

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL J. CRACE and U.S. POSTAL SERVICE,  
POST OFFICE, St. Paul, MN

*Docket No. 99-2073; Submitted on the Record;  
Issued October 25, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly rescinded its acceptance of appellant's claim of a recurrence of disability on February 23 and May 10, 1997 as being consequential injuries to the January 8, 1992 accepted employment injury.

The Board finds that the Office improperly rescinded appellant's acceptance of his claimed consequential injuries of February 23 and May 10, 1997 as the result of an independent intervening cause.<sup>1</sup>

In the instant claim, the Office accepted that appellant sustained a right knee strain due to his federal employment on January 8, 1992. The claim was later expanded to include chondromalacia of the right patella, reparative arthroscopy on January 25, 1994 with medial and anterior tibial tubercle shift screw removal on May 13, 1994 and a patellectomy on December 4, 1996. Appellant was paid appropriate compensation for all time periods. The record reflects that appellant continued on limited-duty work.

On February 23 and May 10, 1997 appellant suffered nonwork-related injuries for which he filed claims for consequential injuries as being causally related to the accepted employment injury of January 8, 1992. On April 18, 1997 the Office accepted the claims as a consequential injury. By decision dated June 16, 1997, the Office rescinded acceptance of the claimed consequential injuries of February 23 and May 10, 1997. The Office noted that a statement was never obtained from appellant regarding exactly how the two nonwork-related injuries occurred and, thus, the claim was erroneously accepted. The Office stated that, although appellant's physician and the Office medical adviser have connected the consequential injuries that resulted from the February 23, 1997 fall to the work condition, neither have shown that it was the work injury that caused appellant to fall. The Office further reasoned that the contemporaneous statement from appellant to his physician regarding the history of the February and May 1997

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<sup>1</sup> In light of the outcome of this case, the second issue before the Board is rendered moot.

incident did not claim that the accepted work injury caused the fall. By decision dated July 23, 1998, an Office hearing representative affirmed the rescission of the prior acceptance of appellant's consequential injuries on the basis that the factual and medical evidence of record failed to support that the injuries of February 23 and May 10, 1997 incurred as a direct and natural consequence of the prior employment injury of January 8, 1992. In a February 3, 1999 decision, the Office denied appellant's request for modification finding that the evidence presented was of a repetitive nature and of no probative value.<sup>2</sup>

In order to rescind prior acceptance of a claim, the Office must establish that its prior acceptance was erroneous through new or different evidence.<sup>3</sup>

In *Daniel E. Phillips*,<sup>4</sup> the Board held that, in order to rescind its prior acceptance of a claim, the Office "must establish that its prior acceptance was erroneous through new or different evidence and that it is not merely second guessing the initial set of adjudicating officials."<sup>5</sup> In *Roseanna Brennan*,<sup>6</sup> the Board indicated that the Office was obliged to introduce "new evidence, legal arguments and rationale, justify its rescission" of the prior acceptance of a claim.<sup>7</sup> More recently, in *Beth A. Quimby*,<sup>8</sup> the Board stated that, in order "to justify a rescission of acceptance of a claim, the Office must show that it based its decision on new evidence, legal argument and/or rationale."

In this case, appellant underwent a patellectomy for an accepted work-related condition approximately 10 weeks before his right patellar tendon tear on February 23, 1997 and the subsequent retearing of his patellar tendon on May 10, 1997. The relevant medical evidence in this case before the Office at the time of the acceptance of the February 23 and May 10, 1997 injuries as being consequential consisted of treatment notes from appellant's treating physician, Dr. Robert Hartman, a Board-certified orthopedic surgeon, a February 24, 1997 magnetic resonance imaging (MRI) scan and the February 26, 1997 operative report of the repair of appellant's ruptured quadriceps tendon. The history of appellant's prior surgery including patellectomy on December 4, 1996 was noted along with the notation that on February 23, 1997 appellant had slipped and fell at church sustaining a hyperflexion injury to his right knee. In a note dated April 3, 1997, the claims examiner noted that appellant's slip and fall at church resulted in repair of the right quadriceps mechanism on February 26, 1997. In a report dated

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<sup>2</sup> In a decision dated November 2, 1998, the Office awarded appellant a schedule award for a 30 percent permanent impairment of the right lower extremity the period May 5, 1998 through December 30, 1999. Inasmuch as appellant's representative does not contest the amount of the schedule award on appeal, the Board will not address this issue.

<sup>3</sup> *Alphonso Walker*, 42 ECAB 129 (1990); see also *Laura J. Womack*, 42 ECAB 528 (1991).

<sup>4</sup> 40 ECAB 1111, 1118 (1989), *petition for recon. denied*, 41 ECAB 201 (1989).

<sup>5</sup> *Id.* at 1117-18 (1989).

<sup>6</sup> 41 ECAB 92 (1989), *petition for recon. denied*, 41 ECAB 371 (1990).

<sup>7</sup> *Id.* at 92, 96 (1989).

<sup>8</sup> 41 ECAB 683, 688 (1990).

