# United States Department of Labor
# Employees' Compensation Appeals Board

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| **LOUISE LAWRENCE, Appellant** | ) | |
| **and** | ) | **Docket No. 04-296** |
| | ) | **Issued: August 26, 2004** |
| **DEPARTMENT OF VETERANS AFFAIRS, FRANKLIN D. ROOSEVELT VETERANS ADMINISTRATION HOSPITAL, Montrose, NY, Employer** | ) | |

*Appearances:*
*Thomas Harkins, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

### ***JURISDICTION***

On November 13, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 20, 2003 denying appellant's recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met her burden of proof to establish a recurrence of disability effective May 25, 2001.

### ***FACTUAL HISTORY***

On May 11, 1996 appellant, then a 46-year-old nursing assistant, filed a traumatic injury claim alleging that she injured her left knee while transferring a patient in the performance of her

federal duties. The Office accepted the claim for a ligament pull and later a left knee sprain and torn lateral meniscus. The record contains an undated report received on December 12, 1996 from Dr. Marc Silverman, a Board-certified orthopedic surgeon, who stated that he originally examined appellant on June 12, 1996 for complaints of bilateral knee pain, more severe on the left. He noted that a magnetic resonance imaging (MRI) scan of her left knee showed irregularity in both the lateral and medial menisci with subtle tears and fluid around the lower portion of the infrapatellar ligament. Dr. Silverman noted that physical therapy had not relieved appellant's pain and recommended arthroscopic surgery as soon as possible. In a January 2, 1997 decision, the Office authorized surgery that was performed on March 6, 1997. The operative report showed a tremendous amount of synovitis on patella and degenerative tearing of the lateral meniscus, lesion in lateral femoral condyle, Grade 4 and on the chondromalacia ground down to the bone. Appellant remained off work until returning to sedentary duty on October 6, 1997.

In a September 10, 1997 progress note, Dr. Silverman stated that appellant continued to complain of right knee pain and requested authorization for an MRI scan and arthroscopic surgery. In a September 19, 1997 CA-8 form, appellant complained of pain in both knees and in her left shoulder.[1] A June 23, 1997 MRI scan of appellant's right knee showed degenerative changes with no evidence of fracture or dislocation. In a June 21, 2000 report, Dr. Ken Falvo, a Board-certified orthopedic surgeon and Office referral physician, stated that appellant was 5'3" tall, 250 pounds and walked with a normal gait. He noted her range of motion in the knees was 0 to 125 degrees, bilaterally with no instability to varus or valgus stress in flexion or extension. Lachman's test was negative and she could straight leg test without difficulty. Dr. Falvo noted patella tenderness with slight crepitus. He opined that appellant could return to her nursing assistant position with no restrictions. The Office referred the case for independent medical examination to resolve the conflict in the medical evidence. In an October 23, 2000 report, Dr. Michael Bernstein, an orthopedic surgeon and the referee examiner, noted that appellant had a normal gait and no evidence of an antalgic limp and full range of knee motion bilaterally. He stated that he could find no evidence of ligamentous instability and concluded that appellant had reached maximum medical improvement and could perform work in a sedentary position. In a January 31, 2001 letter to the employing establishment, the Office noted that appellant was working within her permanent medical restrictions and stated that there were no further actions at that time.

On May 25, 2001 appellant filed a notice of recurrence of disability stating that she could not sit for long periods of time without sharp pain in the outer side of her left knee and that she recently nearly collapsed due to the pain. Appellant did not stop work, but sought to have her medical treatment covered. The record contains a June 19, 2001 attending physician's report (Form CA-20) that contains a few notes and a signature that are illegible, though there does appear to be a mark indicating the condition was not work related. The record also contains June 19, 2001 progress notes signed by Katherine Olczak, a nurse, who stated that appellant complained of left knee pain since May 25, 2001. In an October 31, 2001 letter, the Office notified appellant that more information was needed to adjudicate her claim. In a February 6,

[1] The record indicates appellant had filed claims for her right knee (OWCP claim No. 02-0730343) and left shoulder (No. 02-0730613).

2002 report, Dr. Silverman wrote that appellant's status was post arthroscopic surgery on her left knee with a cartilage transplant of the lateral femoral condyle, partial lateral meniscectomy and synovectomy. He stated that appellant did well for a few years but started to have pain in the last three to four months. Dr. Silverman noted that x-rays revealed moderate degenerative changes and tenderness on both sides of her left knee, diagnosed chondromalacia and recommended an MRI scan and arthroscopic surgery. An MRI scan was performed on April 2, 2002 and showed a degenerative joint disease with scattered osteochondral erosions and small joint effusions with possible loose bodies. Authorized arthroscopic surgery was performed on May 2, 2002 and showed lateral fraying of the lateral meniscus. A lateral cartilage transplant was performed to the lateral femoral condyle.

