

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER D. WEBBER and DEPARTMENT OF DEFENSE,
ADMINISTRATIVE SUPPORT CENTER EAST, New Cumberland, PA

*Docket No. 99-1322; Submitted on the Record;
Issued September 18, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he was disabled from work due to the April 8, 1998 employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for contusion to the left knee resulting from the April 8, 1998 employment injury. After the April 8, 1998 employment injury, appellant returned with light-duty restrictions for one week. By letter dated April 28, 1998, the Office of appellant's treating physician, Dr. James A. Flanagan, a Board-certified orthopedic surgeon, requested approval for surgery to appellant's left knee. Appellant submitted a medical report from Dr. Flanagan dated April 14, 1998 in which he considered that appellant's "initial injuries" to his knees were in Saudi Arabia when he was unloading and that he had further injuries when his knees gave way when he was working on or unloading tanks and he would fall from 8 to 12 feet. Dr. Flanagan performed a physical examination, reviewed an x-ray and diagnosed significant chondromalacia of the patella and a torn medial meniscus on this left knee. He recommended arthroscopic surgery of the knee.

By letter dated April 29, 1998, the Office denied appellant's request for surgery, stating that Dr. Flanagan's report, which did not address the April 8, 1998 employment injury, was insufficient to establish that appellant's need for surgery was related to that injury. Due to a mix-up over whether appellant was seeking surgery for his right or left knee, when in fact his request for surgery was for his left knee, by letters dated May 6 and June 11, 1998, the Office provided appellant with more opportunities to submit evidence to establish his claim. Appellant additionally submitted an attending physician's report, Form CA-20, dated June 19, 1998 from Dr. Flanagan in which he stated that appellant was injured in Saudi Arabia when he fell off a tank and reiterated his diagnosis of significant chondromalacia of the patella and a torn meniscus of the left knee and recommended arthroscopy surgery. He checked the "yes" box that appellant's condition was caused or aggravated by his employment activity because appellant "fell off a tank and continue[d] to do his job." Dr. Flanagan stated that appellant could not work until he was released from his recovery from surgery.

By decision dated July 7, 1998, the Office denied appellant's claim, stating that the evidence of record failed to establish that appellant was disabled for work for any period.

By letter dated July 28, 1998, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of a statement from Dr. Flanagan dated July 15, 1998 in which he stated that appellant "sustained an injury to his left knee on April 8, 1998 and in [his] opinion the torn medial meniscus is a direct result of this injury." He recommended that appellant undergo arthroscopic surgery to repair the torn medial meniscus.

By letter dated August 14, 1998, the Office informed appellant that a more detailed report from Dr. Flanagan was necessary particularly his reasons for concluding appellant's knee condition was related to the April 8, 1998 employment injury, and not his fall in Saudia Arabia and subsequent falls.

Appellant submitted progress notes dated from January 31, 1992 through August 25, 1997 documenting, in part, treatment of his right knee in Saudi Arabia and then describing treatment of his left knee for symptoms of osteoarthritis in the patellofemoral joint.

Appellant underwent surgery to his left knee on August 21, 1998 consisting of an arthroscopic partial medical meniscectomy and an arthroscopic chondroplasty medial femoral condyle of the patella.

Appellant submitted an additional report from Dr. Flanagan dated August 27, 1998. In that report, Dr. Flanagan stated that appellant injured his right knee in Saudi Arabia but had not had any problems with his left knee until the April 8, 1998 employment injury, and at that time diagnosed significant chondromalacia of his left patella with a torn medial meniscus. He opined that the torn medial meniscus was a direct result of the April 8, 1998 employment injury and not a result from the previous injury sustained to his right knee.

By decision dated September 18, 1998, the Office denied appellant's request for modification.

In an undated letter received by the Office on December 9, 1998, appellant requested reconsideration of the Office's decision. Appellant submitted evidence with his request but the evidence had previously been submitted.

By decision dated January 5, 1999, the Office denied appellant's request for reconsideration.

By letter dated January 14, 1999, appellant requested reconsideration of the Office's decision and stated that he "was currently compiling additional medical documentation and a rebuttal to the denial."

By decision dated February 3, 1999, the Office denied appellant's reconsideration request, noting that no additional evidence was submitted.

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

An employee seeking benefits under the Federal Employees' Compensation Act 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 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.² As part of this burden the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.³

In the present case, appellant submitted two medical reports from his treating physician, Dr. Flanagan, dated July 15 and August 27, 1998, in which he stated that appellant's torn medial meniscus was a direct result of the April 8, 1998 employment injury. The Board finds that, while these reports lack the detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that appellant's knee condition is work related, they are sufficient to establish a *prima facie* case that appellant sustained an injury at work. Moreover, there is no contrary evidence in the record.⁴ It is well established that proceedings under the Act⁵ are not adversarial in nature,⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁷ The Office has an obligation to see that justice is done.⁸

On remand the Office should refer appellant, a statement of accepted facts and the case record to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to the relationship between appellant's knee condition and the April 8, 1998 employment injury. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated February 3 and January 5, 1999 and September 18 and July 7, 1998 are hereby vacated, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁴ *See Shirley A. Temple*, 48 ECAB 404, 409 (1997).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *See Shirley A. Temple*, *supra* note 4; *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁷ *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992); *Robert A. Redmond*, 40 ECAB 796 (1989).

⁸ *Dennis Lasanen*, *supra* note 7 at 550; *William J. Cantrell*, 34 ECAB 1233 (1983).

September 18, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member