April 16, 1997, the Office medical adviser stated that, although appellant's mechanism of injury was unusual for a quadriceps rupture, it was probable that the injury was not merely coincidentally related to the surgery done on that same extensor mechanism less than three months earlier. The medical adviser stated that the fall may have been caused by a weakened extensor mechanism, thus causing the rupture, or the compromised extensor mechanism (from the patellectomy) may have failed first, causing the fall. Based on the medical adviser's opinion, the Office accepted the February 23, 1997 injury as consequential. The Office then predicated its June 16, 1997 rescission of acceptance based on appellant's May 21, 1997 statement regarding how the two nonwork-related incidents occurred and the fact that the accepted work-related condition did not cause the February 23, 1997 fall. In his May 21, 1997 statement, appellant stated that on February 23, 1997 he was walking to church from the parking lot when about 10 feet down the sidewalk he slipped on some ice. Appellant stated that his left foot came out from under him and he fell and landed on his back with his right knee bent. Appellant further related that on May 10, 1997 he was visiting a friend in Chicago and, as he was stepping off a curb, his right foot landed on a ramp used by handicap people, his right knee buckled and he fell.

The Office does not meet its burden of proof to rescind an acceptance by showing its acceptance may have been erroneous. Based upon new or different evidence, the Office must establish that it is "not merely second guessing the initial set of adjudicating officials."<sup>9</sup> It has not done so in this case. In his April 16, 1997 report, the Office medical adviser supported that appellant's February 23, 1997 slip and fall as being consequential to his work-related injury by theorizing the possibilities of how the resulting injury could have happened based on appellant's compromised extensor mechanism, which resulted from the work-related patellectomy. Although the Office tried to justify its rescission of acceptance based upon new factual evidence that appellant first slipped with his left foot and then fell, it failed to produce any evidence to dispute the Office medical adviser's medical finding that appellant's compromised extensor mechanism from the work-related patellectomy played a role in causing the fall. The record reflects that after the Office obtained appellant's statements regarding the facts of the events of February 23 and May 10, 1997, in a report dated May 31, 1997, the same Office medical adviser stated in a report dated May 31, 1997 that both events were consequential injuries to the treatment of appellant's original work-related injury. The medical adviser stated that the previous patellectomy, done as treatment for a work-related condition, weakened the knee extensor mechanism considerably. Therefore, the patellar tendon rupture, which subsequently occurred in February 1997, was indeed probably a consequence of the prior treatment of his work-related condition. The recurrent rupture (May 10, 1997), caused by a seemingly benign mechanism, is also "probably related to the relative weakness of the extensor mechanism following patellectomy and subsequent consequential patellar tendon rupture." Accordingly, as there is no contradicting medical evidence of record at the time of the Office's rescission to dispute the weakened knee extensor mechanism caused by appellant's accepted work injury, the Board, therefore, finds that the Office did not meet its burden of proof to rescind its acceptance of appellant's claim.

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<sup>9</sup> See *Daniel E. Phillips, supra* note 4.

Furthermore, it is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.<sup>10</sup>

Once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause." If a member weakened by an employment injury, contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."<sup>11</sup>

The Board finds that the triggering episode for appellant's recurrence of disability on February 23, 1997 was when his left foot slipped on ice while walking to church and appellant sustained a patella tendon rupture. Appellant reruptured his patella tendon on May 10, 1997 when he was stepping off a curb and his right foot hit a handicap ramp causing him to fall. In support of his claim, appellant submitted several reports. In a report dated January 13, 1998, Dr. Elizabeth A. Arendt, a Board-certified orthopedic surgeon, noted that chronic concerns for appellant continued to be the inability to gain any appreciable quadricep strength and his tendency for falls. In a July 28, 1997 report and various reports thereafter, Dr. Arendt opined that the re-tear of the quadricep mechanism in May 1997 was through the site of the previous tear in February 1997. Additionally, a quadricep tear or rupture is a known complication following a patellectomy. Since the patellectomy was secondary to a workers' compensation injury, Dr. Arendt opined that all complications from that surgery fell within the realm of a compensable injury.

Given the circumstances of the February 23 and May 10, 1997 injuries, the Board finds that appellant's disability was the result of the natural consequence or progression of his work-related patella surgery from which he was recovering from. Applying the principles as noted above, the triggering episode for the February 23, 1997 injury was walking and slipping on ice and the triggering episode for the May 10, 1997 injury was stepping off a curb. Given the circumstances of the two nonwork-related events, the Board finds that appellant's disability was the result of the natural consequence or progression of his work-related patellectomy. There is no evidence of record to attribute the cause of either injury to appellant's own intentional conduct or the result of an unreasonable activity given appellant's knowledge of his knee condition.

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<sup>10</sup> See *Carolyn King Palermo (Travis Palermo)*, 45 ECAB 308 (1994).

<sup>11</sup> *Id.*

The decisions of the Office of Workers' Compensation Programs dated February 3, 1999 and July 23, 1998 are hereby reversed.

Dated, Washington, DC  
October 25, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member