

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. SOLOMOND and DEPARTMENT OF THE ARMY,
U.S. ARMY MATERIAL COMMAND, Alexandria, VA

*Docket No. 99-413; Submitted on the Record;
Issued April 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that his left knee condition, on and after March 31, 1995, was causally related to his accepted December 12, 1993 employment injury.

On December 22, 1993 appellant, then a 45-year-old engineer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he hit his forehead, cut his left hand and twisted both knees with more pain in his right knee when he tripped and fell on December 12, 1993. On May 27, 1994 the Office of Workers' Compensation Programs accepted the claim for a concussion.

In a December 13, 1993 emergency room report, appellant was diagnosed with an abrasion and minor head injury due to his trip and fall.

In a Form CA-16 dated February 10, 1994, Dr. Arthur A. Rubin, an attending Board-certified internist, diagnosed postconcussion syndrome due to appellant's December 12, 1993 employment injury. On the back of the form, Dr. Rubin noted that appellant had sustained "head/knee injuries resulting from fall."

In an April 3, 1995 consultation report, Dr. Bruce S. Zimmer, a Board-certified orthopedic surgeon, based upon an employment injury history and physical examination and x-ray interpretations, diagnosed a possible injury to the left knee medial meniscus.

In a magnetic resonance imaging (MRI) scan dated May 11, 1995, Dr. K.G. Reith, noting a December left knee injury, diagnosed joint effusion, edema within the medial tibial plateau with no evidence of acute trauma and a tear of the medial meniscus.

In progress notes dated June 8, 1995, Dr. Zimmer diagnosed a complex tear of the medial meniscus as shown by appellant's MRI scan. Dr. Zimmer recommended that appellant undergo arthroscopy.

On June 15, 1995 appellant filed a claim for a recurrence of disability due to a knee injury commencing March 31, 1995 causally related to his December 12, 1993 employment injury.

By letter dated August 2, 1995, the Office advised appellant of the information required to support his recurrence of disability.

By decision dated October 12, 1995, the Office denied appellant's claim for a recurrence of disability. In the attached memorandum, the Office found the medical evidence of record insufficient to establish that appellant's knee injury was causally related to his accepted December 12, 1993 employment injury.

In response to an Office inquiry letter dated October 24, 1995, Maxwell E. Westmoreland, appellant's supervisor, indicated that appellant had been using a leg brace since his employment injury.

In a letter dated November 8, 1995, appellant disagreed with the Office decision and requested a hearing, which was held on December 15, 1997.

Dr. Zimmer, in his February 26, 1996 operative report and note, diagnosed a left knee medial meniscus tear and Grade III chondromalacia medial femoral condyle.

In a letter dated January 20, 1997, Dr. Zimmer indicated:

"Apparently there is some questions about whether or not [appellant]'s knee injury is related to his accident, which occurred in December of 1993 at work. With any reasonable degree of medical certainty, this injury is most likely work related for the following reasons:

(1)He was asymptomatic prior to the twisting injury.

(2)He has had knee pain off and on since the injury.

(3)The medial meniscus tear is consistent with the mechanism of knee injury."

In addition, appellant submitted progress notes for June 20 and July 2, 1997 referring to treatment for appellant's left knee problems from Dr. Samuel M. Hawken, a Board-certified orthopedic surgeon. Under the June 20, 1997 note, Dr. Hawken noted that appellant "had medial knee pain resulting from a fall in December 1993" at the employing establishment and noted that he had twisted both knees when he fell. He noted that appellant had persistent pain from the fall, which increased until appellant underwent surgery on his left knee.

In a June 27, 1997 MRI scan, appellant was diagnosed with chondromalacia patella, ACL tear, joint effusion and small post-traumatic cyst within the pronator teres muscle area.

In a July 31, 1997 operative report, Dr. Hawken diagnosed osteonecrosis of the medial femoral condyle.

In a report dated October 9, 1997, Dr. Hawken opined that appellant's "condition was caused by a fall." In support of his opinion, Dr. Hawken stated:

"He thought it highly unlikely that other than trauma would have caused this condition in a person your age. I suppose it could have been caused in other comparable trauma but there is no history of that. A fall in 1993 could well exhibit itself as such a condition in April 1995, at the time of the first MRI and, considering the fact that the problem was osteonecrosis of the bone, there is no arthroscopic procedure that could deal with that. The torn medial meniscus is part and parcel of the varus condition and the osteonecrosis of your knee. I suspect that the injury that caused the osteonecrosis was sustained at the same time as the torn medial meniscus was."

By decision dated April 8, 1998, the hearing representative affirmed the Office's October 12, 1995 decision. In her decision, the hearing representative determined that appellant had failed to submit any rationalized medical evidence supporting that his knee injury was causally related to his accepted employment injury. In addition, the hearing representative noted that the record did not contain any evidence that appellant was treated for a knee injury on December 12, 1993.

The Board finds that the case is not in posture for a decision.

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.¹ When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.² In the instant case, while the reports of Drs. Hawken and Zimmer are not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his left knee condition or continued need for medical treatment were due to his accepted December 12, 1993 employment injury, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.³ The Board notes that there is no medical evidence of record refuting a causal relationship between appellant's left knee condition and his December 12, 1993 employment injury. In addition, appellant's supervisor indicated in a letter dated October 24, 1995 that appellant had been wearing a brace since the December 12, 1993 slip and fall injury. While his supervisor's report is not medical evidence and thus insufficient to support appellant's burden of proof, it does lend support to appellant's contention that he had injured his knee on December 12, 1993. On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate medical specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

¹ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

² *John J. Carlone*, 41 ECAB 354 (1989).

³ *See Horace Langhorne*, 29 ECAB 820 (1978).

The decision of the Office of Workers' Compensation Programs dated April 8, 1998 is hereby set aside and the case remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 26, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member