

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELVIN T. HOLLOWAY and DEPARTMENT OF THE NAVY, NAVAL AIR  
STATION, ATLANTA PUBLIC WORKS DEPARTMENT, Marietta, GA

*Docket No. 03-2077; Submitted on the Record;  
Issued November 3, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on September 17, 1999 causally related to his October 7, 1998 employment injury.

On October 22, 1998 appellant, then a 55-year-old electrician, filed a traumatic injury claim alleging that on October 7, 1998 he sustained a left knee strain when he slipped on the back of an electrical bucket truck. Appellant stated that he fell and twisted his left leg and knee underneath his body. Appellant stopped work on October 7, 1998.

The Office of Workers' Compensation Programs accepted appellant's claim for traumatic arthritis of the left knee.

On March 6, 2001 appellant filed a claim alleging that he sustained a recurrence of disability on September 17, 1999 due to his October 7, 1998 employment injury. Appellant submitted medical evidence in support of his claim.

In a March 30, 2001 letter, appellant requested that the Office reopen his claim assigned number 06-0739440. Appellant explained that he had been treated for an injury he sustained to his left knee on September 17, 1999 and pain in his right knee. He stated that his left knee had not improved since September 17, 1999. Appellant requested that the Office send him the appropriate forms necessary to file a claim for a permanent injury. He submitted letters dated November 20, 2001 and January 4, March 4 and July 15, 2002, inquiring about the status of his request.<sup>1</sup>

By letter dated August 22, 2002, the Office informed appellant that its records indicated that he last returned to work on October 16, 1998 and that the evidence of record was insufficient to establish that he sustained a recurrence of disability due to his employment injury or

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<sup>1</sup> In his November 20, 2001 letter, appellant informed the Office that he decided in early May 2001, to retire from the employing establishment.

employment factors. The Office further advised appellant about the type of factual and medical evidence he needed to submit to establish his claim.<sup>2</sup> Appellant did not respond.

By decision dated November 13, 2002, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability due to his October 7, 1998 employment injury.

In an October 13, 2002 letter, appellant responded to the Office's August 22, 2002 letter. On December 10, 2002 appellant submitted medical evidence and figures regarding his lost wages.

By letter dated December 13, 2002, the Office advised appellant that it had received his October 13, 2002 letter and reminded him that a decision was issued on November 13, 2002 denying his recurrence claim. The Office further advised appellant that if he disagreed with the decision he should refer to the appeal rights attached to the decision.

By letter dated November 21, 2002, appellant advised the Office that he disagreed with the decision. In a December 19, 2002 response letter, the Office again informed appellant to exercise his appeal rights if he disagreed with the decision. The Office stated that a review of appellant's case record had been conducted and that he should submit medical documentation indicating that he received medical treatment as a result of his October 7, 1998 employment injury. The Office noted that the last medical evidence of record was a report dated November 4, 1999.

In a May 29, 2003 letter, the Office advised appellant that his original claim appeared to involve a minor injury with no or minimal time lost from work and thus, payment was made for a limited amount of medical expenses and his file was administratively closed. The Office noted that a determination had been made as to whether appellant sustained a work-related injury on October 7, 1998 but a review of the record did not reveal an acceptance letter had been released. The Office advised appellant that his claim had been accepted for traumatic arthritis of the left knee. The Office also advised appellant that if he lost time from work, he may have been eligible to receive continuation of pay (COP) up to a maximum of 45 calendar days. If wage loss continued after his entitlement to COP, he could file a claim for compensation (Form CA-7). The Office informed appellant that the alleged recurrence of disability remained denied and if he disagreed with the decision, he should refer to his appeal rights.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on September 17, 1999 causally related to his October 7, 1998 employment injury.<sup>3</sup>

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted

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<sup>2</sup> The Office reissued the August 22, 2002 letter on October 4, 2002 to appellant at his new address.

<sup>3</sup> On appeal, appellant references an Office decision dated May 29, 2003. The Board notes that the Office's May 29, 2003 letter was informational in nature. Thus, it does not constitute a final Office decision from which appellant may properly appeal. *See generally* 20 C.F.R. § 10.126 (1999).

injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup>

In support of his recurrence claim, appellant submitted an undated letter indicating that he was being treated for a condition, which is illegible and a March 12, 2001 prescription for an ace brace from a physician whose signature is illegible. The letter failed to address whether appellant's condition was caused by his October 7, 1998 employment injury. The prescription did not address whether the brace was needed for a condition caused by the accepted employment injury.

Appellant also submitted a largely illegible report. A November 4, 1999 attending physician's report from an orthopedic surgeon, whose signature is illegible provided a history of the October 7, 1998 employment injury. The physician diagnosed an unstable knee and indicated that it was caused by the employment activity by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>5</sup> The November 4, 1999 report is insufficient to establish appellant's burden because it did not provide any medical rationale explaining how or why appellant's condition was caused by the October 7, 1998 employment injury.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability on September 17, 1999 causally related to the October 7, 1998 employment injury, the Board finds that he has failed to satisfy his burden of proof in this case.

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<sup>4</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>5</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

The November 13, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
November 3, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member