United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
and	)	**Docket No. 07-2242**
	)	**Issued: February 12, 2008**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Sheridan, OR, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 4, 2007 appellant filed a timely appeal from a July 25, 2007 merit decision of the Office of Workers' Compensation Programs denying a recurrence of disability and an August 24, 2007 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of a medical condition causally related to his December 1, 1997 employment injury; and (2) whether the refusal of the Office to reopen his case for further consideration on the merits of his claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

FACTUAL HISTORY

On December 1, 1997 appellant, then a 37-year-old electrical supervisor, sustained injuries to his left knee while running to an emergency in the performance of duty. The Office accepted his traumatic injury claim for left knee sprain and subsequent arthroscopic surgery performed on June 18, 1998, in which a loose body was removed from the popliteal fossa.[1] Appellant returned to work on July 13, 1998. On November 6, 1998 Dr. Mas Yamanaka, a Board-certified orthopedic surgeon, opined that his condition had stabilized. On March 25, 1999 appellant was granted a schedule award for a 17 percent permanent impairment of his left leg.

In a report dated February 10, 2004, Dr. Peter Van Patten, an orthopedic surgeon, provided diagnoses of left knee anterior cruciate ligament (ACL) deficiency and osteoarthritis. Relating the history of injury, he stated that appellant injured his left knee while playing football at age 17 and underwent an arthroscopy at that time for a torn meniscus. The record contains numerous treatment notes from Dr. Van Patten for the period February 17 through August 9, 2004. On August 25, 2004 he performed an unauthorized left knee arthroscopy, with ACL reconstruction.

On April 27, 2007 appellant filed a recurrence of disability claim of his December 1, 1997 injury. In a memorandum to the Office dated April 30, 2007, he stated that surgery was required to address his degenerative arthritis related to his 1996 knee surgery. In a letter dated May 2, 2007, appellant asked that his claim be reopened so that he could have partial knee replacement surgery. He stated that he ruptured the anterior cruciate ligament in his left knee in a 1996 work-related injury (File No. 140329587) and later discovered that his ACL had been removed in a related surgery. Appellant indicated that in 2004, he sustained another left knee injury, which required additional surgery.

Appellant submitted an April 30, 2007 report from Dr. Van Patten who diagnosed "left knee status post-ACL reconstruction with severe medial compartment osteoarthritis." Dr. Van Patten stated that on August 25, 2004 when he underwent ACL reconstruction, appellant had Grade 4 chondromalacia to an extensive degree in the medial compartment. His physical examination of appellant revealed 5/5 strength; 5 degrees of varus angulation to the left knee; laxity at the posterolateral corner; and 1+ Lachman's with a negative pivot shift. Dr. Van Patten found medial joint line tenderness. Range of motion was from 5 degrees to 125 degrees. Appellant had three percent of valgus on the right and three percent of varus on the left. X-rays showed that the medial compartment collapsed completely 40 degree PA view. They further revealed large osteophyte along the medial aspect of the femur and tibia, as well as along the medial aspect and the inferior and superior poles of the patella. There was evidence of subchondial cysts in the medial femoral condyle and a posterior ridge of osteophyte in the lateral compartment and along the lateral femoral condyle. Dr. Van Patten recommended unicondylar knee replacement arthroplasty, but stated that appellant wanted to "get this recognized as a progression of disease from his injury in 1996. At that time it was accepted as an ACL tear and treated by Kaiser Health Insurance."

[1] In its letter of acceptance dated March 1, 1999, the Office recognized that appellant had nonwork-related, preexisting degenerative joint disease of the left knee.

By letter dated May 7, 2007, the Office informed appellant that it had received his notice of recurrence but that the information submitted was insufficient to establish his claim. The Office requested that he submit a statement describing why he believed his current disability or need for medical care was due to his December 1, 1997 employment injury and to provide copies of medical reports documenting any treatment of his left knee since 1997. The Office further notified appellant that he should obtain a narrative report from his attending physician addressing his need for continuing medical treatment, the extent of any disability and its relationship to his accepted employment injury. The Office provided appellant 30 days to submit the requested information.

Appellant submitted a position description for an electrical worker supervisor. On May 14, 2007 he reiterated his request that the Office reopen his case for medical treatment related to his 1997 injury. Appellant again stated that he reinjured his knee in 2004. He submitted largely illegible physicians' notes from Dr. John Nelson, a Board-certified internist, for the period May 15 through June 6, 2006. In a statement dated May 15, 2007, Dr. Nelson indicated that appellant was "having left knee problems brought on by an OTJ [on the job] injury from a torn ACL in his left knee in 1997." He stated that he needed a partial knee replacement due to this injury. In an April 30, 2007 report, Dr. Van Patten stated that he first treated appellant on March 7, 2003. Appellant submitted additional notes dated December 5, 2005 through May 15, 2007 from Dr. Nelson. On March 29, 2006 Dr. Nelson stated that appellant twisted his left knee that morning.

By decision dated July 25, 2007, the Office denied appellant's claim on the grounds that the evidence did not establish that the claimed recurrence resulted from his accepted left knee sprain. The Office noted that appellant's physicians had failed to address his prior knee injuries that occurred in high school and predated his federal employment.

On August 7, 2007 appellant requested reconsideration. In an accompanying letter dated July 30, 2007, he stated that he sprained his left knee when he was 17 years old; that appellant underwent surgery in 1985 to remove loose pieces of meniscus; that he ruptured his ACL in 1997; that pursuant to appellant's accepted 1997 injury, he underwent surgery, but was never told that his ACL was removed; that he tried to reopen his case in 2004, but that his request was denied; that appellant paid privately for an allograft; and that he now needs partial knee replacement surgery.

