U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDLE C. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, NY

Docket No. 98-317; Submitted on the Record;
Issued September 14, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on or about January 16, 1996, causally related to his September 15, 1995 employment-related injury.

On September 15, 1995 appellant, then a 37-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he sustained an injury to his right foot while in the performance of duty. He explained that on September 15, 1995 while walking through the grass, his foot turned to the side. Dr. Andrew R. Peck, a contract physician with the employing establishment, examined appellant on the day of his injury and diagnosed a right foot sprain. Appellant resumed his regular employment duties on September 18, 1995. The Office of Workers' Compensation Programs claims subsequently accepted appellant's claim for "right foot sprain."

Appellant filed a notice of recurrence of disability (Form CA-2a) on February 5, 1996 alleging that he sustained a recurrence of disability on January 19, 1996, causally related to his September 15, 1995 employment injury.[1] Appellant described the nature of his recurrence as fluid build-up of the right knee, pain in his right leg while walking distances or bending and muscular pain at night. The medical evidence submitted in support of the claim included patient aftercare instructions dated January 19, 1996, from Franklin Hospital Medical Center emergency department, which noted a diagnosis of sprain and synovitis of the right knee and further indicated "no physical exertion for [three weeks]" and "patient should not walk for [one] week." Appellant also submitted a January 26, 1996 disability note, from Dr. Norman Sveilich, an osteopath, indicating that appellant was being treated for "disuse atrophy syndrome." He further noted that appellant was capable of performing light-duty work. Additionally, on February 8,

[1] In an April 26, 1996 supplemental statement, appellant indicated that the recurrence of disability actually occurred on January 16, 1996. He explained that the January 19, 1996 date of recurrence previously reported on his Form CA-2a was the date he sought medical treatment following his recurrence of disability.

1996 Dr. Sveilich diagnosed a torn right medial meniscus and he prepared a duty status report (Form CA-17) indicating that appellant was capable of performing only light duty.[2]

In a letter dated February 22, 1996, the employing establishment challenged the claim on the basis that appellant's original injury was accepted for a right foot sprain and not for his right knee. The employing establishment also noted that the alleged recurrence of disability occurred during the final week of a scheduled three-week vacation. Finally, it was noted that appellant reported for military duty on February 10, 1996 despite the physical limitations imposed by Dr. Sveilich on February 8, 1996.[3]

On March 14, 1996 the Office advised appellant that the evidence of record was insufficient to establish a causal relationship between the September 15, 1995 employment incident and his current knee condition. The Office also informed appellant of the employing establishment's challenge to his claim and advised him to submit additional medical evidence within 30 days addressing the issues raised by his employer. The Office subsequently forwarded appellant a "Recurrence Development Checklist" on April 9, 1996 requesting additional factual and medical information.

In a supplemental statement dated April 26, 1996, appellant indicated that his recurrence of disability occurred while traveling on an airplane on January 16, 1996. He explained that "pain struck" him on his right knee and he noticed that his whole knee had become swollen. Appellant further explained that there was no intervening cause for his pain and that he had not sustained an injury to the same area either prior or subsequent to his September 15, 1995 employment injury. Additionally, he noted that upon returning to work following his initial injury, he experienced stiffness in his legs, pain and muscle spasms, swelling of the kneecap and constant irritation.

Additional medical evidence received by the Office included several duty status reports and disability notes from Dr. Sveilich, as well as the doctor's treatment notes dated February 8, March 12, April 9 and May 9, 1996, Dr. Sveilich continued to diagnose disuse atrophy syndrome and a torn right medial meniscus as evidenced by an undated magnetic resonance imaging scan. Additionally, Dr. Sveilich noted that he was awaiting authorization to perform arthroscopic surgery.

By decision dated July 25, 1996, the Office denied appellant's claim on the basis that the evidence of record failed to establish that the claimed condition was causally related to the accepted injury of September 15, 1995. In an accompanying memorandum, the Office noted, among other things, that the evidence provided by Dr. Sveilich did not include a full history of injury or an opinion explaining the causal relationship between appellant's current knee condition and the sprain injury of September 15, 1995.

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[2] On the Form CA-17 Dr. Sveilich attributed appellant's knee condition to a "recurrence of injury on [September 15, 1995]."

[3] The February 8, 1996 Form CA-17 prepared by Dr. Sveilich noted the following limitations: "No lifting, pushing or pulling greater than 10 pounds" and "no standing, walking or squatting."

Shortly after the July 25, 1996 denial of the claim, the Office received additional treatment notes from Dr. Sveilich dated June 17, 21 and July 11, 1996. His notes for June 21, 1996 indicate that appellant underwent a posterior horn partial meniscectomy of the right knee. However, the specific date of this procedure was not noted. Dr. Sveilich also provided two additional duty status reports.

