U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH HINDY and DEPARTMENT OF VETERANS AFFAIRS, PROVIDENCE VETERANS HOSPITAL, Providence, R.I.

Docket No. 96-1375; Submitted on the Record;
Issued April 23, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant sustained a medial meniscus tear and anterior cruciate ligament tear of the left knee in the performance of duty on June 29, 1994 as alleged.

On June 29, 1994 appellant, then a 42-year-old registered nurse, filed a claim for a left knee injury sustained that day when he twisted his left knee by stepping on a rock in an employing establishment parking lot as he was arriving for work. Appellant's supervisor, Mr. Marcus Sogn, confirmed that the incident occurred in the performance of duty.[1]

In a March 16, 1994 magnetic resonance imaging (MRI) scan report, Dr. Gary Marecek, a Board-certified radiologist, diagnosed a "[t]orn lateral meniscus" of the left knee, "probably effecting both the anterior and posterior horns," a "[t]orn anterior cruciate ligament," "[m]oderate size joint effusion" and a "[b]one bruise effecting the lateral femoral condyle." Dr. Maracek stated that the MRI scan demonstrated "a normal appearing medial meniscus."

In a July 1, 1994 report, Dr. Phillipe Cote, an attending Board-certified orthopedic surgeon, noted that he last examined appellant on June 10, 1994, at which time appellant was "doing extremely well" and had returned to full duty performing "all of his work expectations satisfactorily. Unfortunately, he stepped on a rock and twisted his knee while walking in the parking lot at work … during inclement weather (rain storm) … [and] noticed immediate new onset of swelling and pain in the left knee and since that time has been unable to bear weight on it." Dr. Cote diagnosed a possible medial meniscus tear of the left knee as opposed to a tear of the medial collateral ligament and that arthroscopic surgery was required.

---

[1] Mr. Sogn submitted an additional June 29, 1994 report stating that on that day appellant stepped out of his vehicle directly onto a rock, lost his balance, twisted his left knee and was unable to bear weight on his knee afterward.

In a July 11, 1994 report, Dr. Cote gave preoperative presumptive diagnoses of an anterior cruciate ligament (ACL) tear and medial meniscal tear of the left knee.

In a July 25, 1994 report, Dr. Cote noted performing left knee arthroscopy on July 12, 1994 revealing an "acutely displaced bucket handle tear of the meniscus … [and] complete disruption of the anterior cruciate ligament and the stump was debrided after the bucket-handle segment of the meniscus had been removed." He opined that appellant was totally disabled and completely restricted him from standing, weight bearing, stair climbing and driving.

In an August 12, 1994 letter, the employing establishment stated that prior to the June 29, 1994 injury, appellant sustained a nonoccupational left knee injury in March 1994 and had been off work for two months due to this injury.

In an August 22, 1994 report, a physician assistant associated with Dr. Cote diagnosed "[s]tatus post-partial medial meniscectomy, left knee times six weeks" to repair a bucket-handle tear of the left medial meniscus and complete anterior cruciate ligament (ACL) rupture and chronic ACL insufficiency. He released appellant to full duty as of September 9, 1994.

In a September 12, 1994 letter, the Office of Workers' Compensation Programs advised appellant of the type of additional medical and factual evidence needed to establish his claim, including a factual statement and all medical reports concerning the March 1994 left knee injury and a narrative report from his attending physician explaining "the relationship of the diagnosed condition to specific factors of federal employment."

By decision dated October 19, 1994, the Office denied appellant's claim on the grounds that the claimed injury did not occur within the performance of duty. The Office found that appellant had established that the claimed June 29, 1994 incident occurred at the time, place and in the manner alleged, but not that a medical condition resulted therefrom. Appellant disagreed with this decision and requested a hearing before a representative of the Office's Branch of Hearings and Review which was held on September 13, 1994. He submitted additional evidence prior to the hearing.

