U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN P. TAGGART and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, Philadelphia, PA

Docket No. 99-2363; Submitted on the Record;
Issued November 13, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits, effective September 4, 1997, on the grounds that he had no residual medical condition or disability causally related to his accepted March 14, 1996 employment injury.

On March 14, 1996 appellant, then a 50-year-old social worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his back, leg and wrist when he fell out of the chair he had been sitting in. The Office accepted the claim for lumbar strain/sprain and paid appropriate compensation.

In treatment notes dated March 15, 1996, Dr. Michael J. Mandarino, an attending physician specializing in orthopedic surgery, diagnosed contusion and sprain of the lumbar spine, contusion of the left hip, sprain of the left knee and contusion of the left wrist and hand. Dr. Mandarino noted that appellant had injured himself when the chair he was sitting in collapsed and appellant "fell to the floor injuring his low back, twisting the upper leg and knee" on March 14, 1996. Upon physical examination, the physician noted "restricted motion with diffuse tenderness in the lumbar paraspinous muscles more on the left than on the right" and "diffuse tenderness about the left buttock." Regarding the left knee, Dr. Mandarino noted a mild effusion in the left knee and that appellant had recently had an arthroscopic procedure done on this knee.

Dr. Mandarino, in treatment notes dated March 22, 1996, indicated that appellant continued to have discomfort in his left knee. Based upon a physical examination, he noted "tenderness anteriorly with positive patella femoral grating," a positive patellar apprehension test and "tenderness in the suprapatellar pouch."

In treatment notes dated April 1, 1996, Dr. Mandarino indicated appellant continued to have discomfort in his left knee and physical examination revealed slight swelling in the left knee. He diagnosed synovitis of the left knee.

Dr. Mandarino, in treatment notes dated April 15, 1996, noted that appellant continued to have knee and back complaints. A physical examination revealed diffuse tenderness in the left knee and "tenderness in the lumbar paraspinous muscles."

In treatment notes dated May 13, 1996, Dr. Mandarino noted that appellant continued to have back and left knee discomfort. Physical examination of the lumbar spine revealed "restricted motion with tenderness in the lumbar paraspinous muscles." He noted that appellant's left knee revealed "moderate tenderness over the lateral joint line. Marked tenderness over the medial joint line and in the suprapatellar pouch" and range of motion of 0 to 80 degrees.

Dr. Mandarino, in treatment notes dated May 29 and June 4, 1996, noted that appellant's back problem had improved, but that appellant's left knee continued to be a problem. A physical examination of the left knee revealed "a small effusion with tenderness across the medial and lateral joint lines.

In treatment notes dated June 10, 1996, Dr. Mandarino indicated that appellant had "complaints of continued discomfort and popping in the left knee." A physical examination revealed that the left knee was slightly swollen, "tenderness in the suprapatellar pouch, the patella femoral grating and patella apprehension test were both positive."

On June 21, 1996 Dr. Mandarino diagnosed a tear in the medial and lateral menisci. He stated appellant continued to have problems with his left knee and a physical examination revealed diffuse tenderness and slight effusion in the left knee.

Dr. Mandarino, in treatment notes dated June 26, 1996, noted that the magnetic resonance imaging (MRI) scan "did not show any tearing of either the medial or lateral meniscus." Physical examination revealed that appellant continued to have tenderness in his suprapatellar pouch and a small effusion in the left knee. Regarding the lumbar spine, the physician noted that appellant had restricted motion and there was "[m]arked tenderness and mild spasm in the left lumbar paraspinous muscles" and noted that a generalized weakness in the left lower extremity.

By letter dated July 9, 1996, Dr. Mandarino advised the Office that appellant's lumbar strain had not completely resolved yet.

In treatment notes dated July 15, 1996, Dr. Mandarino, based upon a physical examination, noted that appellant had "discomfort on motion with tenderness in the left lumbar paraspinous muscles" and "tenderness along the medial joint line and in the suprapatellar pouch with positive patella femoral grating."

On July 19, 1996 the Office referred appellant, together with a statement of accepted facts,[1] medical records and list of questions to be answered, to Dr. Andrew Newman, a Board-certified orthopedic surgeon, for a second opinion to clarify the injuries appellant sustained due to his accepted employment injury. Specifically, the Office requested Dr. Newman whether appellant's lumbar injury had resolved and, if not, whether further treatment was required and the extent of an injury to the left knee due to the March 14, 1996 employment injury.

