

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM G. KEPNER and ENVIRONMENTAL
PROTECTION AGENCY, Las Vegas, Nev.

*Docket No. 97-2753; Submitted on the Record;
Issued November 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on January 10, 1997 causally related to his January 24, 1995 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on January 10, 1997 causally related to his January 24, 1995 employment injury.

Appellant filed a claim on January 31, 1995 alleging on January 24, 1995 he injured his back in a motor vehicle accident. The Office of Workers' Compensation Programs accepted appellant's claim for acute lumbar strain. Appellant returned to work on April 4, 1995. On April 2, 1997 appellant filed a notice of recurrence of disability alleging that on January 10, 1997 he experienced disability due to knee pain causally related to his accepted employment injury. By decision dated May 7, 1997, the Office denied appellant's claim. Appellant requested reconsideration on June 5, 1997 and submitted additional new evidence. By decision dated July 21, 1997, the Office denied modification of its May 7, 1997 decision.

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his recurrence of disability commencing January 10, 1997 and his January 24, 1995 employment injury.¹ 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 employment factors and supports that conclusion with sound medical reasoning.²

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

² *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

In a note dated February 6, 1995, Dr. Donald R. Mackay, a Board-certified orthopedic surgeon, reported that appellant struck his right leg on a metal bar inside the bus and suffered a twisting injury to his spine. Appellant denied any right lower extremity pain at that time. The remainder of appellant's contemporaneous medical records and statements do not address his right lower extremity.

On February 10, 1997 Dr. Mackay noted appellant's complaints of right knee pain. He stated that appellant injured his knee in January 1995 but that it did not start bothering him until September 1995. In a report dated March 12, 1997, Dr. Mackay diagnosed a torn medial meniscus. He stated that appellant injured his knee on a metal bar and that appellant experienced pain off and on since the accident. Dr. Mackay stated, "I think that his torn meniscus is probably related to his injury from January 24, 1995." These reports are not sufficient to meet appellant's burden of proof as Dr. Mackay did not offer a definite opinion on the causal relationship between appellant's diagnosed condition and his accepted employment injury. He also failed to offer any medical rationale explaining why he thought appellant's current condition was related to a blow to his knee which at the time it occurred did not cause him pain.

Dr. Mackay completed a report on May 23, 1997 and noted appellant struck his knee on a metal bar on January 24, 1995. He stated that appellant advised him that he continued to have pain in his right knee off and on since the accident, but only recently experienced worsening of his symptoms Dr. Mackay stated that appellant did have a documented injury to his right knee and that it was probable that he sustained a small tear in his meniscus which bothered him over the past two years, but not to the point where it required surgery. He concluded that appellant's condition was probably related to his injury on January 24, 1995. This report does not provide a definite opinion on causal relationship. Furthermore, Dr. Mackay did not explain why appellant did not experience symptoms from his knee injury until September 1995, why he did not seek treatment until January 1997 and why appellant's "probable small tear" would require surgery two years later.

On July 8, 1997 Dr. Mackay stated that it was his opinion to a reasonable degree of medical certainty, that appellant's meniscal tear probably began at the time he injured his knee on January 24, 1995. Although this report offers a definite opinion on the causal relationship between appellant's diagnosed condition and his accepted employment injury, Dr. Mackay did not explain the reasoning behind his opinion. This is especially necessary given the lapse of time between appellant's injury and his medical treatment for his right lower extremity. Furthermore, the record does not contain any medical records addressing appellant's knee injury from February 1995 until February 1997, a lapse of two years which raises questions regarding the causal relationship between the current condition and accepted injury.

The decisions of the Office of Workers' Compensation Programs dated July 21 and May 7, 1997 are hereby affirmed.

Dated, Washington, D.C.
November 17, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member