

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY H. ROBERTS and TENNESEE VALLEY AUTHORITY,
SEQUOYAH NUCLEAR PLANT, Soddy Daisy, TN

*Docket No. 02-2164; Submitted on the Record;
Issued May 8, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's right knee condition is causally related to his accepted left knee, back and rotator cuff conditions.

On December 20, 1990 appellant, then a 39-year-old boilermaker, filed a notice of traumatic injury and claim for compensation (CA-1 form), alleging that on October 24, 1990 he injured his left knee when he struck it on an angle iron. He stopped work on October 30, 1990 and returned to modified duties on August 2, 1993. Appellant subsequently stopped work and received total temporary disability. On December 5, 1990 he underwent left knee arthroscopic surgery for a partial medial meniscectomy and chondroplasty of the medial femoral condyle and chondroplasty of the trochlear groove. On August 21, 1992 appellant underwent a partial excision of the posterior horn of the medial meniscus. The Office of Workers' Compensation Programs accepted his claim for left knee strain and medical meniscus tear.

In a May 11, 1999 report, Dr. W. Carl Dyer, an orthopedist and appellant's treating physician, indicated that appellant fell when his left knee gave out, resulting in a strained rotator cuff. He diagnosed a contusion of the left knee, chondromalacia, MFC, left knee and left rotator cuff strain. The Office accepted appellant's left rotator cuff tear as a consequential injury.

In a June 18, 2000 letter, appellant indicated that he was experiencing increasing pain and swelling in his right knee because he had been placing most of his body weight on his right side to compensate for the left knee injury. He requested the right knee condition be accepted as a consequential injury.

In an August 4, 2000 report, Dr. Dyer wrote that a magnetic resonance imaging scan revealed minimal degenerative changes as well as a fusion of the right knee. Appellant's left knee was doing well while his back hurt occasionally with weakness in the lumbar spine. Dr. Dyer found the right knee had synovitis and effusion and pain to palpation, atrophy of the right quad and no ligamentous laxity.

In a June 8, 2001 progress report, Dr. Dyer wrote that appellant had a ruptured medial meniscus of both knees, with the right knee condition directly related to the left knee “since he had to put so much weight on the right knee protecting the left knee as a result of his previous knee problem.”

In a July 3, 2001 letter, the Office referred appellant to Dr. Steven Weissfeld a Board-certified orthopedic surgeon, for a second opinion on the issue of whether appellant’s right knee condition was a consequential injury. In an August 31, 2001 report, he wrote that an x-ray revealed osteoarthritis of the right knee. Dr. Weissfeld added that “decreased usage of the left knee for weight bearing would increase the stress on the right knee and cause an increase in arthritic type pain. However, the arthritic knee would be expected to be somewhat painful, at least intermittently, even if appellant had no trauma to the left knee.” He recommended home exercise and work conditioning program to return appellant to the workforce.

In a September 7, 2001 progress note, Dr. Dyer indicated that appellant had been walking with the aid of two crutches due to pain. He wrote that appellant’s right leg was occasionally giving away, popping and had weakness. Dr. Dyer also indicated that appellant recently suffered a minor stroke.

In a February 27, 2002 letter, the Office provided Dr. Dyer with the report of Dr. Weissfeld and requested his comments. In a March 13, 2002 report, Dr. Dyer wrote that appellant “has ongoing right knee pathology, demonstrated by MRI ... and the pathology is aggravated by the left knee problem. Decreased usage of the left knee would throw additional stress on the right knee.” Dr. Dyer noted that appellant’s right knee problems did not occur until after the left knee problem and that many people experienced problems that show up as a result of overuse. He indicated that the right knee pathology was directly related to the over usage precipitated by the left knee injury and, at the very least, was an aggravation of the preexisting condition within a reasonable degree of medical certainty.

The Office found a conflict of medical opinion between Dr. Dyer and Dr. Weissfeld. In a May 2, 2002 letter, the Office referred appellant to Dr. Richard A. Bagby, Jr., a Board certified orthopedic surgeon, for an impartial medical examination. In a May 2, 2002 report, he stated:

“In my opinion the right knee symptoms and condition, with a reasonable degree of medical certainty are not very well connected to the left knee injury and condition. It is medically probable that the right knee condition would have developed as it has, independently of the left knee condition or injury. If there were a connection, either directly or indirectly causally, I would have expected symptoms of the right knee to occur within weeks or months of the presumed overuse of the right knee from compensating for the left knee problem, *i.e.*, within weeks or months of the use of the crutches or increased weight bearing on the right side relatively. It could be said that the relative overuse of the right occurred only after cumulative episodes of the left knee arthroscopies but there is no scientific way to determine this for a given individual.”

In an August 1, 2002 decision, the Office denied appellant’s claim finding the weight of the evidence rested with Dr. Bagby, the impartial medical specialist.

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

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 attributable to the employee's own intentional conduct.¹

In the present case, the Office determined that there was a conflict in the medical opinion between Dr. Dyer, appellant's attending physician, and Dr. Weissfeld a Board-certified orthopedist, on whether appellant's right knee condition was a consequential injury. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Bagby, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.²

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

The Board finds that the medical opinion of Dr. Bagby is not well rationalized. In his May 2, 2002 report, he stated that appellant's right knee symptoms were not very well connected to the left knee injury, indicating that the condition would have developed independent of the left knee injury. Yet he also wrote that "it could be said that the relative overuse of the right occurred only after cumulative episodes of the left knee arthroscopies but there is no scientific way to determine this. The Board finds Dr. Bagby's opinion is equivocal and not well rationalized as to the issue of the relationship of appellant's right knee condition to the accepted left knee injury.

In a situation where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.⁴ For the reasons noted, the opinion of Dr. Bagby is in need of clarification and elaboration.

Therefore, the case will be remanded to the Office to obtain a supplemental report regarding whether appellant's right knee is causally related to the accepted left knee injury. If Dr. Bagby is unwilling or unable to clarify and elaborate on his opinion, the case should be referred to another appropriate impartial medical specialist.⁵ After such further development as

¹ *John R. Knox*, 42 ECAB 193, 196 (1990).

² Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

³ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁴ *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

⁵ *See Harold Travis*, 30 ECAB 1071, 1078-79 (1979).

the Office deems necessary, an appropriate decision should be issued regarding whether appellant's right knee condition is causally related to his accepted conditions.

The August 1, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for development consistent with this decision.

Dated, Washington, DC
May 8, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member