U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN MUNOZ and DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, Tex.

Docket No. 96-528; Submitted on the Record;
Issued April 14, 1998

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has sustained his burden of proof to establish an employment-related foot and back condition due to his September 17, 1988 employment injury; (2) whether appellant established disability from work after June 3, 1989 due to his employment-related conditions; and (3) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for home exercise equipment.

In September 1988 appellant, then a 55-year-old supervisor of production control, claimed that he injured his left knee when he slipped on a wet floor and another employee who grabbed his arm, failed to prevent him from falling. Appellant was off work for five weeks. Based on the reports of Dr. Pedro Quiroga, a Board-certified orthopedic surgeon, the Office accepted appellant's claim for left knee sprain and authorized continuation of pay, as well as medical benefits. Dr. Quiroga reported persistent knee symptoms, including a popping of the knees and scheduled arthroscopy for January 9, 1989 which revealed the presence of a medial meniscal tear. The Office amended the acceptance of appellant's claim to include a meniscal tear and paid the surgical expenses of repair of the tear. While appellant was released to work on April 10, 1989 with restrictions against climbing, appellant did not return to work. Appellant retired effective June 3, 1989 based on his objections to using a heavy industrial elevator and the lack of an alternate work site. Ten days prior to the effective date of his retirement, he submitted a notice of recurrence of total disability, alleging that in using the industrial elevator at work, he injured his back the week of his knee surgery. He noted that he fell on his back and claimed that his back pain continued. Appellant also cited a prior back injury 29 years earlier when he fell 2 feet onto concrete.[1] Appellant submitted a medical report diagnosing a hip contusion as a result of another fall which occurred while he was home on February 8, 1989. While the Office amended the acceptance of appellant's claim to include a left hip contusion as a consequential

[1] The record shows that appellant had filed a claim for his prior back injury and that he was off work for two weeks following that injury. He submitted a January 6, 1989 report by Dr. Quiroga, who diagnosed osteoarthritis with spurring particularly severe at the L2-4 and L3-4 levels.

injury of the left knee injury, the Office did not accept appellant's claim for an employment-related low back injury.

Between May 1989 and July 1992 appellant remained under the care of Dr. Quiroga, who provided analgesics for appellant's complaints of periodic tenderness at the medial side of his left knee and some decreased range of motion.[2] He noted that the knee pain and other symptoms relative to appellant's back and left hip, were aggravated by cold or humid weather. Dr. Quiroga reported that appellant began to complain of foot pain in March 1991, at the Achilles tendon, which later extended to the plantar aspect of the os calcis. He provided injection treatment and stated that special shoes purchased in January 1992 helped, but provided no definite diagnosis with respect to the pain of the left hip or the foot despite x-rays.[3]

Between September 1992 and April 1993 appellant was treated by Dr. Eradio Arredondo, a Board-certified orthopedic surgeon. In his initial report on September 15, 1992, Dr. Arredondo reported a history of injury consisting of a strain of the back, bruising of the hip and knee injury at the time of the fall, which he reported incorrectly as occurring on concrete. He reported that x-rays of the affected areas were negative, except for osteoporosis in the left knee and hip, with degenerative changes of the back. Dr. Arredondo did not address the results of x-rays of the foot, but noted that appellant had been complaining of pain in his left heel. He stated that appellant had a limp favoring the left lower extremity. Dr. Arredondo ordered a magnetic resonance imaging (MRI) scan of the hip which documented a small effusion lateral to the greater tronchanter along the course of the iliotibial tract. He treated appellant until spring 1993 with medication and advised appellant of drug dependency.

Appellant requested the Office to accept his back and hip conditions as work related, particularly noting that the Office had authorized the diagnostic tests for both conditions. In response, the Office advised appellant that additional medical evidence was required to determine whether appellant sustained work-related back and tronchanteric bursitis conditions. Dr. Robert L. Jones, a Board-certified orthopedic surgeon and Office referral physician, evaluated appellant on July 29, 1993. Dr. Jones provided a history of injury, reviewed appellant's medical treatment, reviewed x-ray results of the spine, hip ankle and foot and provided his findings on evaluation. He noted that the back x-rays showed a slight decrease in the L4-5 disc space with a grade one-half restrospondylolisthesis and a narrowing at L4-5 with a slight posterior degenerative spondylolisthesis. Dr. Jones reported that the left ankle and foot x-rays showed a spur at the insertion of the heel cord with no heel spur. He diagnosed degenerative lumbar disc disease, left tronchanteric bursitis, degenerative osteoarthritis of the left knee tri-compartmental and a heel spur syndrome of the left foot. Dr. Jones negated a causal

