

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. EVERSOLE, JR. and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 00-256; Submitted on the Record;
Issued July 17, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

In a decision dated February 11, 1999, the Office found that the opinion of Dr. W. Scott Nettrour, a Board-certified orthopedic surgeon, represented the weight of the medical opinion evidence and established that residuals of appellant's accepted employment injuries had ceased. The Office had selected Dr. Nettrour as an impartial medical specialist to resolve a conflict between Dr. William Mitchell, appellant's orthopedic specialist and Dr. Jon B. Tucker, an Office referral physician, on the extent of appellant's injury-related disability.

In a report dated April 17, 1998, Dr. Nettrour stated that appellant sustained a soft-tissue injury to the right knee on July 30, 1992, which would have been expected to resolve, with or without treatment, over a period of four to six weeks.¹ At the time of this injury appellant had preexisting degenerative joint disease involving the right knee, which, as expected, progressed over the following five years and was unrelated to any injury sustained in July or August 1992. "He would, therefore, be considered to have recovered from all residuals of the July 30, 1992 and August of 1992 work injuries." Dr. Nettrour stated his opinion with a reasonable degree of medical certainty.

Appellant submitted additional medical evidence. On January 28, 1998 Dr. Gerald W. Pifer, a Board-certified orthopedic surgeon, related appellant's history, medical course, present complaints and findings on examination. Dr. Pifer reviewed a number of medical reports, including an initial report from Dr. Nettrour. He reported that appellant had some preexisting degenerative changes in his knee that were aggravated and rendered symptomatic with the work-related injury that took place in July 1992. Appellant had sufficient symptoms to warrant an arthroscopic examination, which revealed degenerative changes of the medial compartment and

¹ The Office accepted that appellant sustained a right knee sprain.

a tear of the medial and lateral menisci, for which he had meniscectomies. “It is well known,” Dr. Pifer reported, “that people who have medial compartment degenerative changes and subsequently have a meniscectomy that they will, in almost all cases, progress with their arthritic changes in the medial compartment and become more symptomatic with time.” After reading the position description of police officer, he reported that appellant was not capable of carrying out the duties of such a position. In a February 17, 1998 supplemental report, Dr. Pifer opined with a reasonable degree of medical certainty that appellant’s work-related injury of July 30, 1992 was a substantial contributing factor to his current disability and symptoms. He repeated his earlier opinion that appellant had some preexisting degenerative changes in his knee that were aggravated and rendered symptomatic to the point that he required arthroscopic surgery and that appellant continued to have symptoms and disability.

In a decision dated June 9, 1999, the Office denied modification of its February 11, 1999 decision to terminate appellant’s compensation benefits. The Office found that the opinion expressed by Dr. Pifer was shared and already expressed by previous physicians, whose opinions formed part of the conflict resolved by Dr. Nettrour, the impartial medical specialist. For this reason, the Office found that Dr. Pifer’s opinion was insufficient to alter the weight of the medical evidence, which continued to rest with Dr. Nettrour.

The Board finds that the Office has met its burden of proof to justify the termination of appellant’s compensation benefits for the accepted condition of right knee sprain.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

The clear weight of the medical opinion evidence in this case supports that appellant no longer suffers from the right knee sprain he sustained in 1992. Dr. Nettrour, the impartial medical specialist, explained that appellant sustained a soft-tissue injury to the right knee on July 30, 1992, which would have been expected to resolve, with or without treatment, over a period of four to six weeks. It is well established that when there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

As to whether the incidents at work in 1992 caused appellant’s preexisting degenerative joint disease to become symptomatic or whether these incidents otherwise aggravated or accelerated his degenerative joint disease condition, Dr. Nettrour opined that appellant’s

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

preexisting degenerative joint disease involving the right knee was unrelated to any injury sustained in July or August 1992. Dr. Pifer opined that appellant's preexisting degenerative changes were aggravated and rendered symptomatic with the work-related injury that took place in July 1992. He reported that appellant's work-related injury of July 30, 1992 was a substantial contributing factor to his current disability and symptoms.

The Board finds that Dr. Pifer's opinion is of diminished probative value and is insufficient to create a conflict with the opinion of the impartial medical specialist. Dr. Pifer's reasoning -- that "people who have medial compartment degenerative changes and subsequently have a meniscectomy ... will, in almost all cases, progress with their arthritic changes in the medial compartment and become more symptomatic with time" -- casts his opinion in the language of general application and does not sufficiently explain how the specific incident that occurred on July 30, 1992 caused or contributed to the degenerative changes he noted.⁵ Without sound medical reasoning and references to supportive evidence, Dr. Pifer's opinion is insufficient to establish that appellant's preexisting degenerative condition was caused or contributed to by his federal employment.

The June 9, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 17, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ See *Lucrecia M. Nielsen*, 42, ECAB 583 (1991).