U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY J. KRAMER and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

Docket No. 99-1510; Submitted on the Record;
Issued November 6, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he developed degenerative arthritis of the knee causally related to his employment injury of August 24, 1985 or due to other factors of his federal employment.

On May 12, 1994 appellant, then a 51-year-old supervisor of distribution operations, filed a notice of occupational disease and claim compensation alleging that he developed degenerative arthritis as the result of having to undergo surgery in 1985 related to an accepted work injury and factors of his employment, including having to walk and stand to perform his job. He indicated on his CA-2 claim form that he first realized his condition was related to his employment on October 20, 1993.[1]

In a January 4, 1994 report, Dr. Francis K. Tindall, a Board-certified orthopedic surgeon, noted that appellant was first seen on October 26, 1993 with regard to his left knee. He noted a prior history of an open reduction and internal fixation of a fractured patella with subsequent development of post-traumatic arthritis of the knee joint requiring surgery. Dr. Tindall indicated

[1] On August 24, 1985 appellant was stepping off a ladder in the performance of duty when he twisted his left knee and felt a pop. The Office of Workers' Compensation Programs accepted appellant's traumatic injury claim for a left knee strain. Appellant also had surgery for a fractured patella in 1963. In a report dated September 11, 1985, Dr. Saul N. Schreiber, a Board-certified orthopedic surgeon, noted that x-rays taken on August 25, 1985 at Luke Hospital revealed irregularities at the superior pole of the patella with osteophyte formation and a small offset approximately three millimeters at the level of mid patella, where the old fracture occurred. Dr. Schreiber further noted that appellant demonstrated on x-ray "fairly advanced degenerative arthritic changes at the patellofemoral joint." He diagnosed that appellant suffered from a left knee strain as a result of the August 24, 1985 work injury. Appellant underwent arthroscopic surgery on October 31, 1985 for a possible internal derangement. The postoperative report prepared by Dr. Schreiber diagnosed advanced chrondomalacia, Stage III, "most likely secondary to residuals of his patella fracture and open reduction internal fixation." Appellant received a schedule award for a five percent impairment. He returned to work on December 9, 1985. He subsequently filed a claim for a recurrence of disability beginning October 20, 1993, which was denied by the Office on February 14, 1994.

that appellant had undergone a debridement of the arthritic joint as well as a patellectomy on November 30, 1993. He stated:

> "This man has a diagnosis of a post-traumatic degenerative arthritis of his left knee and although his patellofemoral joint was markedly involved the medial joint of the knee demonstrated a tear in the articular cartilage of his medial femoral condyle, which, although debrided at the time of his surgery, carries a particularly poor prognosis. In addition of the above, there was a fibrillation of the lateral meniscus, which was debrided as well."

Dr. Tindall opined that appellant could return to work in a sedentary job with minimal walking. He also reported that appellant had a permanent impairment function to the left knee of 15 to 20 percent, which would require continued medical treatment.

In a report dated April 20, 1994, Dr. Saul N. Schreiber, a Board-certified orthopedic surgeon, noted that appellant sustained a fractured left patella in 1963 that required an "open reduction and internal fixation using rather small wires that healed uneventfully, "but with a slight irregularity on the posterior surface of the patella." He related that appellant returned to normal activities until he was injured on August 24, 1985. According to Dr. Schreiber, an arthroscopy performed on October 31, 1985 revealed chrondomalacic changes in the central portion of the patella. He indicated that his final treatment of appellant was on January 15, 1986, at which time appellant had returned to full-duty work. Dr. Schreiber continued in his report to describe appellant's ongoing medical treatment by subsequent doctors, noting that appellant was diagnosed with a two centimeter erosion on the medial femoral condyle by Dr. Tindall, which was shaved during an arthroscopy on November 30, 1993. Dr. Schreiber stated that appellant had a normal medial femoral condyle at the time of his work injury in 1985, confirmed by x-rays taken during his October 31, 1985 surgery. He opined that appellant's arthritic changes were due to the fractured patella appellant sustained in 1963, which was treated with open reduction and internal fixation. Dr. Schreiber further stated:

> "The patient's current difficulties relate more to his absent patella and anterior pain and a feeling of weakness associated with the giving way sensation and problems with bending activities that require strength and I relate this primarily to the patellectomy. Some of the pain on the medial side can be attributed to the erosion on the medial femoral condyle which would have occurred sometime after the injury of 1985…."

