

This case was before the Board on a prior appeal. Appellant alleged that he sustained a bilateral knee condition causally related to his federal employment as an equipment operator. He noted that his duties included loading and unloading of containers, operating forklifts and tractors and constant physical motion. Appellant submitted reports from his attending orthopedic surgeon, Dr. Dilip Tapadiya, who noted that he had a preexisting right knee condition and opined that appellant had degenerative changes in the knees that were related to his employment duties.

Accompanying an August 6, 2004 reconsideration request, appellant submitted a report dated August 4, 2004 from Dr. John Dorsey, a Board-certified orthopedic surgeon. By decision dated October 22, 2004, the Office determined that the evidence was substantially similar to the prior medical evidence of record and was not sufficient to require merit review. In an April 19, 2005 decision, the Board remanded the case to the Office, finding that Dr. Dorsey's report was new and relevant evidence that required further merit review of the case.<sup>1</sup>

In the August 4, 2004 report, Dr. Dorsey provided a history and results on examination. He stated that he reviewed medical reports and diagnostic studies and diagnosed osteoarthritis of the knees aggravated by work activities. Dr. Dorsey noted that appellant's job duties involved walking, kneeling, climbing, stooping, squatting and heavy lifting. He stated:

"It would stand to reason that someone with a compromised knee, who engages in these activities, would, without question, aggravate the prior condition. Absent those activities, although some progression in the deterioration would be expected, it would not be expected to be to the extent that has taken place in [appellant's] situation.

"There is little documentation to show how much deterioration was present when [appellant] left the military. However, a Long Beach Veterans Administrative Medical Center scan dated February 15, 1995 showed 'mild patellar chondromalacia consistent with degenerative disease.' Since then the condition has materially worsened. It is medically reasonable to conclude that the activities that [appellant] performed at his place of employment would result in progressive deterioration of an already compromised condition to the point that it has in his case.

"Absent the industrial exposure, [appellant] would be expected to have some knee problems but not to the same degree that he has with industrial exposure. I would, therefore, medically conclude that the bilateral knee condition that [appellant] is currently suffering from is definitely related to his employment with the [employing establishment] as an equipment operator.

"[Appellant] indicated that his job required loading trailers with kneeling, bending and squatting and there is also a specific incident in 1991 when he was struck by a truck with a resultant knee injury. He was required to work more than eight hours per day on a concrete surface and it would, therefore, stand to reason that someone with a previously compromised knee, such as [appellant], would be expected to have permanent aggravation and impairment as a result of those activities."

By decision dated July 26, 2005, the Office reviewed the case on its merits and denied modification of its October 22, 2004 decision. The Office found that Dr. Dorsey did not provide sufficiently rationalized medical reports to meet appellant's burden of proof.

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<sup>1</sup> Docket No. 05-317 (issued April 19, 2005).

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

### **ANALYSIS**

Dr. Dorsey provided a medical report with an unequivocal opinion that appellant's job duties aggravated a bilateral knee condition. His report was based on an accurate history, review of medical records and results on examination. The Office found that Dr. Dorsey did not fully explain why the degenerative condition would not have progressed regardless of the employment activities. Dr. Dorsey, however, does clearly state that it was medically reasonable that employment activities such as lifting, bending and squatting aggravated the condition to a greater degree than would be expected from degenerative progression. While appellant has the burden of proof to establish his claim, the Office shares responsibility in the development of the evidence.<sup>5</sup>

The Board finds that appellant has submitted probative medical evidence in support of his claim and there is no contrary medical evidence. The case will be remanded to the Office for further development of the medical evidence to secure a medical report that resolves the issues presented. After such further development as the Office deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the medical evidence on the issue of causal relationship between a knee condition and employment factors is sufficient to require further development of the record.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>4</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>5</sup> *Allen C. Hundley*, 53 ECAB 551 (2002); *William J. Cantrell*, 34 ECAB 1233 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 26, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 3, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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