

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA G. DANIEL and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Walla Walla, WA

*Docket No. 99-1730; Submitted on the Record;
Issued August 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden to establish that her current condition or disability of the left knee was causally related to her accepted January 21, 1997 lower left leg injury.

On January 21, 1997 appellant, a 38-year-old housekeeping aid, injured her lower left leg when she slipped and fell on a patch of slippery, wet grass. Appellant filed a claim for benefits on January 23, 1997, which the Office of Workers' Compensation Programs accepted for contusion of the lower left leg.

On November 7, 1997 appellant filed a CA-2 claim for recurrence of disability, alleging that her current condition or disability of the left knee was caused or aggravated by her accepted January 21, 1997 lower left leg injury.

By decision dated January 13, 1998, the Office denied appellant's claim for recurrence of disability, finding that she failed to submit rationalized medical evidence sufficient to establish that the claimed condition or disability was caused or aggravated by the accepted January 21, 1997 employment injury.

By letter dated May 7, 1998, appellant requested reconsideration of the Office's January 13, 1998 decision. In support of her claim, appellant submitted a June 18, 1998 report from Dr. Robert W. Ruggeri, a Board-certified orthopedic surgeon and appellant's treating physician. He reiterated his opinion, expressed in previous reports, that "with greater probability than not that the fall on January 21, 1997 was the inciting cause of her left knee pain." He also indicated that results of a magnetic resonance imaging scan of the left knee taken on January 29, 1998 revealed a complex tear of the posterior horn of the medial meniscus.

Appellant also submitted a January 22, 1998 report from Dr. Albert M. Randolph, a Board-certified family practitioner, who stated:

“[Appellant] is here with left knee discomfort from a work injury of the knee from January 21, 1997 at which time she slipped down an icy parking lot ... considerably twisting the knee and contusing it. It has had ups and downs since that time but has never fully resolved.... She is a bit overweight but she had healthy knees basically prior to the injury and has had difficulty since. Does n[o]t have locking yet but gets a feeling of it giving way and does have difficulty arising with her knees. Has had a little prominence of the left knee particularly since the injury. Has had to do light duty at work for this reason.”

Dr. Randolph diagnosed a work-related, persistent left knee injury which had not yet resolved, and ruled out internal derangement.

By decision dated August 21, 1998, the Office denied appellant’s request for reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of the January 13, 1998 decision.

By letter dated November 18, 1998, appellant requested reconsideration. In support of her claim, appellant submitted an October 22, 1998 report from Dr. Ruggeri, who reiterated that appellant sustained an injury to her left knee as a result of her fall, and stated:

“[Appellant] had no previous history of knee complaint right or left. Her left knee pathology, in my opinion, was a direct result of her fall onto her left knee. The fall, to repeat, caused the tear of the medial meniscus in her knee. There was no other cause of her knee injury.... The injury was initially manifest by swelling, limited motion and give-way weakness. These symptoms persisted until the time of her surgical correction [on] September 30, 1998.”

By decision dated January 27, 1999, the Office denied appellant’s request for reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of the January 13, 1998 decision.

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

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.¹

In the present case, appellant has submitted rationalized, probative medical evidence from Dr. Ruggeri, which is unrefuted, which indicated that appellant still suffered residual pain

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

from her January 21, 1997 employment injury, and which relates her disability for work as of November 7, 1997 to her January 21, 1997 employment injury. Dr. Ruggeri, appellant's treating physician, stated in his reports that appellant's fall on January 21, 1997 was the inciting cause of her left knee pain "with greater probability than not." In his October 22, 1998 report, Dr. Ruggeri advised that appellant's left knee pathology was a direct result of her fall onto her left knee. He stated that she had no previous history of knee complaints, and emphasized that the January 21, 1997 work incident caused the tear of the medial meniscus in her knee, resulting in symptoms of swelling, limited motion and weakness in the knee, which persisted until her September 1998 surgery. Dr. Ruggeri specifically stated that there was no other cause of her knee injury, other than the January 21, 1997 work incident.

The Board finds that the evidence submitted by appellant, which contains a history of the development of the condition and a medical opinion that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.² Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's January 21, 1997 work injury and her alleged November 7, 1997 recurrence of disability, and is sufficient to require further development of the case record by the Office.

On remand the Office should determine whether appellant met her burden of establishing that on November 7, 1997 she experienced a recurrence of her employment-related disability which was caused or aggravated by her January 21, 1997 employment injury. The Office should refer appellant to a Board-certified orthopedic specialist to submit a rationalized medical opinion on whether she sustained a recurrence of disability due to her employment-related left knee condition on November 7, 1997 which was caused or aggravated by her January 21, 1997 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

² *John J. Carlone*, 41 ECAB 354 (1989).

The January 27, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
August 21, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member