

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN J. O'NEAL and DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, Los Angeles, CA

*Docket No. 01-121; Submitted on the Record;
Issued December 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability causally related to her accepted February 13, 1996 employment injury.

On February 13, 1996 appellant, then a 51-year-old claims technician, filed a traumatic injury claim alleging that on that date she hurt her left arm, leg, back, shoulder, thigh, knee and ankle when she tripped and fell over a wastebasket.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical strain, left hip contusion, lumbar strain, left ankle sprain and left knee sprain. The Office authorized left knee arthroscopy, which was performed on October 7, 1997.

On May 11, 2000 appellant filed a claim alleging that she sustained a recurrence of disability. Appellant stated that her knee never stopped hurting.

In support of her recurrence claim, appellant submitted a May 1, 2000 report from Dr. Rama E. Chandran, a Board-certified orthopedic surgeon and her treating physician. In this report, Dr. Chandran noted a history of appellant's February 1996 employment injury and a diagnosis of osteoarthritis of the left knee. Dr. Chandran further indicated that appellant's current condition was caused or aggravated by the above-noted employment activity by placing a checkmark in the box marked "yes."

Dr. Chandran's May 1, 2000 report noted a history of appellant's medical treatment, her complaints of pain in the lower back and left knee, findings on physical examination, a review of magnetic resonance imaging (MRI) results prior to appellant's October 1997 arthroscopic knee surgery and appellant's postoperative condition. Dr. Chandran stated that appellant might have internal derangement of the knee and indicated that an MRI should be done. Dr. Chandran added that appellant should remain on disability until May 8, 2000, at which time an assessment would be made regarding further disability based on the MRI findings.

By decision dated August 31, 2000, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her February 13, 1996 employment injury. In a September 12, 2000 letter, appellant requested an oral hearing.¹ Appellant's request was accompanied by Dr. Chandran's August 9, 2000 report in which he opined:

"It was felt [appellant] may have an internal derangement, based on the clinical examination, even though the continued osteoarthritis in this area and chondromalacia could cause similar symptoms. I do not feel that [appellant] had a new injury, and this is considered to be a recurrence or exacerbation of her preexisting condition."

Dr. Chandran stated that appellant's symptoms did not warrant any surgical procedures at that time, but that surgical pathology could not be ruled out unless an MRI was performed before appellant could be considered permanent and stationary again. Dr. Chandran again requested an MRI scan.

In a May 9, 2001 decision, the hearing representative affirmed the Office's decision.

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

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified 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 supports that conclusion with sound medical reasoning.²

While the record contains medical reports from Dr. Chandran indicating that appellant sustained a recurrence of disability, the Board finds that these reports lack detailed medical rationale sufficient to establish by the weight of reliable, substantial and probative evidence that her recurrence of disability is due to the February 13, 1996 employment injury. However, the fact that they contain deficiencies preventing appellant from meeting her burden of proof does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.³ Under such circumstances, the reports are sufficient to require

¹ The record contains a March 5, 2001 letter from the Office advising appellant that the record would be held open for 30 days and a review of the written record would be conducted since the court reporter failed to appear at the scheduled hearing.

² *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *See Delores C. Ellyett*, 41 ECAB 992 (1990).

further development of the record, especially given the absence of any contemporary opposing medical evidence.⁴

The Board notes that when an employee initially submits supportive factual and/or medical evidence which is insufficient to meet the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30-calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.⁵

It is well established that proceedings under the Federal Employees' Compensation Act⁶ are not adversarial in nature,⁷ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁸

In this case, there is an uncontroverted inference of causal relationship between the current diagnosed condition and the employment-related injury. Further, Dr. Chandran, appellant's treating physician, has twice requested an MRI to determine the extent of appellant's disability.

On remand, the Office should authorize an MRI, forward the results to Dr. Chandran for his opinion, and then 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 current left knee condition was caused by the February 13, 1996 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ 20 C.F.R. § 10.11(b); *see also supra* note 4.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁸ *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The May 9, 2001 and August 31, 2000 decisions of the Office of Workers' Compensation Programs are hereby vacated and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
December 6, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member