

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY SIMONS and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 98-191; Submitted on the Record;
Issued August 18, 1999*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he had a recurrence of disability effective April 5, 1995 causally related to his September 20, 1986 employment injury.

On September 20, 1986 appellant, then a 29-year-old electrician, was helping to push a jeep when he felt a pop in his knee. He stopped working on September 22, 1986 and returned to light-duty work on September 25, 1986. Appellant stopped work again on November 12, 1986 and underwent arthroscopic knee surgery which showed fraying of the medial meniscus and Grade I chondromalacia of the patella. He returned to work on December 23, 1986 and received continuation of pay for the periods he did not work.

On August 9, 1995 appellant filed a claim for a recurrence of disability. He had stopped working on April 5, 1995 and returned to work on April 19, 1995. Appellant lost intermittent time from work thereafter, through August 3, 1995. In a November 7, 1995 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the claimed recurrence was causally related to the accepted injury. In a December 8, 1995 letter, appellant, through his attorney, requested a hearing before an Office hearing representative. In a September 27, 1996 decision, the Office found appellant's request for a hearing was untimely and, exercising its discretion, denied his request for a hearing. Appellant requested reconsideration. In a January 10, 1997 merit decision, the Office denied appellant's request for modification of the decision. Appellant again requested reconsideration. In a July 10, 1997 merit decision, the Office again denied appellant's request for reconsideration.

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

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally

related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

In a February 5, 1996 report, Dr. Andrew J. Collier, a Board-certified orthopedic surgeon, noted appellant's history of the September 20, 1986 employment injury, stating that appellant twisted his knee and struck it anteriorly. Dr. Collier reported that he first examined appellant on March 28, 1995 for post-traumatic chondromalacia patellae, torn medial meniscus, status post buckling and giving way. He indicated that he performed surgery on April 6, 1995 consisting of a subtotal medial meniscectomy and debridement of the patella. Dr. Collier commented that appellant continued to be symptomatic from post-traumatic chondromalacia but his meniscal complaints had abated. He stated that appellant's current condition was related to the September 20, 1986 employment injury. Dr. Collier indicated that appellant had sustained a direct blow to the anterior portion of his knee and patella, resulting in post-traumatic chondromalacia patellae which was symptomatic and had caused buckling and giving way to the point that appellant sustained meniscal injuries.

Appellant submitted Dr. Collier's office notes. In a June 8, 1995 report, Dr. Collier stated that appellant had sustained his knee injury in 1988 when he was pushing a jeep, slipped, and fell, hitting his left knee against a bumper and then on the ground. He reported appellant had a continued problem with chondromalacia. In a March 26, 1997 report, Dr. Collier indicated that he had corrected the incorrect injury date in his office notes. He noted that there was a discrepancy on the description of appellant's injury between the original reports and his report. Dr. Collier indicated that he had given the history reported by appellant to him. He commented that appellant's original treating physician was an orthopedic spine specialist and noted that he had seen several patients of that physician in which the physician had underestimated the extent of the injury even after arthroscopy. Dr. Collier repeated his conclusion that appellant was injured in the course of his employment in 1986 and sustained an acute, post-traumatic chondromalacia patellae and a torn meniscus. He stated that appellant continued to have symptomatology from the injury.

The Office found Dr. Collier's reports to have little probative value because of an inaccurate history on the grounds that the history given by him described appellant hitting his knee on the jeep and the ground which appellant did not mention in his initial history. The difference between appellant's history in the claim form and Dr. Collier's history, however, is not sufficient to consider the latter to be inaccurate. Both appellant and Dr. Collier indicated that appellant was pushing a jeep on the day in question and injured his knee. Appellant indicated on the claim form that he "hurt" his left knee. In a subsequent December 4, 1986 medical form, Dr. Mario J. Arena, a Board-certified orthopedic surgeon, related that appellant felt a pop in the knee. Appellant did not mention hitting his knee at that time but the absence of such a statement at that time is not significant because appellant only described his injury in general terms and not in the detail elicited subsequently by Dr. Collier. The reports of Dr. Collier support appellant's claim for a recurrence of disability and are not contradicted by any other medical evidence of record. While insufficient to establish appellant's claim, Dr. Collier's reports are sufficient to

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

require further development of the medical evidence.² The case must therefore be remanded for referral of appellant, together with the statement of accepted facts and the case record, to an appropriate specialist for an examination and second opinion on whether appellant's recurrence of disability beginning April 5, 1995 was causally related to his September 20, 1986 employment injury to his left knee.

The decisions of the Office of Workers' Compensation Programs dated July 10 and January 10, 1997 are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.

August 18, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

² *John J. Carlone*, 41 ECAB 354 (1989).