[2] Based on an initial evaluation in fall 1991 by Dr. Robert L. Jones, a Board-certified orthopedic surgeon, the Office awarded appellant a schedule award for a 28 percent impairment of the left leg due to his accepted knee condition. Dr. Jones had indicated that appellant could return to full-time work with restrictions on climbing, squatting or kneeling and did not address the relationship between appellant's claimed back condition or foot and hip pain, with the prior employment injury.

[3] Dr. Quiroga reported that that x-rays of the hip were taken on February 17 and September 20, 1989 and June 19, 1990. It was later reported by a subsequent physician, that foot x-rays were taken on June 17, 1991 but there is no record of a report from Dr. Quiroga documenting foot x-rays on that date. Dr. Quiroga retired in July 1992.

relationship between appellant's low back condition and his heel spur syndrome, with the prior employment injury.[4] He noted that appellant could perform only part-time work in a sedentary position with no lifting.

Appellant continued his treatment for his back and hip condition under the care of Dr. Kerry G. Perloff, a Board-certified orthopedic surgeon, who provided facet block treatment in May and June 1993 and performed surgical excision of the tronchanter bursitis on September 13, 1993. He reported recurrence of plantar fasciitis in September 1993 and repeated the facet block treatment in November 1993. In a November 29, 1993 treatment note, Dr. Perloff reported that, as appellant denied significant heel or back problems prior to his 1988 employment injury and as they were reported directly after the injury, he did not see how the conditions could not be considered work related. He noted that an injury to an extremity which changes one's gait can aggravate both preexisting conditions and employment-related injuries, which occurred with appellant.[5]

In May 1994, appellant began a six-week physical therapy program, in addition to obtaining injection of the plantar fascia. On May 31, 1994 Dr. Perloff recommended exercise equipment for use at home. In a June 7, 1994 treatment note, he reviewed x-rays which documented the mild degenerative changes and spurring of the lumbar spine, moderate arthritic changes in the knee and a large calcaneus spur at the insertion of the Achilles heel. Beginning mid-July 1994 appellant obtained treatment from Dr. H. Jay Hassell, an orthopedic surgeon and associate of Dr. Perloff, who reported a one-week history of synovitis of the left ankle and provided an injection. Under the care of Dr. Hassell, appellant underwent a bone scan of the foot on July 28 and 29, 1994, which documented a bone fragment in the foot which he interpreted as an avulsion-type fracture.[6] Dr. Hassell requested authorization to perform surgery, but was informed that a foot condition had not been accepted as employment related. On September 3, 1994 he performed surgical excision of the fracture, nonunion fragment, with repair of the peroneus brevis and peroneus longus tendons. In postoperative treatment notes, Dr. Hassell reported that appellant brought old x-rays from 1991, which appellant felt showed the fragment which Dr. Quiroga failed to diagnose.

In November 1994, Dr. Don W. Vanderpool, a Board-certified orthopedic surgeon and Office medical adviser, reviewed Dr. Hassell's recommendation for three pieces of exercise equipment, including a treadmill, recumbent exercise trainer and personal climber. Dr. Vanderpool indicated that the accepted conditions do not require the equipment and that appellant would not be bedridden without them as claimed by Dr. Hassell. He also addressed the

[4] Dr. Jones noted incorrectly that the Office had accepted the condition of left tronchanterid bursitis as work related and noted, incorrectly in his evaluation, that appellant favored his right leg.

[5] Dr. Perloff provided an additional estimate of permanent impairment due to the left leg injury, which was reviewed by an Office medical adviser in February 1994. The Office medical adviser calculated a total of 32 percent impairment. As appellant had previously been awarded a schedule award for 24 percent impairment, he was awarded an additional schedule award on March 1, 1994 for an 8 percent impairment of his left leg.

[6] The results from the July 28, 1994 bone scan reported that the 15-millimeter bone fragment represented "a fracture originating from the tarsal cuboid, the anterior margin of the calcaneus or possibly a dislocated apophysis off the base of the left fifth metatarsal." A three-phase bone scan was performed the next day on July 29, 1994.

recent surgery for the excision of the nonunion fragment in the left foot, which he stated was not work related.[7]

By decision dated November 17, 1994, the Office denied payment of the exercise equipment recommended by Dr. Hassell.

