

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN J. ESPOSITO and DEPARTMENT OF THE NAVY, NAVAL AIR  
WARFARE CENTER, AIRCRAFT DIVISION, Warminster, PA

*Docket No. 98-1262; Submitted on the Record;  
Issued January 27, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained a torn right medial meniscus in the performance of duty on January 4, 1996, as alleged.

On January 5, 1996 appellant, then a 56-year-old mechanical engineer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on January 4, 1996 he slipped on ice in a parking lot at the employing establishment, thereby sustaining an injury to his lower back, left leg and right knee. Appellant stopped working on January 5, 1996 and returned on January 25, 1996.

In support of his claim, appellant submitted the ambulance personnel report with refusal of transport, dated January 4, 1996, indicating that appellant fell in the parking lot, that he had a history of herniated discs in his back and that appellant was encouraged to seek further medical treatment. Appellant also submitted medical notes dated January 10 through January 29, 1996 from the offices of Dr. Richard A. Koff, a family practitioner, in whose offices appellant was treated by both Dr. Koff and Dr. David J. Zweiback, an osteopath. These notes dated January 10 through January 24, 1996 indicate that Dr. Zweiback first saw appellant on January 10, 1996 for lumbar strain after slipping on ice at work. Appellant also saw Dr. Zweiback on January 17, 1996 for right shoulder and left leg pain "since falling." Dr. Zweiback diagnosed lumbar strain, cervical trapezius complex and thigh neuropathy, and Dr. Zweiback released appellant to return to light-duty work on January 25, 1996.

On February 23, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for low back strain and left leg strain, authorized continuation of pay from January 10 to 24, 1996, but requested further medical evidence for the period January 5 to 9, 1996.

In response, appellant wrote a letter to the Office dated February 7, 1996, stating that from January 5 to 9, 1996, he was instructed by his doctor to rest, use ice and take anti-

inflammatory medications until he saw the doctor. Appellant also advised the Office that he had undergone physical therapy, but completed it as of February 5, 1996.

With the letter, appellant also submitted additional evidence, including progress notes from Dr. Zweiback dated January 19 to February 7, 1996, wherein Dr. Zweiback noted that appellant was being treated for lumbar strain, that he was doing “wonderfully” with physical therapy, and that he was released to work with restrictions on January 27, 1996. Finally, by report dated February 6, 1996, Dr. Stephen B. Lewis, Board-certified in physical medicine and rehabilitation, diagnosed appellant as suffering from mechanical lower back pain, lumbosacral strain and sprain and degenerative disc disease of the lumbar spine. Dr. Lewis noted that appellant “will begin a physical therapy lumbar stabilization program and begin a conditioning program on the treadmill and his duties will be modified at work.”

By letter dated February 26, 1996, the employing establishment recommended that continuation of pay be denied after February 5, 1996, as appellant “has not been to physical therapy since February 5, 1996 and Dr. Zweiback confirmed that additional physical therapy desired by the employee can be performed at home during nonwork hours.”

The employing establishment also submitted several reports by Dr. Zweiback, including a note dated January 17, 1996 wherein Dr. Zweiback ordered physical therapy for appellant, and Dr. Zweiback’s attending physician’s supplemental report (Form CA-20a) dated February 14, 1996, wherein Dr. Zweiback diagnosed appellant as suffering from “lumbar strain/sprain and disc disease, which limits his ability to sit or stand for prolonged periods.” Dr. Zweiback also prescribed physical therapy and a home exercise program. In the latter report, Dr. Zweiback noted causal relationship by a check mark.

In a physician’s certification dated April 17, 1996, Dr. Zweiback stated that the nature of appellant’s disability as “disc degeneration in lumbar spine and strain.” He further noted that appellant was still on light duty, with restrictions of no heavy lifting and no persistent standing or stooping. In his progress notes of May 15, 1996, Dr. Zweiback noted that appellant had residual problems with his right knee and left leg.

In response to the Office’s February 1, 1996 request for further information supporting appellant’s request for continuation of pay from January 4 to 9, 1996, various physical therapy notes dated May 22 to July 5, 1996 were submitted, which generally note treatment procedures to address the area of restrictions in appellant’s sacral, lower extremity and lumbar spine regions, with occasional notations of right knee pain. In the note dated May 30, 1996, the licensed practical nurse noted that appellant’s low back was feeling better, but that he was complaining of right knee pain.

An Office medical adviser reviewed the evidence of record on August 6, 1996, noted that appellant was undergoing physical therapy and that the effects of the employment-related injuries should have resolved. He recommended that appellant undergo a second opinion medical examination to determine whether “another diagnosis is present,” whether further treatment is necessitated and whether equipment is needed for the effects of the employment injury.

On August 12, 1996 the Office noted that appellant had submitted medical evidence sufficient to support the period of disability from January 5 to 24, 1996.

On September 5, 1996 appellant submitted notes by the licensed practical nurse dated August 6, 1996, wherein she noted that there was a clicking of the right knee on flexion and tenderness in the right medial knee.

On September 5, 1996 Dr. Robert E. Mannherz, a Board-certified orthopedic surgeon, noted that appellant “developed complaints of right knee pain that began abruptly as of the end of last week. After kneeling directly on his right knee, he developed a sharp pain over the medial joint.” Dr. Mannherz diagnosed “[c]hronic degenerative disc disease, lumbar spine with L3-4 disc herniation, probably traumatic chondromalacia medial femoral condyle, right knee.” On September 26, 1996 Dr. Beth Mallozzi, an osteopath, reviewed four films of appellant’s right knee and concluded that they did not show acute fracture, dislocation, or joint effusion and that there was no significant degenerative joint disease or osseous abnormality. In a report of a magnetic resonance imaging scan for the right knee performed on October 4, 1996, Dr. Stephen Jaffe, a Board-certified radiologist, found a “complex tear of the medial meniscus.” On November 15, 1996 Dr. Mannherz performed an arthroscopy on appellant’s right knee with partial medial meniscectomy.