In a July 19, 1996 report, Dr. Tindall stated that appellant was seen for continuing complaints of left knee discomfort including swelling, pain and "grinding and cracking." He stated, "It is of interest to note that this man's previous arthroscopy of 1985 carried out by Dr. Schreiber showed no evidence of post-traumatic arthritis." According to Dr. Tindall, as of

June 23, 1992 when appellant was operated on by Dr. Charlie Creasman, he demonstrated arthritis in the joint and a significant defect in the intercondylar notch. Dr. Tindall further stated:

> "When I arthroscoped him on November 30, 1993, following his injury of October 20, 1993, I noted that he had sustained, in addition to the findings of the other two arthroscopists, a tear in the articular cartilage of his femoral condyle two centimeters in diameter in the weight bearing surface of his femur. There was also chrondomalacia and frank osteoarthritis of his patella and I went on and excised his patella at that juncture.
>
> "His diagnosis then on his work-related injury should be a chondral disruption with post-traumatic arthritis rather than merely a knee sprain."

In a CA-20 attending physician's report dated May 14, 1997, Dr. Tindall diagnosed osteoarthritis localized in appellant's left knee. He check marked a box indicating that appellant's condition was caused or aggravated by an employment injury of October 20, 1993. He opined that appellant may need a total knee replacement in the future.

The Office referred appellant for a second opinion examination with Dr. Joseph S. Gimbel, a Board-certified orthopedic surgeon, who, in a report dated February 27, 1998, noted physical findings and appellant's history of knee injuries. He stated:

> "There is a preexisting disability as the result of his injury in 1963, at which time he had a fractured patella and this required open reduction internal fixation…. The medial femoral condyle erosion is not related to his industrial injury of 1985. An arthroscopy in 1985 revealed a normal femoral condyle.
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> "Previous x-rays were reported to show degenerative changes of the knee.
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> "There is persistent pain in his knee, which limits his ability to function and do his daily normal routine. Pain is mainly medial, associated with numbness in this region, weakness of the quadriceps, erosive changes, medial femoral condyle and his patellectomy…."

Dr. Gimbel diagnosed "status post patellectomy of the left knee with degenerative changes involving the medial femoral condyle." He further noted that appellant had a preexisting diagnosis of chrondomalacia patella following a fractured patella.

In a report dated June 22, 1998, Dr. Leonard A. Simpson, an orthopedic surgeon and Office medical consultant, indicated that he had reviewed the file in order to calculate whether an increase in schedule was warranted for appellant's left lower extremity. Dr. Simpson determined that appellant had no greater than a five percent permanent impairment related to his work injury of August 24, 1984. He noted that any increased impairment related to appellant's osteoarthritis was nonwork related.

In a decision dated March 22, 1999, the Office denied compensation. The Office specifically assigned controlling weight to the opinions of Drs. Schreiber, Gimbel and Simpson,

noting that the physicians were in agreement that appellant's left knee condition of degenerative arthritis was not causally related to his federal employment, but rather to his nonwork-related knee injury in 1963.

The Board finds that appellant failed to establish that he developed degenerative arthritis of the knee causally related to his accepted work injury of August 24, 1985 or due to other factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.[5]

Dr. Tindall, appellant's treating physician, failed to explain how appellant's post-traumatic degenerative arthritis of the left knee was causally related to appellant's job duties. The Board finds that Dr. Tindall failed to adequately explain how appellant's degenerative arthritis, diagnosed by arthroscopy on September 11, 1985, was caused or aggravated by the August 24, 1985 injury or to appellant's subsequent duties which required standing and walking.

In contrast, Dr. Gimbel provided a reasoned medical opinion, stating that appellant's preexisting degenerative arthritis was due to his nonwork-related fracture of the patella in 1963. Dr. Gimbel explained that, since appellant was diagnosed with a normal femoral condyle immediately following the August 24, 1985 work injury, the subsequent erosive changes in the medial femoral condyle found in 1993 were attributable to appellant's preexisting degenerative arthritis and not the August 24, 1985 work injury. In assessing medical opinion evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *Woodhams*, *supra* note 4.

quality. The factors that enter into such evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6] The Board finds that Dr. Gimbel's report constitutes the weight of medical opinion. Because appellant has not submitted a sufficiently reasoned medical opinion to carry his burden of proof in establishing that his degenerative arthritis is causally related to his employment injury or factors of his employment, the Board finds that the Office properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated March 22, 1999 is hereby affirmed.

Dated, Washington, DC
November 6, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *Gary R. Sieber*, 46 ECAB 215 (1994); *Melvina Jackson*, 38 ECAB 443 (1987).