Appellant requested an oral hearing, claiming that the prior foot x-rays in 1991 showed the loose bone fragment which other physician's failed to diagnose. He claimed that the schedule award determination was improperly "combined" and that he was disabled from work because of the requirement to use the industrial elevator which he felt he could not use, at the time of his retirement. Appellant submitted a January 4, 1995 report from Dr. Hassell, who reported a history of foot pain since the injury and noted that his review of x-rays from June 17, 1991 showed the same bony fragment documented by the bone scans. He reviewed the findings of the bone scans and noted that further clinical examination confirmed that the bony fragment was an avulsion fracture of the peroneus longus or brevis tendon which obviously predated the June 17, 1991 x-rays he reviewed. Dr. Hassell noted, postoperatively, that appellant's symptoms had resolved and that he no longer walked with an antalgic gait pattern favoring his left foot. He noted that the prior examining physicians had incorrectly attributed appellant's antalgic gait to his spur at the attachment of the Achilles tendon to the calcaneus area. He stated that "initial injury, which has been well documented on x-rays but gone unrecognized, was part of the initial job-related injury and needs to be included in your treatment consideration." In a subsequent report dated January 12, 1995, Dr. Hassell explained further that at the time of the September 17, 1988 employment injury, "[t]here was an avulsion fracture fragment remaining intact with the peroneus longus tendon as it was pulled away from the base of the fifth metatarsal." He also addressed appellant's back and hip conditions, which he related to appellant's September 17, 1988 employment injury based on a thorough review of the medical records. Dr. Hassell reported in subsequent progress reports that appellant continued to complain of back pain but that appellant was able to jump and walk without any discomfort in his foot.

At a hearing held on June 8, 1995, appellant testified that he was claiming total disability from the date of his retirement to the present, together with medical benefits for his left foot, back, knee and hip condition, which he related to his employment injury. He testified concerning the difficulty he had in opening the elevator door which was very heavy and caused him to loose his balance and fall. Appellant submitted duplicates of medical reports following the hearing, as well as an update report from Dr. Hassell dated July 1995. In his July 1995 report, Dr. Hassell diagnosed recurrent trochanteric bursitis due to overuse.

By decision dated August 23, 1995, the Office found that appellant had not established his claim for a back condition or foot condition due to his September 17, 1988 employment injury and thus affirmed the denial of payment of exercise equipment.

By letter dated October 12, 1995, appellant requested reconsideration of the Office's August 23, 1995 decision. Appellant referred to Dr. Hassell's opinion that his condition

[7] The record contains results from an MRI scan of the lumbar spine performed on November 18, 1994 which showed mild degenerative disc disease and spondylosis.

predated the x-rays from June 17, 1991 and he claimed that his back condition was aggravated by the September 17, 1988 employment injury. He noted that he felt Dr. Jones' work restrictions of a sedentary part-time job in 1993 supported his claim for disability due to a back injury.

By decision dated October 18, 1995, the Office denied review of the merits of appellant's claim on the grounds that the evidence he submitted was repetitious and insufficient to warrant a review of the prior decision.

The Board finds that appellant has not met his burden of proof to establish an employment-related foot and back condition due to his September 17, 1988 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act[8] has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[9] As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[10] Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.[11] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of relationship of the diagnosed condition and the specific employment factors or employment injury.[12]

The medical evidence immediately after appellant's September 17, 1988 employment injury documents a knee injury due to the employment injury, which was found on arthroscopy to be a medial meniscus tear. The tear was surgically repaired by Dr. Quiroga, a Board-certified orthopedic surgeon, on January 9, 1988 and appellant was released to work three months later. Based on a February 17, 1989 report of Dr. Quiroga, the Office accepted in addition to a medial meniscus tear, that appellant had sustained a hip contusion as a result of a fall due to his employment-related knee condition. The medical evidence did not document appellant's complaints of foot pain until spring 1991. When Dr. Quiroga retired in July 1992, he reported that appellant first complained of pain along his Achilles tendon in March 1991 and his treatment notes until July 1992 note continued foot pain at that area and into the plantar aspect of the os calcis. While two years later appellant was diagnosed with an avulsion fracture based on results of a bone scan, the record is devoid of foot symptoms to bridge the gap in time between September 17, 1988 and March 1991. Dr. Hassell, the orthopedic surgeon who ordered the bone

[8] 5 U.S.C. §§ 8101-8193.

