and swelling was consistent with bursitis and that appellant had developed bursitis secondary to her work injury of August 9, 1995. The Board notes that Dr. Bunch's opinion is not sufficiently rationalized to carry appellant's burden of proof since he offers no explanation how or why appellant developed bursitis following her August 9, 1995 work injury. Dr. Bunch also specifically failed to provide any opinion that appellant sustained a recurrence of disability on or after May 27, 1998 causally related to her prior work injury.

Because appellant has not submitted, as requested by the Office, a detailed medical report supported by medical reasoning from her physician, which explains the causal relationship between her claimed recurrence of disability and her accepted employment injury, she has not satisfied her burden of proof. Consequently, the Board finds that the Office properly denied appellant's claim for recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated January 4, 1999 is hereby affirmed.

Dated, Washington, DC
October 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member