In an October 31, 1994 report, Dr. Cote stated that appellant had "recovered fully from his first injury at the time that he sustained a second injury." He noted that the March 16, 1994 MRI scan "demonstrated a normal appearing medial meniscus" while the July 12, 1994 operative note documented "a bucket-handle tear of the medial meniscus found at the time of surgery. For this reason I believe that the injury of June 29, 1994 is unrelated to the prior injury in that the meniscus tear occurred on June 29, 1994. The above is true to a reasonable degree of medical certainty."

At the hearing, appellant testified that he injured his left knee in March 1994 while playing basketball and was treated by Dr. Cote. Following physical therapy, he returned to full duty in May 1994. Appellant asserted that he had no other left knee problems following his return to work until he stepped on the rock on June 29, 1994 and was again treated by Dr. Cote who diagnosed a medial meniscal tear not previously present, performed arthroscopic surgery on July 12, 1994. The hearing representative left the record open for 30 days for appellant to

submit medical records pertaining to the March 1994 nonoccupational left knee injury and the July 12, 1994 surgical report.

By decision dated and finalized November 6, 1995, the Office's hearing representative denied modification, finding that appellant had not established that the claimed injury occurred in the performance of duty. The hearing representative found that appellant had established "the occurrence of an employment-related accident," but not a resulting medical condition as he submitted insufficient rationalized medical evidence. The hearing representative noted that Dr. Cote's October 31, 1994 report was "not based on a demonstrated complete and accurate factual and medical background," as Dr. Cote referred only to the March 16, 1994 MRI scan report. "He did not mention and [appellant] has not submitted … reports of other prior medical testing and treatment of the knee. Dr. [Cote] also did not supply the June 12, 1994 surgery report documenting the existence of a medial meniscus tear." The hearing representative also found Dr. Cote's opinion contained "unacceptable medical reasoning to the effect that since [appellant] did not have a medial meniscus tear prior to June 29, 1994, the medial meniscus tear must be caused by the June 29, 1994 accident." Appellant disagreed with this decision and in a December 7, 1995 letter requested reconsideration and enclosed additional evidence.[2]

In a March 9, 1994 chart note, Dr. Michael Wiggins, a Board-certified orthopedic surgeon associated with Dr. Cote, noted a March 8, 1994 left knee injury sustained while playing basketball and diagnosed a left knee effusion. A March 9, 1994 x-ray showed left knee effusion without fracture, degenerative changes or loose body.

A March 11, 1994 chart note diagnosed a "[p]robable medial meniscal tear and possible (ACL)." Dr. Wiggins amended this diagnosis in a March 15, 1994 chart note to "[m]edial collateral ligament injury and internal derangement of the knee, possible meniscal tear." This diagnosis was further refined in a March 21, 1994 report to a complete "Grade III ACL tear, possible lateral meniscal tear" by MRI scan. When appellant presented with increased left knee pain on May 9, 1994, Dr. Wiggins referred appellant for physical therapy.

In a June 10, 1994 report, Dr. Cote stated that appellant was "back at work and doing quite well."

By decision dated February 14, 1996, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification. The Office found that appellant had not submitted the July 12, 1994 surgical report requested by the hearing representative and did not submit medical evidence supporting causal relationship based on other than temporal grounds.

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually

[2] Appellant also submitted copies of reports previously of record.

experienced the employment incident in the time, place and in the manner alleged.[3] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

As applied to this case, appellant has the burden of establishing that his claimed left knee injury was caused by the June 29, 1994 incident or other factors of his federal employment. Appellant has established that the June 29, 1994 incident occurred at the time, place and in the manner alleged. What remains in dispute is whether the claimed medial meniscal tear and ACL tear were related to this incident.

The Office denied appellant's claim in February 14, 1996 and November 6, 1995 decisions on the grounds that appellant submitted insufficient medical evidence to establish that the claimed ACL tear and left medial meniscal tear were attributable to the June 29, 1994 incident and not the nonoccupational March 8, 1994 left knee injury to the medial collateral and ACL and torn lateral meniscus of the left knee and a "normal appearing medial meniscus."