Dr. Mandarino, in treatment notes dated July 31, 1996, noted appellant continued to have problems with his lower back, left buttock and left knee. Regarding the left knee, he noted that persistent walking caused appellant to have severe pain and the knees gives out on appellant. Physical examination revealed tenderness of the left lumbar paraspinous muscles and trochanteria bursa of the left hip and diffuse tenderness in the left knee with a slight effusion.

In a report dated August 9, 1996, Dr. Newman, based upon a physical examination, employment injury history and statement of accepted facts, concluded that any left knee complaints were unrelated to his March 15, 1996 injury as an arthroscopic report revealed severe degenerative arthritis changes.

In treatment notes dated August 14 and 28, 1996, Dr. Mandarino noted appellant's continuing lower back and left knee discomfort. On physical examination dated August 14, 1996, Dr. Mandarino noted tenderness in the lumbar paraspinous muscles, tenderness in the suprapatellar pouch and medially, and positive grating in the patella femoral. He stated that a physical examination on August 28, 1996 revealed diffuse tenderness in the left knee in the medial and lateral joint lines, a small effusion, and positive patella femoral grating.

In a report dated September 3, 1996, Dr. Mandarino noted that appellant was being treated for his continuing left knee problems and that appellant had "occurrences of giving way of the left knee" with "persistent discomfort in the left knee after walking or standing for more than a few minutes." He noted recurrent effusion and tenderness in the patella and medial compartment in appellant's left knee, which the physician found during his repeated physical examinations of appellant. Lastly, Dr. Mandarino indicated his disagreement with Dr. Newman's conclusions and opined that appellant "presently suffer from an irritation in his left knee that was brought on by an incident at work."

By letter dated September 9, 1996, Dr. Newman opined that appellant's symptoms and complaints were unrelated to his work injury, that his accepted lumbar sprain and strain had resolved and that any hip or knee problems were unrelated to the employment injury.

Dr. Mandarino, in treatment notes dated September 16, 1996, noted mild tenderness in the left lumbar paraspinous muscles, that the left hip had restricted motion and tenderness in the left knee with a small effusion.

[1] The Board notes that the statement of accepted facts incorrectly notes appellant's date of injury as March 4, 1996, but the date of injury was correctly noted in the questions to be answered.

In treatment notes dated October 1 and 9, 1996, Dr. Mandarino noted diffuse tenderness and slight effusion based upon physical examination and that appellant continued to have discomfort in his left knee.

In treatment notes dated October 29, 1996, Dr. Mandarino treated appellant for a locked knee and diagnosed degenerative joint disease, degenerated and torn meniscus left knee. A physical examination revealed tenderness medially with minimal effusion and a range of motion of 20 to 40 degrees.

Dr. Mandarino, in treatment notes dated November 1 and 15, 1996, noted continued left knee discomfort. On November 1, 1996 he noted a range of motion of 0 to 60 degrees in the left knee while on November 16, 1996 appellant had a range of motion of 5 to 50 degrees. Dr. Mandarino noted that appellant's left knee continued to lock on him and noted diffuse tenderness in the left knee in the November 15, 1996 notes.

In treatment notes dated December 2 and 13, 1996, Dr. Mandarino continued to treat appellant for his left knee discomfort and tenderness in the left paraspinous muscles. Physical examination of the left revealed "tenderness along the medial and lateral joint lines as well as over the medial and lateral femoral condyles" and a slight effusion of the left knee.

On December 13, 1996 the Office referred appellant to Dr. Randall M. Smith, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Mandarino, appellant's attending physician and Dr. Newman, a second opinion Board-certified orthopedic surgeon, regarding whether appellant's lumbar strain and sprain had resolved and whether appellant's left knee and hip problems were due to his accepted employment injury.

Dr. Mandarino, in treatment notes dated January 13, 1997, noted that appellant's left knee was worsening with locking and giving way. Physical examination revealed tenderness medially, mild tenderness laterally, a slight effusion and "crepitation noted on motion of the knee."

