

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SIDNEY RANEY and DEPARTMENT OF DEFENSE,  
DEFENSE DEPOT, Tracy, CA

*Docket No. 99-2300; Submitted on the Record;  
Issued December 17, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's employment-related condition had ceased as of July 6, 1999.

In the present case, appellant filed an occupational disease claim for the right knee on June 28, 1985 and a traumatic injury claim for the left knee on July 19, 1985. The Office accepted that appellant sustained a temporary aggravation of osteoarthritis in the right knee, and a left knee strain.

By letter dated June 3, 1999, the Office advised appellant that it proposed to terminate his compensation on the grounds that his employment-related condition had ceased. By decision dated July 6, 1999, the Office terminated appellant's compensation.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>1</sup>

In the present case, the Office referred appellant, medical records, and a statement of accepted facts to Dr. Bertzel C. MacMaster, an orthopedic surgeon. Although the statement of accepted facts describes the traumatic injury as occurring on May 24, 1985, the actual date was July 19, 1985. May 24, 1985 is the date that appellant indicated on his occupational disease claim that he first became aware of an employment-related right knee condition. The Office accepted a temporary aggravation of right knee osteoarthritis based on a February 17, 1986

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

report from Dr. Norris C. Knight, Jr., an orthopedic surgeon serving as an Office referral physician, who reported that appellant's work duties, including lifting and walking, aggravated his osteoarthritis. With respect to a fall at work on July 19, 1985, the Office accepted a left knee strain. Although appellant has indicated his belief that the July 19, 1985 incident aggravated his right knee, the accepted osteoarthritis condition was based on repetitive work duties, not the July 19, 1985 employment incident.

In a report dated May 10, 1999, Dr. MacMaster provided a history and results on examination.<sup>2</sup> With respect to the left knee, Dr. MacMaster stated that there was no objective evidence of continuing sprain or strain. As to the right knee, he further stated:

“If the Office indeed accepts the condition of a partial media meniscectomy there is a meniscal injury, both to the media and lateral menisci, then there is indeed evidence of a continued aggravation, that is loss of range of motion in the knee. There is no effusion present, however, and there is no evidence of instability of the knee. There is no evidence of progressive deterioration of the knee based on radiographic criteria since the changes seen in the most recent films are essentially those seen in 1986. If the Office does not accept the torn menisci as a direct result of his injury, which is not evident from the statement of accepted facts, then the aggravation of that condition has in fact ceased since the patient has not been working. What you see are merely the result of the natural deterioration process that occurs as a result of a meniscal injury.”

The Board notes that the Office did not accept a torn meniscus as employment related. Moreover, the evidence of record is not sufficient to establish a torn meniscus as causally related to appellant's federal employment. The record indicates that appellant underwent surgery on August 19, 1985 to repair tears of the medial and lateral menisci. In a report dated August 26, 1985, Dr. Jerry L. Jones, an orthopedic surgeon, indicated that appellant had decided by June 1985 to have right knee surgery, based on an arthrogram of the right knee. Dr. Jones stated that on July 19, 1985 appellant “had an injury that he slipped and fell which aggravated the condition of the right knee and this necessitated him not being able to work at that time and to desire correction and have surgery to correct the right knee problem.” He does not explain the nature and extent of an aggravation to the right knee caused by a July 19, 1985 incident, nor does he clearly explain what relationship, if any, a meniscus tear in the right knee had with either appellant's repetitive work duties or the July 19, 1985 injury. In his February 17, 1986 report, Dr. Knight noted that appellant had surgery on August 19, 1995, and stated, “there was no history of injury of any kind with the onset. That is, the condition occurred spontaneously by history.” Dr. Knight also stated, “One would presume that these are degenerative tears, but I cannot prove this. The treating orthopedist should be in a better position to tell us that. With an absence of trauma, then we have to assume that the condition is related to inelasticity and the general tissue aging incident to age 51.”

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<sup>2</sup> Although the statement of accepted facts contained an incorrect date for the traumatic injury, the history reported by Dr. MacMaster indicated that he had an accurate background on which to base his opinions.

The Board finds that there is no probative evidence to establish that the meniscus tears were causally related to appellant's federal employment. Dr. MacMaster clearly opined that if the torn menisci were not employment related, then the evidence indicated the accepted aggravation had ceased. This represents the weight of the medical evidence, as there is no contrary medical opinion with respect to appellant's continuing condition. The final report from an attending physician, Dr. J.E. Keever, is dated January 14, 1998 and indicates only that appellant had osteoarthritis of both knees, without providing an opinion on causal relationship with federal employment.

Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's compensation in this case.

The decision of the Office of Workers' Compensation Programs dated July 6, 1999 is affirmed.

Dated, Washington, D.C.  
December 17, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member