Appellant filed a request for reconsideration on July 15, 1997. In support of his request, appellant submitted a June 4, 1996 report from Dr. Sveilich, in which he attributed appellant's current knee condition to his prior injury in September 1995.[4] Additionally, appellant's counsel argued that the Office, in characterizing appellant's initial injury as merely a "'right foot sprain,'" ignored the fact that appellant also twisted his right leg and right knee on September 15, 1995.[5]

On October 9, 1997 the employing establishment submitted a September 15, 1995 injury report, which included the following description of appellant's September 15, 1995 employment incident:

> "[Appellant] was delivering [Route] 6101 (a foot route employing a push cart) on E. Pine St. when he stepped down an uneven grassed area causing his foot to turn. He felt pain but believed it would subside. Upon notification to this office, employee was taken to contract physician."

In a merit decision dated October 14, 1997, the Office denied modification of the prior decision dated July 25, 1996. The Office explained that the initial injury of September 15, 1995, had been accepted for right foot sprain, which was consistent with the contemporaneous medical records. The Office further noted that at the time of the initial injury appellant had not implicated his right leg or knee, thus calling into question his subsequent characterization of the incident as involving a twisting injury of the right leg, knee and ankle. Additionally, the Office noted that not only did Dr. Sveilich rely upon a questionable history of injury, he failed to provide any medical rationale in support of his opinion that appellant's current knee condition was causally related to the injury of September 1995. Consequently, the Office concluded that the evidence of record was insufficient to warrant modification of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on or about January 16, 1996, causally related to his September 15, 1995 employment-related injury.

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[4] Dr. Sveilich diagnosed disuse atrophy syndrome of the right lower extremity and a medial meniscus tear of the right knee. Dr. Sveilich indicated that he initially evaluated appellant on January 25, 1996 and at the time appellant stated that "he twisted his right knee while delivering mail" in September 1995. He also noted a history of spontaneous swelling of the right knee on January 19, 1996. He further indicated that the injury of January 19, 1996 was causally related to the initial injury from September 1995, noting that "[t]he incidents of spontaneous swelling can be related."

[5] Counsel provided the following description of the September 15, 1995 employment incident: "[C]laimant, while walking briskly on his letter carrier route stumbled and turned his right foot to one side. As a result, the claimant twisted his right leg, his right knee and his right ankle."

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[6] This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[7] Moreover, sound medical reasoning must support the physician's conclusion.[8] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

In the instant case, although appellant's treating physician, Dr. Sveilich, attributed appellant's current right knee condition to his prior employment-related injury of September 1995, he relied upon a history of injury that is at variance with the history initially reported by appellant on September 15, 1995. In his June 4, 1996 report, Dr. Sveilich noted that appellant stated "he twisted his right knee while delivering mail" in September 1995.[10] As the Office correctly noted, this history of injury is inconsistent with the prior evidence of record. Appellant did not indicate that he had twisted his knee when he completed his Form CA-1 on September 15, 1995. Similarly, the employing establishment's September 15, 1995 injury report makes no reference to a right knee injury. Both items of evidence merely indicate that appellant turned his foot.

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action.[11] Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements.[12] The fact that appellant did not initially implicate either his right knee or leg in the incident of September 15, 1995, casts

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[6] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[7] Section 10.121(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.121(b).

[8] *See Robert H. St. Onge*, *supra* note 6.

[9] *Norman E. Underwood*, 43 ECAB 719 (1992).

[10] As previously noted, *supra* note 5, appellant's counsel indicated that "while walking briskly on his letter carrier route [appellant] stumbled and turned his right foot to one side." Counsel further noted that as a result, appellant "twisted his right leg, his right knee and his right ankle."

[11] *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

[12] *Louise F. Garnett*, 47 ECAB 639, 644 (1996).

doubt on his current assertion that he twisted his knee on that date. Moreover, the initial medical evidence submitted by Dr. Peck on September 15, 1995 does not mention an injury other than the reported right foot sprain.

Further, Dr. Sveilich's reports are insufficient to satisfy appellant's burden inasmuch as he failed to provide any medical rationale for his opinion on causal relationship. In his June 4, 1996 report, Dr. Sveilich provided the following analysis on the issue of causal relationship: "The injury of January 19, 1996 is causally related to the initial injury from September 1995. The incidents of spontaneous swelling can be related." While Dr. Sveilich attributed appellant's current condition to the prior injury of September 1995, he did not discuss how a twisting incident that allegedly occurred some four months prior to his initial examination on January 25, 1996 could result in a torn right medial meniscus. Moreover, his opinion is speculative in that he merely noted that the "incidents of spontaneous swelling *can* be related."[13] (Emphasis added). Accordingly, Dr. Sveilich's reliance on a questionable history of injury, coupled with his failure to adequately explain the bases for his conclusion, clearly undermines the probative value of his opinion.[14] As appellant failed to provide rationalized medical opinion evidence establishing a causal relationship between his accepted injury of September 15, 1995 and his current right knee condition, the Office properly denied appellant's claim for compensation.

The October 14, 1997 decision of the Office of Workers' Compensation Programs is, hereby, affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[13] *See Norman E. Underwood, supra* note 9.

[14] *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).