

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK M. MORRELL and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, CHUGACH NATIONAL FOREST, Anchorage, AK

*Docket No. 99-2448; Submitted on the Record;
Issued October 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained a recurrence of disability on or around May 20, 1997, causally related to his accepted employment-related right knee conditions.

The Office of Workers' Compensation Programs accepted that on June 16, 1975 appellant, then a 39-year-old public information officer, sustained a torn right medial meniscus while in the performance of duty. The Office additionally authorized a surgical menisectomy, which took place on March 12, 1976. Appellant did not stop work with the exception of a few days for recovery after surgery. On April 5, 1977 the Office granted appellant a schedule award for a five percent permanent impairment of his right lower extremity.

On January 5, 1982 appellant filed a claim for a recurrence of disability, alleging that his right knee condition had deteriorated and additionally alleging that he had developed a right foot condition as a result of his right knee condition. In support of his claim, appellant submitted a medical report dated January 27, 1982 from Dr. Richard E. James, a Board-certified orthopedic surgeon and his treating physician. In his report, Dr. James diagnosed chondromalacia of the patella and medial joint compartment degenerative arthritis with a very mild, slowly progressive genu varus deformity of the right knee. On March 31, 1982 the Office accepted that appellant's diagnosed knee conditions were causally related to his original injury, but did not accept that appellant's claimed foot condition was causally related to his accepted knee condition.

On December 10, 1982 appellant filed a separate claim for traumatic injury to his right knee on December 8, 1992, alleging that his knee twisted when he shifted his weight while standing. The Office combined this claim with appellant's prior claim and authorized medical treatment. On January 20, 1983 appellant underwent authorized surgical abrasion chondroplasty of the medial femoral condyle and a partial arthroscopic menisectomy of retained torn portions of the posterior horn of the right medial meniscus. Appellant continued to work. On November 16, 1984 based on a May 9, 1984 medical report from Dr. James, the Office granted

appellant a schedule award for an additional 25 percent permanent impairment of his right lower extremity.

Appellant last worked for the employing establishment as a public information officer, on January 3, 1986 when he elected early retirement. A position description is not contained in the record, although there is a notation by appellant's treating physician that this position involved some degree of field work. Subsequent to his retirement from federal service, appellant worked in private industry, with his most recent employer being Washington Forestry Consultants, Inc., for whom he worked from Spring 1994 to December 31, 1997. Appellant explained that his job involved walking and driving along power line routes to identify trees, which needed trimming and clearing away from the lines. He estimated that his position involved driving or walking along sidewalks or through alleys approximately 95 percent of the time and that the remaining five percent of the time he was required to walk over mountainous, brush covered or uneven terrain. On December 22, 1997 while he was employed by Washington Forestry Consultants, appellant filed a claim for recurrence of disability beginning May 20, 1997. Appellant did not stop work. By decision dated August 27, 1998, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between the claimed recurrence of disability and appellant's accepted employment injuries, but rather indicated that appellant's knee condition was due to intervening factors of his subsequent private sector employment. Appellant requested an oral hearing, which was held on April 21, 1999. In a decision dated July 2, 1999, an Office hearing representative affirmed the Office's prior decision.

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

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² In the present case, appellant has submitted evidence, which suggests that the claimed recurrence of disability was causally related to his accepted right knee injuries. Specifically, appellant submitted several reports by his treating physician, Dr. Richard E. James, a Board-certified orthopedic surgeon, that appellant's current condition is causally related to his prior accepted injuries. In his March 28, 1997 report, Dr. James noted that appellant was still working as a forester and was getting along pretty well, except for some swelling and discomfort, but that appellant was concerned that due to his altered gait, he was developing a right foot condition, evidenced by an unusual wear pattern on his right shoe. Dr. James diagnosed longstanding, moderate degenerative arthritis of the medial compartment of the right knee and mild degenerative changes of the patellofemoral lateral compartment. Dr. James prescribed a wedge to be placed in appellant's right shoe to decrease appellant's foot discomfort.

¹ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Jose Hernandez*, 47 ECAB 288 (1996).

² *Id.*

In a report dated December 15, 1997, Dr. James noted that appellant was still working in the woods at his job as a forester and was spending a lot of time going up over hills and mountains and that appellant's right knee was progressively worsening as far as his symptoms were concerned. Dr. James noted appellant's complaint that the knee became swollen on a daily basis and gave out on him frequently, causing him to fall. He diagnosed progressive worsening of post-traumatic arthritis of the right knee and recommended work restrictions. The physician concluded that it was only a matter of time before appellant required a total knee replacement.

In a letter to the Office dated October 9, 1998, Dr. James noted that appellant had undergone two surgeries in the early 1980's because of a medial meniscus tear and an anterior cruciate ligament tear while working for the Forest Service and stated:

“[Appellant] has continued to develop the expected degenerative changes in the medial compartment of his knee following meniscectomy and meniscal injury, as well as the instability of his anterior cruciate ligament. He has been given various forms of conservative treatment, including interarticular steroid injections and a three-sixteenths inch lateral sole heel wedge to off weightbear his medial compartment.

“Appellant has now reached a point where his symptoms are markedly interfering with his quality of life. His x-rays now show other severe degenerative arthritis in the medial compartment of his knee. At some point in time, conservative measures are no longer going to be able to allow him to continue with his present recreational and work activities, unless he has a total knee replacement arthroplasty.”

* * *

“[I]n my medical opinion, I feel that he definitely has developed progressive, post-traumatic arthritis of his knee, secondary to the old injuries.... This, certainly, is not an unusual course for his type of condition and previous injury problems.”

In a letter to appellant dated December 2, 1998, Dr. James stated:

“I, certainly, agree that your knee problem has been a slow deterioration and arthritic condition, which has been aggravated by your initial injury and subsequent surgeries. I do not feel there is any intervening causal injuries, which could be responsible for your present condition.”

While the reports by Dr. James are not sufficient to carry appellant's burden of proof to establish that appellant's claimed recurrence is causally related to his accepted employment injuries, as the physician fails to adequately explain why he believes appellant's intervening employment duties in the private sector did not play a role in causing his knee condition to worsen, the Board finds that this medical evidence raises an inference of causal relationship between appellant's 1997 recurrence of disability and his accepted employment injuries and is

sufficient to require further development of the case record by the Office.³ Dr. James was clearly aware of appellant's employment duties while employed by Washington Forestry Consultants and his opinion that appellant's current knee conditions are causally related to his original employment related knee injuries and not to any intervening causes is unequivocal and uncontroverted.

On remand, the Office should further develop the medical evidence by referring appellant and a complete statement of accepted facts, to include all of appellant's accepted conditions including degenerative joint disease, which was accepted in 1982, to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's current knee conditions are causally related to his accepted employment injury. After such development of the case record as the Office deems necessary, the Office should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated July 2, 1999 and August 27, 1998 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
October 11, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

³ See *John J. Carlone*, 41 ECAB 354 (1989).