

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE MAYNOR and TENNESSEE VALLEY AUTHORITY,  
DIVISION OF FOSSIL FUEL & HYDROPOWER, Chattanooga, Tenn.

*Docket No. 96-1200; Submitted on the Record;  
Issued February 19, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established that he developed a right knee condition consequential to his accepted left knee injury.

On August 18, 1988 the Office of Workers' Compensation Programs accepted that appellant sustained a contusion and a ruptured medial meniscus in his left knee, causally related to his federal employment.

On January 20, 1995 appellant filed a recurrence of disability claim alleging that he developed a consequential right knee condition from overuse, due to his favoring the left knee. The medical evidence the Office had before it at this time supported that, following acceptance of appellant's claim, he continued to have left knee difficulties including effusion, soreness and bone spurring continuing through 1994. However, no further medical evidence supporting his consequential injury claim was submitted.

By decision dated May 18, 1995, the Office rejected appellant's consequential injury claim finding that the medical evidence of record did not establish the consequential injury relationship.

Appellant requested reconsideration on June 5, 1995 and in support he submitted additional medical evidence. The proffered medical evidence consisted of an April 24, 1995 Office medical progress note from Dr. William E. Matthews, appellant's Board-certified treating orthopedic surgeon, which stated that at that time appellant had bilateral knee pain and was favoring his right knee. Dr. Matthews continued to explain that appellant had bilateral degenerative joint disease with a possible torn medial meniscus on the right, and that appellant's "right knee trouble could very well be exacerbated by his left knee injury." He continued that "due to favoring the left knee, [appellant] has caused complications to the right knee."

By decision dated October 11, 1995, the Office denied modification of the prior decision finding that the evidence submitted was not sufficient to warrant modification. The Office quoted the first sentence of Dr. Matthews' office note addendum and explained that it was equivocal and without rationale, and hence was insufficient to warrant modification. The Office did not address Dr. Matthews' second unequivocal sentence supporting causal relation and providing the rationale that the right knee complications were caused by appellant's favoring his previously injured left knee.

On January 10, 1996 appellant again requested reconsideration, and in support he submitted a January 8, 1996 report from Dr. Matthews. Dr. Matthews stated that "the work-related injury to [appellant's] left knee exacerbated the right knee problem due to favoring the left knee."

By decision dated January 29, 1996, the Office denied modification of the prior decision finding that the submitted medical evidence contradicted the earlier report from the same physician, and hence was not of sufficient probative value to establish the claim. The Office found that the 1995 report which stated that appellant was favoring his right knee, contradicted the 1996 report which stated that the right knee problem was due to favoring the left knee. The Board notes, however, that the 1995 report was addressing appellant's presenting symptoms at that time, and that the 1996 report was addressing the causal relation of the symptoms, such that they are not in conflict.

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

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>1</sup> This holds true in recurrence and consequential injury claims as well as in initial traumatic and occupational claims. In the instant case, although neither of appellant's treating physician's reports contain rationale sufficiently detailed as to physiologic mechanism involved to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a consequential right knee injury, causally related to his February 9, 1988 left knee injury, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between his present exacerbated right knee problems and overuse, due to his favoring his left knee as a result of his original traumatic injuries, that is sufficient to require further development of the case record by the Office.<sup>2</sup> Additionally, there is no opposing medical evidence in the record.

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<sup>1</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

Therefore, this case must be remanded for the compilation of a statement of accepted facts based upon all of the medical records of file, and for referral to an appropriate specialist for a rationalized second opinion on the issue of exacerbation and/or causal relation of appellant's right knee condition as a result of the ongoing accepted left knee condition.

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 29, 1996, October 11 and May 18, 1995 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.  
February 19, 1998

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member