

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALMA (ROLLING) CALLWOOD and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY

*Docket No. 99-2022; Submitted on the Record;
Issued November 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established a recurrence of disability on August 18, 1995, causally related to her December 29, 1992 employment injury.

On December 29, 1992 appellant, then a 45-year-old food service worker, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained injuries to her back, left side and left knee due to a fall at work that day. The December 29, 1992 incident was witnessed by Cheryl P. Miller, who stated that appellant fell on a wet floor and hurt her left knee.

On the day of her injury, appellant was treated at the employing establishment's health unit and was referred for x-rays and further evaluation at the orthopedic clinic. She was advised to return to light duty that day and avoid weight bearing. The following day, appellant was seen at the employing establishment's orthopedic clinic by Dr. Mark Chang, that, while there was no suggestion of a fracture, appellant had aggravated underlying degenerative changes in her left knee.¹ Dr. Chang recommended that appellant rest through January 2, 1993 and then return to light duty with limitations on walking and standing. Upon returning to the orthopedic clinic on January 6, 1993, appellant was diagnosed as having suffered a left knee contusion and was advised to stop working for two weeks, after which she was to resume light duty.

On January 7, 1993 appellant was examined by Dr. Melvin L. Adler, a Board-certified orthopedic surgeon, who noted that appellant complained of pain in her back, left buttock and left knee subsequent to a fall at work on December 29, 1992. Dr. Adler also noted that appellant had a prior history of intermittent problems with her left knee, having undergone arthroscopic surgery in September 1991.

¹ Appellant indicated that she had previously undergone surgery on her left knee on September 5, 1991.

On physical examination, he indicated that appellant had full range of motion in her back, hips, knees and ankles. Dr. Adler did, however, note mild crepitation on flexion and extension of the left knee. He also indicated that appellant's x-ray of the left knee showed some early degenerative changes, but no evidence of dislocation or fracture. Dr. Adler provided diagnoses of multiple soft tissue injuries and status post arthroscopic surgery of left knee with osteoarthritis of the left knee.

In February 1993, appellant sought treatment from Dr. Howard Finelli, an orthopedic surgeon, who diagnosed lower back and knee pain syndrome, internal derangement of the lumbosacral spine with radiculopathy and spasm, contusion and sprain of the left hip and internal derangement of the left knee. Dr. Finelli recommended physical therapy and rest and determined that appellant was totally incapacitated from February 2 through March 1, 1993. Appellant returned to work in a light-duty capacity on February 28, 1993. Dr. Finelli later recommended that appellant wear a lumbosacral corset and a knee brace, which the Office of Workers' Compensation Programs authorized. Appellant continued to receive physical therapy three times per week for five months following her return to work.

On August 8, 1996 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she suffered a recurrence of disability on August 18, 1995 causally related to her December 29, 1992 employment injury. She explained that she continued to experience difficulty with her left knee following her return to work and that she later underwent surgery to resolve this condition.

The notice of recurrence was accompanied by a January 25, 1996 attending physician's report (Form CA-20) from Dr. Adler indicating that appellant underwent arthroscopic surgery on August 18, 1995 to repair a torn medial meniscus of the left knee, which Dr. Adler attributed to appellant's December 29, 1992 employment injury. The report further noted that appellant has degenerative osteoarthritis of the left knee.

In a decision dated April 5, 1999, the Office denied appellant's claim on the basis that the evidence failed to establish that the claimed recurrence of disability was causally related to the injury of December 29, 1992.

The Board finds that this case is not in posture for decision.

Appellant's claim for recurrence of disability was denied because the Office had not accepted that appellant sustained an injury to her left knee on December 29, 1992. The Office's April 5, 1999 decision notes that the employment injury resulted in "lumbago, swelling in the head and neck." The decision makes no mention of appellant's claimed left knee injury of December 29, 1992. While the record does not contain any other decision or correspondence from the Office indicating whether the Office accepted a left knee injury, the Office authorized physical therapy for appellant's left knee as well as a brace. Also, the Office's summary mentions a left knee condition.

In her notice of appeal, appellant indicated that the Office had previously denied a request for a magnetic resonance imaging (MRI) scan of her left knee. The record indicates that Dr. Finelli requested an MRI scan in April 1993, the only correspondence between the Office

and Dr. Finelli consists of a November 1, 1993 letter from the Office advising the doctor of the need for additional information to justify continued physical therapy. Thus, the record forwarded to the Board does not appear to be complete.

The date of appellant's claimed recurrence of disability, August 18, 1995, coincides with the date Dr. Adler reported that appellant underwent arthroscopic surgery for a torn medial meniscus of the left knee. Following her surgery, appellant returned to work on October 4, 1995. In denying appellant's claim for recurrence of disability, the Office noted that, while Dr. Adler provided a diagnosis of degenerative arthritis of the left knee, he made "no mention of the accepted work-related conditions..."² Because Dr. Adler did not attribute appellant's recurrence of disability to any of the accepted conditions arising from her December 29, 1992 employment injury, the Office concluded that the record failed to establish that appellant's claimed recurrence was causally related.

If appellant sustained only lumbago and swelling in the head and neck as a result of her December 29, 1992 employment injury, the Office's treatment of Dr. Adler's findings was appropriate. However, medical reports provided by Drs. Chang, Finelli and Adler clearly indicate that appellant did injure her left knee when she fell at work on December 29, 1992. The exact nature and extent of appellant's left knee condition has been variously described as a contusion, aggravation of degenerative changes, internal derangement and torn medial meniscus. The Board thus finds that the record requires further development to ascertain the true nature and extent of the injury appellant sustained to her left knee on December 29, 1992.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.³ Although the above evidence does not contain sufficient rationale to meet appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her left knee condition is causally related to her accepted employment exposure, this evidence raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁴

On remand, the Office should refer appellant, the case record, and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's left knee condition is causally related to the employment injury of December 29, 1992. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

² The Office apparently overlooked Dr. Adler's diagnosis of a torn medial meniscus of the left knee as well as his notation that appellant underwent arthroscopic surgery for this condition on August 18, 1995. The Office's decision also fails to mention that Dr. Adler attributed appellant's left knee condition to her employment injury of December 29, 1992.

³ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁴ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The April 5, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
November 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member