

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHAWN J. FINNEY and DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, Utah

*Docket No. 96-2406; Submitted on the Record;  
Issued November 24, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability in October 1994 causally related to his May 8, 1981 or April 8, 1988 employment-related left knee injuries.

On December 14, 1994 appellant, then a 36-year-old aircraft mechanic, filed a claim for a recurrence of disability which he attributed to his May 8, 1981 employment injury.<sup>1</sup>

In clinical notes dated November 16, 1994, Dr. L. Michael Janeway, a Board-certified orthopedic surgeon, related that appellant's symptoms continued to worsen and his condition had deteriorated to the point where he could not function with his left knee. He indicated that appellant should stop work for at least two weeks.

In a claim form dated December 11, 1994, appellant claimed compensation benefits for total disability commencing in October 1994.

In two reports dated January 3, 1995, Dr. Janeway diagnosed left knee arthritis and instability and indicated that appellant needed to take an indefinite period of time off work until satisfactory rehabilitation had been reached. He checked the block marked "yes" indicating that the condition was causally related to appellant's employment.

In a report dated January 11, 1995, Dr. Jack Farber, a Board-certified psychiatrist, related that he had been treating appellant since October 4, 1994 for depression and that, although appellant had numerous other medical problems, he appeared sufficiently disabled from his psychiatric condition alone and he did not see him as capable of productive employment for the foreseeable future. In another report dated January 11, 1995, Dr. Farber diagnosed major depression and unspecified alcohol dependence.

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<sup>1</sup> The case record reveals that appellant had sustained two previous left knee injuries, on June 28, 1982 and April 8, 1988, in addition to the 1981 employment injury.

In a report dated February 13, 1995, Dr. Janeway stated:

“On December 28, 1994 formal physical therapy was discontinued, as range of motion and strength had reached proportions that could be continued with home therapy with which [appellant] complied. He is still on medications at this time, and apparently still under direct treatment from Dr. Farber. At this point in time knee function is such that a sedentary type of activity is possible, however, probably still precluded by the subjective statement of significant pain and the apparent continued depression, apparently secondary to loss of normal activity directly related to the knee pathology (this question may be better answered by Dr. Farber).”

Dr. Janeway did not provide any physical findings on examination.

By decision dated March 28, 1995, the Office denied appellant’s claim for compensation benefits commencing on October 4, 1994 on the grounds that the evidence of record failed to establish that the claimed recurrence of disability was causally related to his employment injury.

By letter dated March 25, 1996, through his representative, appellant requested reconsideration of his claim and submitted additional evidence.

In a report dated August 17, 1995, Dr. Farber related that he had been seeing appellant since October 1994 for depression and anxiety. He stated, “it is my understanding that although his physical dysfunction leaves him with anxiety and discouragement about his work capacity, it is primarily the degree of physical impairment he experiences that limit his ability to work.”

In a report dated November 29, 1995, Dr. Janeway related that appellant’s industrial left knee injuries included arthritis, quadriceps mechanism instability, anterior cruciate and medial collateral ligament instability and that his review of appellant’s medical file revealed that the original work injury, subsequent work injuries, and resulting degenerative changes had rendered appellant permanently disabled for all but sedentary work. He stated his opinion that appellant’s current knee pathology was causally connected to his employment based on a review of his medical history. Dr. Janeway stated:

“I feel [appellant] is capable of only sedentary work based on the physical pathology demonstrated. The prior ligament tear, coupled with the quadriceps mechanism instability, anterior cruciate and medial collateral ligament instability have rendered [appellant’s] knee highly susceptible to misalignment. The medical history is replete with aggravation and reinjury resulting from [appellant’s] attempts to maintain a normal life. The arthritis which has developed as a result of the injuries, has in itself been the cause of an exacerbation of symptoms.