In a June 10, 2002 decision, the Office denied appellant's recurrence claim finding the medical evidence insufficient. In a July 3, 2002 report, Dr. Silverman wrote that appellant was status left knee arthroscopy with cartilage transplant on the lateral femoral condyle, partial lateral meniscectomy and synovectomy which he stated was secondary to her work injury of May 10, 1996. In a December 5, 2002 decision, the Office denied appellant's request for right knee arthroscopy finding the only conditions accepted under this claim were related to the left knee. In a December 11, 2002 report, Dr. Silverman stated that appellant's severe left knee injury caused her to compensate toward her right knee to the point she cannot function due to severe right knee pain. He diagnosed medial patellofemoral narrowing with moderate to severe arthritis and added that appellant needed arthroscopic surgery on her right knee as soon as possible. On February 20, 2003 appellant underwent right knee arthroscopy, though it is not clear from the record that this was authorized by the Office. Appellant continued to pursue compensation for this condition.[2]

In a February 12, 2003 medical report, Dr. Silverman stated that in 1996 appellant injured both her knees, the left more severe than the right. A March 6, 1997 left knee arthroscopy revealed a large tear of her lateral meniscus, chondromalacia, Grade 4 with a severe injury to the cartilage on the lateral femoral condyle. Dr. Silverman stated that he told appellant at that time she will likely eventually need total knee replacement. Dr. Silverman further noted that in late 2001 appellant began to experience left knee pain and another arthroscopy that revealed severe chondromalacia of the lateral femoral condyle, the medial femoral condyle and the patella as well as torn menisci. At that time he also performed a cartilage transplant. He opined that appellant has a 70 percent disability to her left knee and will require a knee replacement in the future. Dr. Silverman attributed appellant's left knee condition to her May 10, 1996 accepted injury.

Dr. Silverman further noted that appellant compensated for her left knee pain by relying more on her right knee which ultimately became painful and required arthroscopic surgery as well. He noted that x-rays of appellant's right knee revealed some arthritis at the medial joint line as well as the patellofemoral, recommended arthroscopic surgery and opined that appellant will eventually require cartilage transplants and knee replacement. Dr. Silverman reiterated his opinion that appellant's right knee was a consequence of her left knee condition.

[2] The record indicates that appellant filed a separate claim for her right knee condition.

Dr. Silverman also noted that in April 1997 he began to treat appellant for left shoulder pain. He noted that on November 11, 1999 she underwent an arthroscopy of the left shoulder with debridement of an anterior superior labral tear as well as synovectomy with an arthroscopic subacromial decompression and partial acromioplasty. Dr. Silverman attributed appellant's left shoulder condition to a May 8, 1995 accident.

In a May 27, 2003 letter, appellant, through her representative, requested reconsideration of the June 10, 2002 denial of recurrence. Appellant noted that appellant was only seeking medical benefits as she had not stopped working after filing the recurrence claim. In her request appellant, argued that the Office should expand the conditions accepted as related to the May 1996 accepted injury to include her right knee. She also argued that her shoulder conditions should be compensable.[3]

In a July 16, 2003 letter, the Office notified appellant that more information was needed to adjudicate her claim; in particular medical evidence contemporaneous to the May 25, 2001 recurrence claim. In an August 8, 2003 letter, appellant submitted an undated attending physician's report with an illegible signature and a June 13, 2001 report from St. Barnabas Hospital with illegible signature and notes. In an August 20, 2003 decision, the Office denied modification finding the medical evidence contemporaneous to the May 25, 2001 recurrence claim to be insufficient. The Office further noted that appellant's right knee condition could not be considered as a consequential injury because the right knee complaint did not arise at the time of the left knee condition and is not mentioned in the first medical reports until November 2002.[4] The Office noted that appellant's right knee condition was being referred to another claims examiner for adjudication. Finally, the Office stated that appellant's shoulder condition was also being considered under another claim.

## ***LEGAL PRECEDENT***

An individual 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 compensation is claimed is causally related to the accepted injury.[5] This burden includes the necessity of furnishing 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 rationale.[6] Where no such rationale is present, medical evidence is of diminished probative value.[7]

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[3] Appellant's representative is essentially requesting reconsideration of two cases; one for her accepted left knee condition and a second for a shoulder condition that is not part of this record.

[4] This statement is not accurate as appellant's right knee complaints began with the accepted injury and are throughout the file.

[5] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

[6] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[7] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

## ***ANALYSIS***

In the present case, appellant failed to submit rationalized medical evidence establishing that she sustained a recurrence of her right knee condition on May 25, 2001. The only evidence in the record contemporaneous to the May 25, 2001 claim is the June 19, 2001 CA-20 form report that is illegible and the June 19, 2001 progress note signed by a nurse. The form report is insufficient to meet appellant's burden as it is illegible. The report from the nurse is not considered medical as a nurse is not a physician.[8]

In a February 6, 2002 report, Dr. Silverman stated that appellant did well for a few years after her 1997 work-related surgery but started to have pain in the last three to four months. Dr. Silverman noted that x-rays revealed moderate degenerative changes and tenderness on both sides of her left knee; diagnosed chondromalacia and recommended an MRI and arthroscopic surgery. This report is insufficient because it does not state that appellant's condition on May 25, 2001 was causally related to the accepted injury of May 10, 1996 or explain why he believes it is causally related. This explanation is especially important as the medical evidence shows that appellant had, including arthritis, a degenerative knee condition.

In addition, Dr. Silverman stated that appellant's pain began three or months prior to the February 6, 2002 report which is well after appellant filed her May 25, 2001 recurrence claim.

Later reports by Dr. Silverman causally relate her condition at the time of the various reports, but they do not discuss appellant's condition at the time she filed her recurrence claim. As appellant has failed to submit rationalized medical evidence causally relating her left condition on May 25, 2001 to her accepted May 10, 1996 injury she has not met her burden of proof to establish a recurrence.

The Board further notes that appellant has submitted substantial medical evidence supporting her argument that she had an ongoing bilateral knee condition causally related to her May 10, 1996 accepted injury.

In this decision, the Board does not address appellant's right knee or shoulder conditions as appellant has filed separate claims that are not before the Board at this time.

## ***CONCLUSION***

Appellant has not met her burden of proof to establish she sustained a recurrence of her May 1996 accepted left knee injury effective May 25, 2001.

[8] Section 8102(2) of the Federal Employees' Compensation Act provides, in relevant part, "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 20, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member