

cruciate ligament damage with surgical repair. Appellant stopped work on April 26, 1998 and returned to full duty on March 19, 1999.

On October 10, 1999 appellant requested a schedule award. He submitted a report dated February 3, 2000 from Dr. Albert A. Weiss, a Board-certified orthopedic surgeon, opining that appellant would never be free from pain; that his condition might worsen over time; and that “given the magnitude of surgery he has undergone for significant problems, there is a likelihood that he will develop post-traumatic arthritis.” On November 3, 2000 the Office granted appellant a schedule award for a 20 percent impairment of his left leg.

On November 26, 2003 appellant submitted a claim for recurrence of disability alleging that his pain had increased since surgery “from occasional to now constant knee swelling and moderate to severe pain in [his] left knee.” In support of his claim, appellant submitted a variety of medical reports, including an October 17, 2003 report from Dr. Carl Mogil, a Board-certified osteopath, specializing in orthopedic surgery. Dr. Mogil described appellant’s history of advanced arthritis in his right knee, for which he underwent arthroscopic surgery in 1999 and stated that the right knee became swollen if he stood for more than a few minutes. He further stated that his left knee ached constantly. Dr. Mogil provided diagnoses of post-traumatic arthritis of the right knee and post-traumatic patellofemoral arthritis of the left knee. In a December 12, 2003 progress note, Dr. Mogil indicated that an imaging report of appellant’s knees revealed moderate chondromalacia involving the medial femoral condyle in the right knee along with chondromalacia at the patellar surface and medial compartmental osteoarthritis. He further indicated that osteoarthritis changes were noted in the left knee as well, involving the medial femoral condyle and patella. In a January 6, 2004 report, Dr. Mogil reiterated his diagnoses of osteoarthritis in both knees.

By decision dated February 25, 2004, the Office denied appellant’s claim for a recurrence of disability on the grounds that he had failed to establish a causal relationship between his alleged disability and the accepted April 26, 1998 employment injury.

By letter dated March 23, 2004, appellant requested review of the written record. By decision dated June 14, 2004, a hearing representative affirmed the Office’s February 25, 2004 denial of appellant’s recurrence claim.

In a report dated August 3, 2004, Dr. Mogil opined that appellant’s arthritic left knee condition was causally related to his April 26, 1998 injury. He described that, subsequent to his left knee surgery, appellant experienced pain, grinding and swelling in both knees. He indicated that the injury caused appellant to “weight bear significantly on his already arthritic right knee” and that he deteriorated into an arthritic condition subsequent to reparative surgery on the left knee. He further reported that appellant “developed the metabolic condition of diabetes mellitus which is known to aggravate arthritic conditions and accelerate their progress.”

By letter dated September 2, 2004, appellant requested reconsideration of the June 14, 2004 decision of the Office hearing representative. By decision dated September 21, 2004, the Office denied reconsideration of the June 14, 2004 decision, finding that the evidence submitted by appellant was accumulative.

LEGAL PRECEDENT

A recurrence of disability means “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹ Therefore, the Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that he suffered a spontaneous material change in the employment-related condition without an intervening injury.²

When an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician’s conclusion.³ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁴ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician’s conclusion of causal relationship.⁵

It is an accepted principle of workers’ compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee’s own intentional conduct. Once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.⁶

ANALYSIS

The Board finds that the numerous reports from Dr. Mogil regarding the causal relationship between appellant’s osteoarthritis in his left knee and his accepted employment injury are sufficient to require further development of the case record by the Office. Proceedings under the Federal Employees’ Compensation Act are not adversarial in nature, nor is the Office a

¹ 20 C.F.R. § 10.5(x).

² *Carlos A. Marrero*, 50 ECAB 117 (1998).

³ *See Edna M. Boyd*, 56 ECAB ____ (Docket No. 04-943, issued September 1, 2004).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁵ For the importance of bridging information in establishing a claim of recurrence of disability, *see Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988).

⁶ *See Robert J. Wescoe*, 54 ECAB ____ (Docket No. 02-1479, issued October 23, 2002).

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.⁷ Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's position. The Board will remand the case for further development of the medical evidence.

Appellant alleged that he sustained a recurrence of disability commencing October 14, 2003. He submitted a report from Dr. Mogil dated October 17, 2003, which provided diagnoses of post-traumatic arthritis of the right knee and post-traumatic patellofemoral arthritis of the left knee. In a report dated August 3, 2004, Dr. Mogil opined that appellant's arthritic left knee condition was causally related to the April 26, 1998 injury and stated that, subsequent to his left knee surgery, appellant experienced pain, grinding and swelling in both knees. He indicated that the injury caused appellant to "weight bear significantly on his already arthritic right knee" and his condition deteriorated into an arthritic condition subsequent to surgery on the left knee. Although his reports do not contain rationale sufficient to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a recurrence of total disability commencing on October 14, 2003 causally related to his April 26, 1998 injury, the Board finds that they constitute substantial evidence in support of his claim and raise an inference of causal relationship between the arthritic condition of his left knee and the original traumatic injury. The evidence is sufficient to require further development of the case record by the Office.⁸

On remand the Office should refer appellant, together with a statement of accepted facts, a complete case record and specific questions to be answered, to an appropriate Board-certified specialist for a rationalized medical opinion as to whether he sustained a recurrence of disability on October 10, 2003. After such development as the Office deems necessary, a *de novo* decision shall be issued.⁹

CONCLUSION

The Board finds that the case is not in posture for a decision as to whether appellant has established that he sustained a recurrence of disability on October 10, 2003 causally related to his April 26, 1998 employment injury.

⁷ See *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

⁸ See *John J. Carlone*, 41 ECAB 354 (1989).

⁹ In light of the Board disposition on the first issue, the denial of reconsideration issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the September 21, June 14 and February 25, 2004 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: July 25, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board