

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDRICK BASS and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Pensacola, FL

*Docket No. 01-998; Submitted on the Record;
Issued December 28, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing more than a 15 percent permanent impairment of the left lower extremity, for which he received a schedule award; and (2) whether appellant sustained a recurrence of disability commencing April 5, 2000 causally related to his March 22, 1989 employment injury.

This case is on appeal before the Board for the second time.¹ Previously, the Board remanded the case for the Office of Workers' Compensation Programs to develop the record further and redetermine the extent of impairment of appellant's left leg. The facts and history of the case as set forth in the Board's November 13, 1998 decision are incorporated herein.

Following further development, on May 6, 1999 the Office awarded appellant an additional schedule award for a one percent permanent impairment to appellant's left lower extremity. This equated to a total award of 15 percent permanent impairment.

On September 28, 2000 appellant filed a Form CA-2a, notice of recurrence, for an April 5, 2000 seizure due to a brain tumor. Appellant asserted that he suffered seizures both prior to and after his tumor was surgically removed. Appellant stated that, during the seizures, his legs would shake and flap uncontrollably and he would injure both of his knees and feet in the process. Appellant stated that his left knee went out on June 19, 2000.

On December 10, 2000 appellant filed a Form CA-7 claim for compensation for an increased schedule award. Appellant had earlier advised the Office that the basis for an increased schedule award was that he had reinjured his knee during a seizure. Appellant advised he had recently undergone brain surgery.

¹ Docket No. 96-566 (issued November 13, 1998).

By letter dated December 20, 2000, the Office asked Dr. Andrew G. Gygi, appellant's treating Board-certified orthopedic surgeon, whether the seizure in which appellant banged his left knee worsened his work-related injury. Dr. Gygi was also asked to opine whether there was any additional impairment to appellant's left knee prior to his seizures.

In his October 25, 2000 examination notes, Dr. Gygi noted that appellant had brain surgery for removal of a benign tumor since he was last examined. Appellant advised that he has been having seizures and that he has pain in both of his knees. He has been walking with a cane since his neurosurgery. Appellant did not complain of radiating pain but indicated that the toes on his right foot have been paralyzed since his tumor. The examination revealed appellant walking fairly well with a cane, but with a somewhat spastic gait, particularly on the right. He was also somewhat unsteady on his feet. Range of motion of both knees were full. There was no instability. There was no crepitus. There was no calf tenderness or swelling. Severe weakness of the toes on the right foot was present in both dorsiflexion and plantar flexion, with only fair dorsiflexion of the foot. Motor function on the left was normal. X-rays of the knees revealed modest arthritic changes. Dr. Gygi opined that appellant's knees should not keep him from working, but because of appellant's paralysis and unsteady gait, he was unable to work at this time.

In a November 3, 2000 letter, Dr. Gygi advised that appellant's problems were directly related to his injury dating back to February 1989, but that appellant was not working because of his brain tumor removal. He further stated that, if appellant's only problems were his knees, appellant could work in a sedentary environment with no extended standing, walking, or carrying and no squatting, climbing or stooping. Dr. Gygi opined that appellant's knee problems were permanent and that his previously estimated impairment rating was accurate.

In a January 8, 2001 letter, Dr. Gygi opined that appellant's seizures did not materially affect his work-related knee injury. Dr. Gygi noted that appellant's knees seem to get worse as the years go by. He further opined that appellant did not have any additional permanent impairment.

By decision dated January 30, 2001, the Office rejected appellant's claim for an additional schedule award and also found that appellant did not sustain a recurrence of disability as a result of his seizures.

The Board finds that appellant has not established that he has more than a 15 percent permanent impairment of his left lower extremity.

The schedule award provisions of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. The Office has

² 5 U.S.C. § 8107.

adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* by regulation as the appropriate standard for evaluating schedule losses.³

In this case, the Office accepted the conditions of a left knee strain, torn meniscus and chondromalacia patellae as related to factors of appellant's employment. Following seizures resulting from a brain tumor and the resultant surgery, appellant requested an increased schedule award.

The reports of Dr. Gygi represent the weight of probative medical evidence regarding appellant's permanent impairment. Dr. Gygi is Board-certified in orthopedic surgery and is appellant's treating physician. He noted that appellant's knee examination was essentially normal. X-ray revealed modest arthritic changes in both knees. Although he stated in his November 3, 2000 letter that appellant's post-traumatic arthritis was related to his work-related injury, Dr. Gygi opined that the previous impairment rating was accurate. After reviewing appellant's medical record, Dr. Gygi advised in his January 8, 2001 letter, that appellant did not have any additional permanent impairment. He further stated that appellant's seizures had no material effect on appellant's work-related knee injury.

The weight of the medical evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion.⁴ Medical conclusions unsupported by rationale are of diminished probative value.⁵

Dr. Gygi reviewed all of appellant's medical records, was aware of appellant's seizures and subsequent removal of the brain tumor and opined that the changes in appellant's knees were not considered severe enough to be ratable above previous impairment ratings. The Board finds that the weight of the medical opinion evidence regarding the extent of appellant's permanent impairment and entitlement to an additional schedule award lies with the opinion of Dr. Gygi.

The Board further finds that appellant has not met his burden of proof in establishing a recurrence of disability causally related to his work-related injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show

³ 20 C.F.R. § 10.404 (1999).

⁴ *Anna C. Leanza*, 48 ECAB 115 (1996).

⁵ *Vicky L. Hannis*, 48 ECAB 538 (1997); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁶

In this case, appellant did not establish that the nature and extent of his light-duty requirements changed and he has not presented any rationalized medical evidence showing that his injury-related condition changed. The only medical reports of record are from Dr. Gygi, appellant's treating orthopedic physician. He advised that, if appellant's only problems were his knees, he would be able to work in a sedentary environment with restrictions. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.⁷ Accordingly, a change in appellant's ability to work due to the surgical removal of a brain tumor is not a recurrence of disability. As previously discussed, Dr. Gygi did not find any changes considered ratable with regards to appellant's knee. Dr. Gygi's opinion, therefore, is insufficient to establish appellant's claim.

The January 30, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 28, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).