By decision dated August 24, 2007, the Office denied appellant's request for merit review finding that the evidence submitted did not address the issue of causal relationship and was, therefore, irrelevant.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.[2] Continuous treatment for the original condition or injury is not considered a recurrence of a medical

[2] 20 C.F.R. § 10.5(y).

condition, nor is an examination without treatment.[3] As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.[4] It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.[5]

The Office's procedure manual defines a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.[6]

The Office's procedure manual further provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return PRN, or computed from the date of last examination), the claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.[7]

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to establish a recurrence of his accepted medical condition. The Office accepted appellant's claim for left knee sprain and subsequent arthroscopic surgery which occurred on June 18, 1998. The Office recognized that appellant had nonwork-related, preexisting degenerative joint disease of the left knee. Appellant returned to full duty on July 13, 1998. He has not submitted any medical evidence showing that he was disabled from work. Appellant contends, however, that he requires partial knee replacement surgery for his continuing employment-related condition.

The record reflects that appellant was treated for his accepted condition by Dr. Yamanaka until November 6, 1998. There is no evidence of record establishing that he received medical treatment for his accepted condition between November 6, 1998 and February 10, 2004, when he was seen by Dr. Van Patten. As computed from the date of Dr. Yamanaka's last examination on November 6, 1998 his treatment on February 10, 2004 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant is responsible for submitting an attending physician's report containing a description of the objective findings and supporting causal relationship between his current condition and the previously accepted work injury.[8] He had the burden of submitting sufficient medical evidence to document the need for further

[3] *Id.*

[4] *Id*.; 20 C.F.R. § 10.5(x).

[5] *See* 20 C.F.R. § 10.104; *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

[7] *Id*. at Chapter 2.1500.5(b) (September 2003).

[8] *Id*.

medical treatment.[9] Appellant did not submit the evidence required and thus, failed to establish a need for continuing medical treatment.[10]

On February 10, 2004 Dr. Van Patten provided diagnoses of left knee ACL deficiency and osteoarthritis. On April 30, 2007 he diagnosed "left knee status post ACL reconstruction with severe medial compartment osteoarthritis" and recommended unicondylar knee replacement arthroplasty. However, none of his reports contain a reasoned opinion supporting the causal relationship between appellant's current condition and the previously accepted work injury, as required by Office procedures.[11] Although he gave findings on examination, Dr. Van Patten provided an inaccurate history of injury, stating that appellant's 1996 injury was accepted as an ACL tear. Additionally, he failed to address the relationship between the knee injury appellant sustained in high school, his preexisting degenerative joint disease and his current diagnosed condition. For these reasons, Dr. Van Patten's reports are of diminished probative value.

Dr. Nelson's reports do not support the existence of a causal relationship between appellant's current diagnosed condition and his accepted December 1, 1997 injury. On May 15, 2007 Dr. Nelson stated that appellant was "having left knee problems brought on by an OTJ injury from a torn ACL in his left knee in 1997." The Board notes that appellant's claim was accepted for a left knee sprain, not for a torn ACL. Dr. Nelson not only provided an inaccurate history of injury, but also has failed to explain how appellant's current condition developed as a result of the accepted knee sprain. Without such rationale, his opinion is of diminished probative value.[12] The Board notes that on March 29, 2006 Dr. Nelson stated that appellant twisted his left knee that morning. He did not address how that intervening injury affected appellant's current condition.

Stating that the pain in his left knee had continued to worsen since the 1997 injury, appellant contended that his current condition was causally related to his accepted condition and attendant surgery. However, the mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor appellant's belief that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[13] The Board notes that appellant alleged that the approved June 18, 1998 left knee surgery resulted in the removal of his ACL. However, the record reflects that the arthroscopic surgery performed on that date involved the removal of a loose body from the popliteal fossa, not the removal of his ACL. Appellant also stated on at least two occasions that he reinjured his knee in 2004. He has failed to present evidence establishing that his current condition resulted from his accepted 1997 injury.

[9] 20 C.F.R. § 10.5(y).

[10] *See J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006).

[11] *Id.*

[12] *Mary A. Ceglia*, *supra* note 5; *Albert C. Brown*, 52 ECAB 152 (2000).

[13] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

The Office informed appellant of the type of evidence necessary to establish his claim by letter dated May 7, 2007. The evidence submitted was insufficient to establish that appellant sustained a recurrence of a medical condition and the Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider, and the reasons why the decision should be changed and by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law; or
>
> "(ii) Advancing a point of law or fact not previously considered by the Office; or
>
> "(iii) Constituting relevant and pertinent evidence not previously considered by the Office."[14]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs 10.606(b)(2)(i) through (iii) of that section will be denied by the Office without review of the merits of the claim.[15]

ANALYSIS -- ISSUE 2

In his August 7, 2007 request for reconsideration, appellant neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

The Board also finds that appellant did not submit relevant and pertinent evidence not previously considered by the Office. On July 25, 2007 the Office denied appellant's recurrence claim on the grounds that he failed to submit a rationalized medical opinion explaining the causal relationship between his diagnosed condition and the accepted work incident. Appellant did not submit any relevant and pertinent evidence not previously considered by the Office in support of his request for reconsideration. He merely submitted a personal statement reiterating the history of injury and his request for authorization for surgery. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his August 7, 2007 request for reconsideration .

[14] 20 C.F.R § 10.606.

[15] *Id*. at § 10.608(b).

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of a medical condition causally related to his December 1, 1997 employment injury. The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration on the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 24 and July 25, 2007 are affirmed.

Issued: February 12, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board