On November 7, 1996 the Office referred appellant to Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon, for a second opinion. Dr. Klinghoffer examined appellant on December 4, 1996. After taking appellant’s history, he conducted an examination and reviewed appellant’s medical history, stating:

“If there is documentation of a knee injury as a result of his fall in January followed by the development of knee symptoms within a reasonable length of time then I believe that a causal relationship should be recognized between the need for that knee operation and his fall. The records that I reviewed from Dr. Mannherz do not begin until many months after he fell and the letter from Dr. Lewis in February 1996, one month after he fell, says nothing at all about any knee problem. I, therefore, believe that unless there is additional information to document his knee trouble, a causal relationship will have to remain speculative.

“It sounds to me from his history as if he probably sprained his low back when he fell on January 4, [1996]. He has a history of back pain without any precipitating event and it may very well be that his back pain now is worse than it was before he fell; however, my examination did not reveal any physical abnormality in his back, there is no evidence of a disc herniation and I believe that the question of whether or not his back feels any different now than it did prior to January is purely a matter of the patient’s credibility rather than one of medical judgement. It is my opinion that he does not need any treatment for his low back or have any disability related to his low back as a result of the January 1996 incident.”

By decision dated April 22, 1997, the Office found that there was insufficient evidence to establish that the right knee surgery was due to the January 4, 1996 injury. The Office did accept

a contusion of the right knee based on a medical note that appellant experienced right knee weakness.

At the request of appellant, a hearing was conducted regarding his claim on December 17, 1997. At the hearing, appellant testified that he had worked for the employing establishment for 32 years, that he did not have any previous injuries to his right knee, that he still had problems with his back and left leg, that he started experiencing pain in the area around the right patella and one day it got so bad that he could not bear it, that he retired on a regular retirement, that he had no history of significant right knee injuries other than those of January 4, 1996 and the incident described in Dr. Mannherz's September 5, 1996 report, that his knee never hit the ground but rather was twisted in the fall, that he was asking for a chance to continue physical therapy and maybe attend an "exercise place," and that he had unreimbursed travel expenses.

In a decision dated January 6, 1998 finalized February 18, 1998, the Office hearing representative found that, although the factual evidence established that appellant reported a right knee injury contemporaneous with the employment injury of January 4, 1996 and that six days later there was a notation of right knee weakness, subsequent medical records did not record any serious problems with the right knee until Dr. Mannherz's office note of September 5, 1996, which made reference to a distinct, separate and nonemployment-related incident approximately one week earlier. The Office hearing representative concluded that there was no definitive, rationalized medical opinion finding that the torn medial meniscus was causally related to the January 4, 1996 employment injury and, therefore, appellant failed to meet his burden of proof. The Office hearing representative affirmed the April 22, 1997 decision finding no causation between the torn meniscus and the work-related injury.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a torn right medial meniscus in the performance of duty causally related to his January 4, 1996 work-related injury.

The Board has held that an award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment<sup>1</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>2</sup> does not raise an inference of causal relationship between the condition and the employment factors.<sup>3</sup> Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medial opinion evidence.<sup>4</sup>

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>2</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

<sup>3</sup> *Michael E. Smith*, 50 ECAB \_\_\_\_ (Docket No. 97-1562, issued March 26, 1999).

<sup>4</sup> *Id. Victor J. Woodhams*, 41 ECAB 345 (1989).

In the instant case, the Office found that appellant sustained a low back strain a left leg strain and a right knee contusion on January 4, 1996. However, the Office did not accept that appellant sustained a torn right medial meniscus resulting from the accepted injury.

No medical reports provide rationalized evidence of a causal nexus between appellant's January 4, 1996 accepted injury and his torn right medial meniscus, which required surgery on November 15, 1996.

Due to the absence of any medical evidence directly linking appellant's torn medial meniscus to his employment-related injury of January 4, 1996, the Office requested a second opinion from Dr. Klinghoffer. Dr. Klinghoffer qualified his opinion by noting that, if documentation of a knee injury as a result of his fall in January was followed by the development of knee symptoms within a reasonable length of time, he would believe that the causal relationship should be recognized. However, Dr. Klinghoffer pointed out that Dr. Mannherz' notation did not occur until many months after the fall and the letter from Dr Lewis of February 1996, one month after appellant fell, said nothing at all about any knee problem. Dr. Klinghoffer concluded that unless there was additional information to document his knee trouble, "a causal relationship will have to remain speculative."

In an unsigned report dated September 5, 1996, Dr. Mannherz noted that appellant "developed complaints of right knee pain that began abruptly as of the end of last week. After kneeling directly on the right knee, he developed a sharp pain over the medial joint." Accordingly, Dr. Mannherz attributes the onset of right knee pain to a recent incident that occurred seven months after the January 4, 1996 employment injury. There is no mention of the January 4, 1996 employment injury. An x-ray taken by Dr. Beth Mallozzi on September 26, 1996 revealed possible meniscal tear, right knee, and this was confirmed on October 7, 1996, Dr. Jaffe officially diagnosed appellant as having a "complex tear of the medial meniscus." However, Dr. Jaffe, did not review appellant's history and gave no opinion as to causation, or when the torn meniscus occurred.

Appellant has not submitted sufficient medical evidence establishing a causal relationship between the January 4, 1996 employment injury and his torn medial meniscus of the right knee. Therefore, he has failed to meet his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated January 6, 1998, finalized February 18, 1998 and April 2, 1997 are hereby affirmed.

Dated, Washington, D.C.  
January 27, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member