[9] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

[11] *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[12] *Id.*

scan in July 1994, related appellant's avulsion fracture and loose fragment in his foot to the prior injury without any explanation of the lack of symptoms for the two and one-half-year period appellant was treated for other conditions. He also did not address the specific fall or explain how the diagnosed condition of an avulsion fracture resulted.

The Board notes that, while there are bridging symptoms with respect to appellant's back condition, appellant did not identify a back injury on his claim form initially, nor do the reports support a back condition. Appellant first complained of back pain from lifting a heavy industrial elevator door at work on January 5, 1989, prior to his scheduled knee surgery on January 9, 1989. While appellant claimed that both the September 17, 1988 employment injury and the subsequent work incident on January 5, 1989 aggravated his back condition, he submitted no medical evidence to support his claim for a work-related aggravation to a preexisting condition. The Board has held that where an employee claims an aggravation of preexisting arthritis, the employee must provide a rationalized medical opinion discussing the nature of the condition, including its natural or traditional course and how the underlying condition was affected by the employment with reference to medical records.[13] The Board notes that while Dr. Perloff, a Board-certified orthopedic surgeon, related appellant's back condition to his employment injury, he did not address the medical records which showed a lack of symptoms from September 17, 1988 until January 6, 1989, nor did he provide a basis to accept a consequential back injury as appellant has claimed. In order to establish a consequential back injury, he would need to explain that as a result of appellant's knee condition, appellant sustained a back injury beyond his underlying condition with medical rationale to support the opinion. Dr. Hassell's January 12, 1995 report is deficient for this reason as well.

The Board finds further that appellant has not established disability from work after June 3, 1989 due to his employment-related conditions.

Following appellant's knee surgery on December 9, 1988, Dr. Quiroga released appellant to work on April 10, 1989. Appellant claimed that he remained off work because of his back condition and that he resigned effective June 3, 1989 because he felt unable to use the heavy industrial elevator. While he claimed that the July 29, 1993 evaluation of Dr. Jones, a Board-certified orthopedic surgeon and Office referral physician, supported his inability to perform any lifting at work and his ability to work part time, the Board notes that Dr. Jones did not relate appellant's physical restrictions to his work-related knee and hip conditions. As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[14] Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[15] Whether a

[13] *Newton Ky Chung*, 39 ECAB 919 (1988); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). An employee's entitlement to compensation for an established employment-related aggravation is limited to the period of disability caused by the aggravation. An employee who is found medically disqualified to continue in the employment because of the effect that the employment factors might have on the underlying condition does not qualify for compensation; *see Gaeten F. Valenza*, 39 ECAB 1349 (1988); *James L. Hearn*, 29 ECCAB 278 (1978).

[14] *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

[15] *See Fred Foster*, 1 ECAB 21 (1947).

particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence.[16] Appellant has not demonstrated an inability to work after April 10, 1993 or after the date of his retirement on June 3, 1989, due to his employment-related condition.

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

Medical expenses, along with transportation and other expenses incidental to securing medical care, are covered by section 8103 of the Federal Employees' Compensation Act.[17] This section provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree of the period of any disability or aid in lessening the amount of any monthly compensation.[18] The Board has held that with respect to approving treatment, the Office has broad discretionary authority to approve appropriate medical treatment.[19]

The Board notes that Drs. Perloff and Hassell recommended exercise treatment as part of their treatment of appellant's hip, knee, back and foot condition. As stated above, the accepted conditions by the Office included the medial meniscus tear with surgery approved and a hip contusion as a consequential injury and subsequent acceptance of tronchanteric bursitis also with surgery approved. An Office medical adviser, Board-certified in orthopedic surgery, reviewed the request for home exercise equipment and found that such equipment was unnecessary for the accepted conditions. The Board finds that as the equipment would not likely cure or give relief to the accepted conditions, the Office did not abuse its discretion in denying the payment of exercise equipment at home.

[16] *See Debra A. Kirk-Littleton, supra* note 11.

[17] 5 U.S.C. § 8103(a).

[18] 20 C.F.R. § 10.401(a).

[19] *Billy Ware Forbes*, 45 ECAB 157 (1993).

The decisions of the Office of Workers' Compensation Programs dated October 18 and August 23, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 14, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member