

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DARRY J. DAVIS and DEPARTMENT OF DEFENSE,  
FORT McPHERSON, GA

*Docket No. 98-1159; Submitted on the Record;  
Issued November 10, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that his disability claim for wage loss on or after July 28, 1997 is causally related to the accepted employment injury of July 22, 1997.

On July 22, 1997 appellant, then a 46-year-old military pay technician, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he bruised his left knee and sustained lower back spasms due to his bumping his knee very hard against his desk. Appellant stopped work on July 22, 1997 and returned to light-duty work on July 28, 1997. The Office of Workers' Compensation Programs accepted the claim on September 10, 1997 for contusion of the left knee and paid continuation of pay for the period July 23 to July 25, 1997.

In an assessment dated August 20, 1997, Dr. Kent Hovis, a chiropractor, indicated that appellant continued to have pain and was unable to do anything. Dr. Hovis noted a four-year history of lower back pain and diagnosed a subluxation at C1 by x-ray in the lower back.

On October 6, 1997 appellant filed a claim for compensation for wage loss for the period July 28, 1997<sup>1</sup> through the date of the claim.

In an attending physician's report (Form CA-20), Dr. Alan Czarkowski, appellant's attending physician, diagnosed left knee contusion and reported that appellant was disabled from July 23 to July 25, 1997 due to his left knee contusion. Dr. Czarkowski indicated that appellant could return to light-duty work on July 28, 1997.

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<sup>1</sup> On the form, appellant indicated that he was requesting compensation for the period July 22 to October 6, 1997. However, it appears that appellant was requesting wage-loss compensation from the period July 28 to October 6, 1997 as he was paid continuation of pay for the period July 22 to July 25, 1997.

By letter dated October 22, 1997, the Office advised appellant that his claim had been accepted for contusion to the left knee and compensation had been paid for the period July 23 to July 25, 1997. The Office also informed appellant that the record contained no evidence supporting any disability due to his accepted employment injury for the period he was claiming compensation. The Office also noted that his back condition had been denied as a work-related condition by letter dated September 10, 1997.

In a report dated November 6, 1997, by Dr. Ralph D'Auria<sup>2</sup> and Dr. David G. Hollifield<sup>3</sup> noted a history of left knee pain since his accepted employment injury on July 22, 1997.

In reports dated November 24 and December 2, 5 and 23, 1997, Drs. Hollifield and D'Auria diagnosed left knee pain and that appellant had not returned to work.

Appellant submitted disability slips from Dr. D'Auria indicating that he was disabled from work for the period November 6, 1997 to January 7, 1998.

By decision dated January 28, 1998, the Office denied appellant's request for wage-loss compensation on the basis that the medical evidence of record fails to establish that he was totally disabled due to his accepted employment injury.

Appellant requested reconsideration in a letter dated January 25, 1998<sup>4</sup> and submitted medical records for the period November 26, 1989 to February 14, 1996, an August 20, 1997 assessment form Dr. Hovis, a chiropractor, and an October 1, 1997 Form CA-20 signed by Dr. Czarkowski.

By decision dated February 19, 1998, the Office denied appellant's request for modification on the basis that the evidence submitted failed to establish that his disability was due to his left knee contusion.

The Board finds that appellant has not established his disability claim for wage loss on or after July 28, 1997 is causally related to the accepted employment injury of July 22, 1997.

In establishing a claim for compensation, two separate issues must be addressed: whether an injury was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and; whether there is a causal relationship between the injury and any disability or specific condition for which compensation is claimed, *i.e.*, "causal relationship." These are two distinct elements of a compensation claim.<sup>5</sup> Fact of injury must be established before the issue of causal relationship is addressed. However, acceptance of fact of injury is not contingent upon a claimant proving causal relationship between the injury and any disability or condition for which compensation is claimed. Thus, a claimant may, as in this case, establish that an injury occurred

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<sup>2</sup> An attending physician Board-certified in physical medicine and rehabilitation.

<sup>3</sup> An attending physician Board-certified in physical medicine and rehabilitation.

<sup>4</sup> Attached to the letter is a postage stamp indicating that appellant's letter was mailed on January 31, 1998.

<sup>5</sup> See *Elaine Pendleton*, 40 ECAB 1143 (1989).

in the performance of duty as alleged, but fail to establish that the claimed disability or condition is causally related to the injury.<sup>6</sup>

In this case, the Office found that appellant sustained a contusion to the left knee only and paid continuation of pay for the period July 23 to July 25, 1997. The issue which remains to be resolved is whether the July 22, 1997 contusion to the left knee rendered appellant disabled for work on or after July 28, 1997.

In support of his claim, appellant submitted medical reports from Drs. D'Auria and Hollifield, medical records for the period November 26, 1989 to February 14, 1996, an August 20, 1997 assessment form from Dr. Hovis, a chiropractor, and an October 1, 1997 Form CA-20 signed by Dr. Czarkowski, and disability slips signed by Dr. D'Auria. However, none of the evidence submitted establishes that appellant was totally disabled on and after July 28, 1997 due to his accepted left knee contusion. None of the reports by Drs. D'Auria and Hollifield provide any medical rationale addressing the issue of whether appellant was disabled for work on and after July 28, 1997 due to the accepted condition of left knee contusion. The physicians noted that appellant was seen for knee pain and that he was not working. The medical reports submitted for the period November 26, 1989 to February 16, 1996 are irrelevant as they are prior to the accepted employment injury of July 22, 1997 and, thus, do not address the issue of disability for the period appellant is requesting compensation.

Dr. Hovis in his August 20, 1997 assessment form noted a history of back pain for the past four years and diagnosed a subluxation at C1 by x-ray. He also opined that appellant was totally disabled due to continued pain. Section 8101(2) of the Federal Employees' Compensation Act provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."<sup>7</sup> As the Office denied appellant's claim for a back condition causally related to the accepted left knee contusion injury, Dr. Hovis' opinion regarding appellant's back is deemed not relevant to appellant's knee contusion claim.

Lastly, Dr. Czarkowski's report is also insufficient to meet appellant's burden that he was disabled on and after July 28, 1997 due to his accepted July 22, 1997 employment injury. Dr. Czarkowski indicated on the Form CA-20 that appellant would be able to return to work on July 28, 1997.

Appellant has failed to submit sufficient rationalized medical evidence from his physicians addressing the issue of whether he was medically disabled for work on or after July 28, 1997 due to the accepted left knee contusion. He has not submitted medical evidence setting forth, in sufficient detail and with supporting medical rationale, the pathophysiologic mechanisms whereby the July 22, 1997 left knee contusion would render him unable to perform

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<sup>6</sup> As used in the Act, the term "disability" means incapacity because of injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528, 540 (1986).

<sup>7</sup> 5 U.S.C. § 8101(2).

his customary job duties on and after July 28, 1997. Without such evidence, appellant has not established his claim for compensation on and after July 28, 1997.

Consequently, appellant had not met his burden of proof as he submitted insufficient medical evidence indicating that the accepted left knee contusion caused by the accepted July 22, 1997 employment injury caused a continuing disability after July 28, 1997.

The decisions of the Office of Workers' Compensation Programs dated February 19 and January 28, 1998 are affirmed.

Dated, Washington, D.C.  
November 10, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member