U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOBIAS HAWKINS and DEPARTMENT OF THE NAVY, MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

Docket No. 96-1094; Submitted on the Record;
Issued April 6, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a right knee injury and consequential left knee injury causally related to factors of his federal employment.

On February 5, 1995 appellant, then a 51-year-old planner and estimator-pipefitter, filed an occupational disease claim, alleging that he had strained his right knee, causing pain and stiffness and had aggravated his left knee, while "favoring" his right knee as a result of a prior work-related injury, to his knee from which he had not recovered. Appellant indicated that he first became aware of these conditions and that they were causally related to factors of his federal employment on December 29, 1993. By decision dated November 17, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had not established that the claimed conditions were causally related to factors of his federal employment.[1]

The Board has carefully reviewed the case record in the present appeal and finds that it is not in posture for decision and must be remanded for further development of the evidence.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[2] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal

[1] Appellant initially injured his right leg on December 29, 1993 as a result of a twist and fall incident. The Office accepted his claim for right knee strain. Appellant filed a claim for recurrence of disability on October 6, 1994 which was denied. By merit decision dated March 20, 1994, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to establish modification. In the memorandum accompanying the decision the Office found that the evidence submitted was insufficient to establish either a recurrence of disability or a consequential injury to the left knee.

[2] *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

relationship between the condition and the employment.[3] Neither the fact that the condition became apparent during a period of employment, nor appellant's belief that employment caused or aggravated his condition is sufficient to establish causal relationship.[4] While the medical opinion of a physician, supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[5] neither can such opinion be speculative nor equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty, that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[6]

In the present case, appellant submitted numerous medical reports, which indicated that his right and left knee conditions were causally related to his original employment injury of December 29, 1993 and in part, to his industrial activities. In office notes dated January 4, 1994, Dr. Susan Lambert, a general practitioner, noted a right knee strain and stiffness with deep knee bends. In office notes dated January 21, 1994, Dr. Lambert diagnosed right knee pain that was aggravated by cold temperatures and indicated that appellant's knee problem was secondary to a basketball injury and work. In office notes dated October 11, 1994, Dr. Lambert noted that appellant complained of intermittent pain in both knees and that his left knee was "giving out" over the last few weeks. She indicated that the right knee condition was work related and the left knee condition was not work related. In a report dated January 17, 1995, Dr. Joseph Pramuk, a general practitioner, noted a medical history of the left knee buckling for several years. He initially diagnosed degenerative meniscus versus degenerative joint disease of the left knee aggravated at least in part by the right knee condition. Dr. Pramuk noted that a magnetic resonance imaging (MRI) scan of the left knee revealed macerated posterior horn of medial meniscus, bilateral meniscal displacement related to bony changes of osteoarthritis and insignificant fluid, behind the distal femoral metaphysis. He recommended that appellant restrict his activity to moderate activity on both knees, with no lifting over 25 pounds, only occasional bending, squatting, kneeling and climbing and that appellant stay in a warm environment. In his July 12, 1995 report, Dr. Pramuk reiterated his previous diagnoses and limitations for appellant and added that with respect to the left knee it was common to see a preexisting degenerative condition, in one joint aggravated by "favoring" an acutely injured joint and that the right knee injury was precipitated by appellant's industrial and nonindustrial (sports) activities.

While the reports by Drs. Lambert and Pramuk are not sufficient to establish that appellant's right knee condition and claimed consequential left knee condition are causally related to factors of his federal employment, as they have not clearly delineated the employment factors which caused the claimed diagnosed conditions, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the

[3] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[4] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[5] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[6] *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

evidence.[7] The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.[8] It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature,[9] and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[10] The Office has the obligation to see that justice is done.[11]

In the present case, as there was an uncontroverted inference of causal relationship, with respect to the right knee condition and probative medical evidence of a consequential injury, with respect to the claimed left knee condition, the Office was obligated to request further information from appellant's treating physicians. On remand, the Office should further develop the evidence by providing Drs. Pramuk and Lambert with a statement of accepted facts and requesting that they submit rationalized medical opinions, on whether appellant's right and left knee conditions are causally related to factors of his federal employment and the originally accepted December 29, 1995 employment injury, respectively. After such development as the Office deems necessary, a *de novo* decision shall be issued.

[7] The Board notes that the Office relied on the statement by the employing establishment that appellant was working in a sedentary warm environment after October 11, 1994 with no requirements that he bend, squat, kneel or climb to find that the doctors' reports were not sufficient to meet appellant's burden of proof. However, there is no contrary medical evidence of record that establishes that appellant's employment played no role in his claimed condition and it appears that appellant was exposed to preinjury work conditions for approximately ten months prior to being placed on limited duty.

[8] 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

[9] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985; *Michael Gallo*, 29 ECAB 159 (1978).

[10] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[11] *William J. Cantrell*, 34 ECAB 1233 (1983).

The decision of the Office of Workers' Compensation Programs dated November 17, 1995 is set aside, and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 6, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member