There are two difficulties with the Office's denial.[5] First, the medical record demonstrates that appellant had recovered from the March 8, 1994 injury prior to the June 29, 1994 incident. Appellant returned to full-duty work without difficulty no later than June 10, 1994 and Dr. Cote, his attending orthopedic surgeon, found appellant's knee to have excellent function as of that date. Thus, it appears that appellant's left knee condition, to the extent attributable to the March 8, 1994 injury, resolved as of June 10, 1994. The Board notes that a prior left knee injury would not preclude appellant from establishing injury due to the June 29, 1994 incident.[6]

Second, appellant has submitted medical evidence indicating a distinct injury on June 29, 1994 to a different structure of the knee than was involved in the March 8, 1994 injury. A March 16, 1994 MRI scan showed a torn *lateral* meniscus of the left knee and a "normal appearing *medial* meniscus." In a July 1, 1994 report, Dr. Cote noted the accepted June 29, 1994 incident caused "immediate *new* onset of swelling and pain" and severe instability." Dr. Cote diagnosed a possible medial meniscus tear of the left knee, confirmed in a July 25, 1994 postoperative report stating that left knee arthroscopy on July 12, 1994 revealed an "acutely displaced bucket handle tear of the meniscus … [and] complete disruption of the anterior cruciate ligament."

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 110.5(a)(14).

[5] In both the February 14, 1996 and November 6, 1995 decisions, the Office found that appellant had not established his claim in part because Dr. Cote had not submitted his July 12, 1994 surgical report. The Board notes, however, that Dr. Cote provided diagnoses in his July 11, 1994 preoperative report, made the day prior to the July 12, 1994 arthroscopy, of an ACL tear and medial meniscal tear and described the July 12, 1994 procedure and postoperative diagnoses in detail in his July 25, 1994 report. The absence of the actual surgical note is therefore of little relevance as there are sufficient medical reports which contain the relevant information from that report.

[6] *Beth P. Chaput*, 37 ECAB 158 (1985).

In an October 31, 1994 report, Dr. Cote stated that appellant had "recovered fully" from the March 8, 1994 injury prior to the accepted June 29, 1994 incident. He noted that the March 16, 1994 MRI scan "demonstrated a normal appearing medial meniscus" while the July 12, 1994 surgery revealed a bucket-handle tear of the medial meniscus. Dr. Cote therefore opined that the accepted June 29, 1994 incident in which appellant slipped on a rock, twisted his knee and fell caused the medial meniscus tear" to a reasonable degree of medical certainty." Dr. Cote noted in his July 1, 1994 report that appellant had been working full time without difficulty as of June 10, 1994, but experienced "*immediate* onset of new pain and swelling" and the inability to bear weight when he twisted his knee and fell on June 29, 1994, causing a meniscal tear. The Board finds that Dr. Cote's opinion on causal relationship is based on objective, detailed medical findings and a complete knowledge of the factual and medical history and contains sufficient rationale to require further development.

The Board finds that the consistent history of injury, treatment and diagnoses contained within the medical reports submitted, constitutes sufficient evidence in support of appellant's claim to require further development of the record by the Office.[7] The Board notes that there is no medical evidence of record controverting causal relationship. The Office did not seek to further develop the medical evidence and did not refer the case to an Office medical adviser or second opinion physician. The Board has held proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter. The Office shares a responsibility to develop the evidence and must do so in a fair and impartial manner.[8] Therefore, the case shall be returned to the Office for further development.

On return of the case the Office should conduct appropriate development to determine, considering the Office's acceptance of the July 29, 1994 incident, whether such incident resulted in a medical condition, aggravation of any preexisting medical condition and any period of disability for work. The Office should also determine whether the July 29, 1994 incident, or other employment factors, necessitated the July 12, 1994 left knee arthroscopy. Following this and other such development as the Office deems appropriate, the Office shall issue an appropriate decision in the case.

[7] *See John J. Carlone, supra* note 3. The Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

[8] *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

The decisions of the Office of Workers' Compensation Programs dated February 14, 1996 and November 6, 1995 are hereby set aside and the case remanded to the Office for appropriate development consistent with this decision.

Dated, Washington, D.C.
April 23, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member