“It is my medical opinion based on reasonable medical probability that [appellant’s] current knee pathology is 80 [percent] directly and causally related to his industrial injury of May 8, 1981. The series of smaller traumas also incurred at work, and/or the treatment required for these injuries.”

Dr. Janeway provided a list of work restrictions.

By decision dated May 6, 1996, the Office denied modification of its March 28, 1995 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability in October 1994 causally related to his May 8, 1981 employment-related left knee injury or subsequent left knee employment injuries or to any other factors of his federal employment.

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.<sup>2</sup> 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.<sup>3</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>4</sup>

In clinical notes dated November 16, 1994, Dr. Janeway, a Board-certified orthopedic surgeon, related that appellant's left knee symptoms continued to worsen and his condition had deteriorated to the point where he could not function with his left knee. He indicated that appellant should stop work for at least two weeks. However, Dr. Janeway did not indicate the cause of appellant's condition and therefore these notes are not sufficient to establish that he sustained a recurrence of disability causally related to his employment.

In two reports dated January 3, 1995, Dr. Janeway diagnosed left knee arthritis and instability and indicated that appellant needed to take indefinite period of time off work until satisfactory rehabilitation had been reached. He checked the block marked "yes" indicating that the condition was causally related to appellant's employment.

The Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.<sup>5</sup> Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.<sup>6</sup>

In a report dated January 11, 1995, Dr. Farber, a Board-certified psychiatrist, related that he had been treating appellant since October 4, 1994 for depression and that, although appellant

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<sup>2</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>3</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>5</sup> *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

<sup>6</sup> *Id.*

had numerous other medical problems, he appeared sufficiently disabled from his psychiatric condition alone and he did not see him as capable of productive employment for the foreseeable future. In another report dated January 11, 1995, Dr. Farber diagnosed major depression and unspecified alcohol dependence. The Office has not accepted that appellant had an employment-related depression condition and therefore this report is not sufficient to discharge appellant's burden of proof.

In a report dated February 13, 1995, Dr. Janeway stated:

“On December 28, 1994 formal physical therapy was discontinued, as range of motion and strength had reached proportions that could be continued with home therapy with which [appellant] complied.... At this point in time knee function is such that a sedentary type of activity is possible, however, probably still precluded by the subjective statement of significant pain and the apparent continued depression, apparently secondary to loss of normal activity directly related to the knee pathology (this question may be better answered by Dr. Farber).”

Dr. Janeway did not provide any physical findings on examination to support his conclusions and he did not indicate that appellant was totally disabled. He merely indicated that appellant was limited to sedentary activities due to subjective complaints of pain. Furthermore, he seemed to be attributing appellant's problems, at least partially, to depression which is not an accepted condition in this case. Due to these deficiencies, this report is not sufficient to establish that appellant sustained an employment-related recurrence of disability.

In a report dated August 17, 1995, Dr. Farber stated, “it is my understanding that although his physical dysfunction leaves him with anxiety and discouragement about his work capacity, it is primarily the degree of physical impairment he experiences that limit his ability to work.” However, Dr. Farber was the treating physician for appellant's emotional condition, not his left knee condition, and therefore Dr. Farber's opinion that appellant could not work primarily due to his knee condition is of limited probative value and is not sufficient to discharge appellant's burden of proof.

In a report dated November 29, 1995, Dr. Janeway stated that his review of appellant's medical file revealed that the original left knee work injury, subsequent work injuries, and resulting degenerative changes had rendered appellant permanently disabled for all but sedentary work. He stated his opinion that appellant's current knee pathology was causally connected to his employment based on a review of his medical history. However, Dr. Janeway did not opine that appellant was totally disabled nor did he specify any dates of partial or total disability and therefore this report does not establish that appellant sustained a recurrence of disability in October 1994 causally related to previous employment injuries or to any other factors of his federal employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to

establish causal relationship.<sup>7</sup> Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to his accepted employment injuries and, therefore, the Office properly denied appellant's claim for compensation.

The May 6, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
November 24, 1998

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).