

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBINA BROWN JOHNSON and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Bay Pines, FL

*Docket No. 98-320; Submitted on the Record;
Issued December 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability in 1995 causally related to her April 20, 1986 employment injury.

On April 20, 1986 appellant, then a 26-year-old nursing assistant, sustained contusions of both knees, internal derangement of the left knee and degenerative osteoarthritis of the left knee when she slipped on a wet floor and fell. She received appropriate compensation benefits.

On July 19, 1996 appellant filed a claim for a recurrence of disability in 1995 which she attributed to her May 12, 1986 employment injury.

A report regarding a magnetic resonance imaging (MRI) scan performed on July 10, 1988 noted a very small joint effusion but no evidence of a meniscal tear or a ligamentous injury of the left knee.

In a report dated July 17, 1996, Dr. Scot S. Sloan, a chiropractor, provided a history of appellant's condition and diagnosed a medial hamstring strain.

In notes dated July 18, 1996, Dr. Sloan related that appellant had palpable edema in the pes anserinus area as well as the medial knee region. He stated that the pes anserinus condition was "probably a compensatory strain from a prior knee injury inflaming the insertion of the tendon of the medial hamstring."

In notes dated July 19, 1996, Dr. James L. West, a Board-certified orthopedic surgeon, related that appellant had undergone arthroscopic surgery of the left knee some years previously. He provided findings on examination and recommended an MRI scan.

By decision dated August 9, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish causal

relationship between her claimed recurrence of disability in 1995 and her 1986 employment injury.

In an undated letter received by the Office on October 18, 1996, appellant requested a hearing before an Office hearing representative.

In an undated letter received by the Office on November 1, 1996, Dr. West noted that appellant had returned to full-time work following her 1986 employment injury but had experienced continued left knee problems since the 1986 injury. He opined that appellant was a candidate for arthroscopic surgery despite the MRI scan which showed no evidence of a meniscal tear or ligamentous injury to the left knee.

By decision dated November 14, 1996, the Office denied appellant's request for an oral hearing on the grounds that the request was not timely filed within 30 days of the August 9, 1996 decision and the issue in the case could equally well be addressed by a request for reconsideration and a submission of additional evidence.

In an undated letter received by the Office on August 8, 1997, appellant requested reconsideration of the denial of her claim and submitted evidence previously of record as well as new evidence.

In a report dated August 7, 1996, Dr. West related that he saw appellant in 1986 when a diagnosis of internal derangement of the left knee was made. He stated that he had reviewed an MRI report that showed no evidence of a meniscal tear and no evidence of ligamentous injury of the left knee. He provided findings on examination but did not make a diagnosis.

In a report dated September 26, 1996, Dr. Brett R. Bolhofner, a Board-certified orthopedic surgeon, provided a history of appellant's condition, findings on examination and diagnosed chronic medial left knee discomfort. He noted that a recent MRI scan was essentially unremarkable. He did not provide an opinion as to the cause of the knee discomfort.

In a report dated October 1, 1996, Dr. Koco Eaton, an orthopedic surgeon, provided a history of appellant's condition and findings on examination and gave his impression of pes anserinus. He related that appellant injured her knee in 1986 and had experienced problems since then. He did not provide an opinion as to the cause of the condition.

By decision dated September 23, 1997, the Office denied modification of its prior decision.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability in 1995 causally related to her April 20, 1986 employment injury.

In this case, on April 20, 1986, appellant sustained contusions of both knees, internal derangement of the left knee and degenerative osteoarthritis of the left knee in the performance of duty. In 1996 she filed a claim for a recurrence of disability in 1995 which she attributed to her 1986 employment injury.

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.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 the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

In a report dated July 17, 1996, Dr. Sloan, a chiropractor, provided a history of appellant's condition and diagnosed a medial hamstring strain. In notes dated July 18, 1996, he related that appellant had a pes anserinus area condition which was "probably a compensatory strain from a prior knee injury inflaming the insertion of the tendon of the medial hamstring." However, under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁴ As Dr. Sloan did not treat appellant for a subluxation, he is not considered to be a physician under the Act and his reports have no probative value on the issue of whether appellant sustained an employment-related recurrence of disability.

In an undated letter received by the Office on November 1, 1996, Dr. West, a Board-certified orthopedic surgeon, noted that appellant had returned to full-time work following her 1986 employment injury but had experienced continued left knee problems since the 1986 injury. He opined that appellant was a candidate for arthroscopic surgery despite the MRI scan which showed no evidence of a meniscal tear or ligamentous injury to the left knee. In a report dated August 7, 1996, Dr. West related that he saw appellant in 1986 when a diagnosis of internal derangement of the left knee was made. He stated that he had reviewed an MRI report that showed no evidence of a meniscal tear and no evidence of ligamentous injury of the left knee. However, in his reports he provided no diagnosis of appellant's condition and no rationalized opinion explaining, how, if at all, appellant's left knee problems in 1996 were causally related to her 1986 employment injury. Therefore, these reports are not sufficient to establish that appellant sustained a recurrence of disability in 1995 causally related to her accepted 1986 left knee injury.

In a report dated September 26, 1996, Dr. Bolhofner, a Board-certified orthopedic surgeon, provided a history of appellant's condition, findings on examination and diagnosed chronic medial left knee discomfort. He noted that a recent MRI scan was essentially unremarkable. However, he did not provide an opinion as to the cause of the condition or any rationalized medical opinion explaining how appellant's knee discomfort was causally related to

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

her 1986 employment injury. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated October 1, 1996, Dr. Eaton, an orthopedic surgeon, provided a history of appellant's condition and findings on examination and gave his impression of pes anserinus. He related that appellant injured her knee in 1986 and had experienced problems since then. However, he did not provide a reasoned medical opinion explaining how the diagnosed condition was causally related to the 1986 employment injury. Therefore, this report does not support appellant's claim of an employment-related recurrence of disability.

Appellant failed to submit rationalized medical opinion evidence establishing that her claimed recurrence of disability in 1995 was causally related to the accepted 1986 employment injury and, therefore, the Office properly denied her claim for compensation.

The September 23, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 14, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member