In a report dated January 14, 1997, Dr. Smith, based upon a review of the history of the employment injury, medical records, physical examination and questions to be answered, concluded that appellant was capable of returning to work on a limited basis. He recommended arthroscopic surgery to determine the problems with appellant's left knee although Dr. Smith noted "although with preexisting degenerative changes and a negative MRI scan with no evidence of any meniscal or ligamentous damage, I can [no]t see much of what is going to be found." Regarding appellant's employment injuries, Dr. Smith stated:

> "The effects of the work injury are basically resolved, although he has not returned to preinjury level because of lack of appropriate rehabilitation program and as a result of that weakness, anxiety and lots motion, he still does have some residual disability from the fall, because of the lack of appropriate rehabilitation…. It is my medical opinion that he partially disabled at this point from his occupation as a result of preexisting problems aggravated by the fall and incompletely rehabilitated. The knee surgery is not related to his fall at work, did

not cause the fall at work and the only effect that has was the fact that it was sensitive at the time of the fall, causing a more significant level of pain."

By letter dated July 2, 1997, the Office requested clarification from Dr. Smith as to whether appellant's preexisting knee condition was aggravated by the accepted employment injury and whether appellant was intended to stop work during Dr. Smith's recommended therapy.

In a letter dated July 16, 1997, Dr. Smith opined that appellant's current problems with his knee were preexisting and not due to his accepted employment injury. The physician then noted that the injury might have "temporarily irritated his knee and necessitated several weeks of rehab[ilitation]" and that at the time Dr. Smith saw him it was "not medically reasonable for him to still receive therapy and to be still out of work as a result of this fall." Lastly, he opined that any injury suffered by appellant to his knee due to the March 14, 1996 injury had resolved, did not require missing work or any therapy.

In a report of an MRI scan test dated July 18, 1996, Dr. Christopher Conners, a Board-certified diagnostic radiologist, noted that the test showed "no evidence of medial or lateral meniscal tear" and that "[t]he anterior and posterior cruciate ligaments are intact. The medial and lateral collateral ligaments are intact."

On August 4, 1997 the Office issued a proposed notice of termination of compensation on the grounds that any disability from appellant's March 14, 1996 injury had ceased.

Appellant disagreed with the proposal in a letter dated August 8, 1997 and submitted an August 12, 1997 letter from Dr. Mandarino, photographs of his March 5 1996 and May 13, 1997 knee surgeries, operative reports dated March 5 1996 and May 13, 1997 by letter dated August 22, 1997.

In an operative report dated March 5, 1996, Dr. Mandarino's postoperative diagnosis included torn medial meniscus, torn lateral meniscus, suprapatellar plica, synovitis, degenerative arthritis and loose bodies in the left knee.

In a surgical report dated May 13, 1997, Dr. Mandarino noted a postoperative diagnosis of chondral fracture of the medial femoral condyle, loose bodies, synovitis, degenerative menisci and manipulation of the left knee.

In an August 12, 1997 report, Dr. Mandarino stated:

"[Appellant] underwent an arthroscopic procedure to his left knee on March 5, 1999. He subsequently returned to work and sustained a work injury that resulted in his requiring a second arthroscopic procedure to the left knee on May 13, 1997. The second surgical procedure was not the same as the first. The second surgical procedure was related to the patient's fall at work."

By decision dated September 5, 1997, the Office terminated appellant's compensation benefits effective September 4, 1997 as he had recovered from his March 14, 1996 employment

injury. In the attached memorandum, the Office noted that Dr. Mandarino provided no rationale for his opinion that appellant's May 13, 1997 surgery was due to his accepted employment injury and found that the weight of the evidence remained with Dr. Smith, the impartial medical examiner.

By letter dated September 9, 1997, appellant requested an oral hearing, which was held on February 26, 1998 at which appellant was represented by counsel and allowed to testify. At the hearing on February 26, 1998, appellant testified regarding his original March 5, 1996 arthroscopic surgery prior to his employment injury and that his second arthroscopic surgery on May 13, 1997 was done to repair the damage done to his knee when he fell on March 14, 1996. Appellant testified that he had broken another part of the knee and that the part that had been operated on March 5, 1996 had stayed intact. Next, appellant testified that he took leave without pay when he had the second surgery performed in 1997 and that he was off work until late August due to his second knee surgery. Lastly, appellant referred to the pictures taken during the two arthroscopic surgical procedures to show that he had a meniscus problem which was resolved by the March 5, 1996 surgery and that he had a broken medial chondral due to his March 14, 1996 fall that was resolved by the second knee surgery.

