

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRIAN J. AVERI and DEPARTMENT OF JUSTICE,  
DRUG ENFORCEMENT ADMINISTRATION, Lorton, VA

*Docket No. 00-1358; Submitted on the Record;  
Issued April 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability commencing in 1998, causally related to his October 26, 1993 right knee strain injury.

On October 26, 1993 appellant, a special operations task force coordinator, filed traumatic injury claim, which was accepted for right knee strain. On September 30, 1998 appellant, then a 45-year-old special agent, filed a claim for recurrence of disability, alleging that his right knee condition had deteriorated since 1993.

By letter dated April 29, 1999, the Office of Workers' Compensation Programs requested further information regarding his condition since 1993, including a physician's report with a rationalized opinion supporting causal relation.

Appellant submitted a December 8, 1997 report from Dr. Naila T. Rahman, an employing establishment physician, which noted appellant's history of 1971 right knee injury, arthroscopic surgery for repair of torn cartilage and current complaints of right knee pain. Dr. Rahman indicated that appellant's right leg was ¼ inch shorter than the left since his knee surgery, that he could not run long distances and that he had slight atrophy of the right knee muscles both medially and laterally above the knee.

Appellant also submitted a February 27, 1998 report from Dr. David P. Sokolow, a Board-certified orthopedic surgeon, who noted a history of a valgus mechanism injury to appellant's right knee in 1970, a reinjury in 1993 when he fell six feet and recent problems with increasing pain, stiffness and swelling of the right knee. He diagnosed right knee osteoarthritis.

By report dated April 14, 1998, Dr. John W. Johnson, a Board-certified orthopedic surgeon, stated that appellant had a right knee injury in early 1970, a meniscectomy, an interval injury when he fell in 1993 and now "rather extensive degenerative changes in the joint which are related to his initial injury and have been aggravated by his interval injury."

On May 29, 1998 Dr. Sokolow noted that appellant had had a severe recurrence of his right knee pain six weeks after being injected by Dr. Johnson. Examination revealed moderate quad[ri]ceps atrophy, mild to moderate effusion, and exquisite point tenderness to palpation of the anterolateral and anteromedial joint lines in both patellar facets. Dr. Sokolow recommended total knee replacement as the best option, despite appellant's age.

By report dated October 13, 1998, Dr. Sokolow reviewed appellant's symptoms at that time, noted that he could perform his normal investigative/supervisory duties if he avoid any form of running, prolonged standing or extended hours, and opined: "It should be noted that his work injury in 1993, when he fell off a barricade, did significantly exacerbate his symptoms and is likely to have accelerated the degenerative process within his knee."

By report dated June 29, 1999, Dr. Sokolow reviewed his history of treatment of appellant, stating that "he has right knee osteoarthritis which was severely exacerbated during a work injury in 1993 for which he has previously received comp[ensation]." He concluded: "[H]is present status is that he requires total knee replacement for this problem and it is my medical opinion that the surgery is necessary because of his comp[ensation] injury from 1993."

By letter dated August 4, 1999, the Office advised appellant that his October 26, 1993 injury was accepted for right knee strain which would ordinarily have been expected to resolve within a few months and therefore would not be related to his present condition. The Office requested that appellant check his records for medical reports showing aggravation of a prior injury.

By decision dated October 18, 1999, the Office denied appellant's recurrence claim finding that the medical evidence was not sufficient to establish a causal relationship with his 1993 injury.

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

All of appellant's examining physicians note that he has objective right lower extremity problems including quadriceps atrophy, pain, stiffness and swelling, and that the diagnosed condition of severe osteoarthritis limits his activity related to running and prolonged standing.

Dr. Johnson stated that appellant had an interval injury when he fell in 1993 and now had rather extensive degenerative changes in the joint that were related to the original injury and had been aggravated by the 1993 interval injury accepted for right knee strain.

Dr. Sokolow reviewed appellant's history and the performance of his duties and stated that his work injury in 1993, when he fell off a barricade, did significantly exacerbate his right knee symptoms and was likely to have accelerated the degenerative process within his right knee. In a subsequent report, Dr. Sokolow stated outright that appellant had right knee osteoarthritis which was severely exacerbated during the work injury in 1993, and that the required total knee replacement was necessary because of his compensation injury from 1993.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence

to see that justice is done.<sup>1</sup> This holds true in recurrence claims as well as in initial traumatic and occupational claims. In this case, none of appellant's treating physicians' reports contains rationale sufficient to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a recurrence of right knee disability, causally related to and/or aggravated by his October 26, 1993 injury. However, these reports constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between his current knee condition and his accepted traumatic injury; which is sufficient to require further development of the case record by the Office.<sup>2</sup> Additionally, there is no opposing medical evidence in the record.

The case must therefore be remanded to the Office for preparation of a comprehensive statement of accepted facts, including an accurate medical history and specific questions to be resolved, to be followed by the referral of appellant, together with the complete case record, to an appropriate specialist for a rationalized opinion on whether appellant's current right knee condition was related to the October 26, 1993 accepted knee strain.

The October 18, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC  
April 18, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>1</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989).