In a report dated February 19, 1998, Dr. Mandarino noted:

> "As you are aware on March 5, 1996 [appellant] underwent an arthroscopic procedure to his left knee. The patient did well with this procedure and returned to work. Following the work incident the patient had recurrent discomfort in the left knee and this necessitated a second arthroscopic procedure being performed on May 13, 1997 at which time a fracture through the articular cartilage, *i.e.*, the cartilage that is on the bone and in this case the medial femoral condyle had fractured. This fracture occurs with a significant impact to this area and is not the type of condition that would come merely from walking. Due to the findings on the second arthroscopic procedure and in particular the chondral fracture, [appellant] has proceeded and in particular to the chondral fracture, [appellant] has proceeded to have an accelerated degenerative process in his left knee that has caused continuing pain and disability up to the present time."

Next, Dr. Mandarino opined that appellant was totally disabled "due to the sequela of his work injuries" and that appellant "had recurrent discomfort" in his left knee when he attempted to return to work.

In a report dated March 13, 1998, Dr. Mandarino opined that appellant's May 13, 1997 arthroscopic surgery was "a result of the direct impact to this area and is not an injury that would come from walking around or from normal activity." The physician concluded that the fracture of appellant's articular cartilage was due to appellant's employment injury and based his opinion upon appellant's complaints and the fact that the fracture was not present at the time of his March 5, 1996 arthroscopic surgery.

By decision dated April 28, 1998, the hearing representative affirmed the September 5, 1997 decision terminating appellant's compensation. In support of his decision, the hearing representative found that Dr. Smith's opinion continued to constitute the weight of the evidence.

Regarding, Dr. Mandarino's opinion, the hearing representative found that he had failed to provide a well-reasoned opinion supported by objective evidence detailing how appellant's employment-related injury had not ceased. He also noted that Dr. Mandarino did not discuss a June 18, 1996 MRI showed no significant cartilage or ligamentous damage.

In a letter dated April 20, 1999, appellant requested reconsideration and submitted an article on negative MRI findings in knee injuries in support of his request. Appellant also argued that the MRI is not always accurate.[2]

By merit decision dated May 4, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification.

The Board finds that the Office did not meet its burden of proof to terminate appellant's benefits.

Under the Federal Employees' Compensation Act,[3] once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[4] After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[5]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[6]

The Office referred appellant to Dr. Smith for an impartial medical evaluation to resolve the conflict in the medical opinion evidence. The Board concludes that Dr. Smith's January 14, 1997 report is insufficiently rationalized to constitute the weight of the medical opinion evidence. At the hearing on February 26, 1998, appellant testified that Dr. Mandarino had diagnosed a fracture of his left knee due to his accepted employment injury based upon the second arthroscopic surgery. Appellant also testified that his pain, suffering and inability to work was due to the subsequent acceleration of the degenerative disease in his left knee due to the fracture caused by his employment injury. Dr. Mandarino, in his June 8, 1999 report concluded that appellant total knee replacement was causally related to his knee problems caused when he fell on his knee on March 14, 1998. In his January 14, 1997 report, Dr. Smith does not

[2] Appellant also noted that the Office had not paid for his physical therapy from April to July 1997.

[3] 5 U.S.C. §§ 8101-8193.

[4] *William A. Kandel*, 43 ECAB 1011 (1992).

[5] *Carl D. Johnson*, 46 ECAB 804 (1995).

[6] *See Gary R. Sieber*, 46 ECAB (1994).

address whether appellant's hip and left knee problems were causally related to the accepted employment injury or whether appellant fell on his hip and left knee on the date of the injury.

Consequently, a conflict still exist in the medical evidence as to whether appellant's left knee and hip conditions which include the second arthroscopic surgery, accelerated degenerative disease and chondral fracture resulted in appellant's total disability as well as a need for a total knee replacement.

The decision of the Office of Workers' Compensation Programs dated May 4, 1999 is hereby reversed.[7]

Dated, Washington, DC
November 13, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[7] The Board notes that appellant submitted evidence with his appeal. This evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may submit this evidence and any other new evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b).