

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRVING S. WEISS and DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE, Plantation, FL

*Docket No. 00-545; Submitted on the Record;
Issued February 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that intermittent periods of disability after April 6, 1998 were causally related to his January 5, 1998 employment injury.

On January 5, 1998 appellant, then a 65-year-old tax examiner, filed a traumatic injury claim, alleging that he tripped and fell, injuring his right knee, right hand and wrist, and left leg and ankle. He further related that he had "swelling" of both extremities. Appellant stopped work on January 8, 1998 and returned to work on January 9, 1998.

Appellant received treatment at an emergency room on January 8, 1998. A physician interpreted an x-ray of appellant's right knee date as negative for a fracture. Based on the hospital records, the Office of Workers' Compensation Programs accepted appellant's claim for a contusion of the right knee.

In a letter received by the Office on April 8, 1998, appellant stated that following his treatment at the hospital his "left leg began to be extremely painful (knee, calf [and] ankle)." He informed the Office that he had preexisting lymphedema in his left leg, which had been under control but had swollen "out of regular proportion since the work injury." Appellant related that on March 27, 1998 he sought treatment from Dr. George Kolettis, an orthopedic surgeon.

In a report dated March 27, 1998, Dr. Kolettis discussed appellant's fall at work on January 5, 1998 with "pain initially in the right knee." He noted that appellant's "[s]ymptoms gradually improved, but [his] left knee began to bother him more and more." On physical examination Dr. Kolettis found marked lymphedema of the left lower extremity with tenderness on the medial side of the left knee.

Dr. Kolettis diagnosed mild degenerative changes with a possible degenerative tear of the medial meniscus of the right knee with improving symptoms, a possible torn medial meniscus of

the left knee with degenerative changes, a chronic sprain of the left ankle with mild degenerative changes and severe congenital lymphedema of the left lower extremity.

In an office visit note dated May 28, 1998, Dr. Kolettis stated that appellant continued to have pain in his left knee. He found that appellant's treatments for lymphedema had improved the edema in his left lower extremity. Dr. Kolettis noted that appellant was working four hours a day and that "standard treatment measures are contraindicated by [appellant's] lymphedema and the increased risk of significant complications." In an office visit note dated June 22, 1998, he listed essentially unchanged findings and opined that appellant was unable to work and should "be placed on permanent disability."

On June 26, 1998 appellant submitted a claim requesting compensation for intermittent periods of disability from April 6 through June 30, 1998.

By letter dated July 17, 1998, the Office requested that Dr. Kolettis discuss whether appellant had a medical condition causally related to his January 5, 1998 fall at work and whether the fall caused or aggravated his lymphedema. The Office asked Dr. Kolettis to comment on appellant's need for physical therapy and the expected outcome.

By letter dated August 18, 1998, the Office informed appellant that it needed additional information and requested that he submit medical records of treatment received between January 8 and March 27, 1998, copies of his hospital discharge summary and medical reports prior to his employment injury regarding any treatment of his left knee and preexisting lymphedema.

By decision dated October 7, 1998, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that he had any disability due to his January 5, 1998 employment injury. In decisions dated November 2 and December 24, 1998, the Office denied merit review of its October 7, 1998 decision.

On August 31, 1999 appellant, through his representative, requested reconsideration and submitted a deposition dated August 20, 1999 from Dr. Kolettis who discussed his initial evaluation of appellant on March 27, 1998 and his subsequent treatment. In response to whether the fall in January 1998 "caused an injury or aggravated a preexisting condition," Dr. Kolettis stated:

"Well, I think it did both. I think that the preexisting problems were his degenerative changes in his knee that [were] clearly aggravated by his injury. And he also had the underlying problem of the chronic lymphedema, which complicated his treatment options. But I believe that he -- he very likely had a new injury to his knee, that being a medial meniscus tear."

When asked to discuss the mechanism of injury, Dr. Kolettis related that, "when [appellant] fell, if his knee bent excessively or twisted as he fell, that could cause the one surface of the femur to slide across the surface of the other bone, the tibia, in such a way that it pinches the meniscus in between the two bones and causes that meniscus to tear." Dr. Kolettis responded in the affirmative when asked whether appellant had a medial meniscus tear due to his injury

provided that appellant's statement that "he had no significant problems with his knees before this incident" was accurate. He further opined that appellant sustained a permanent impairment due to his January 1998 employment injury.

In a decision dated October 14, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior merit decision.

The Board finds that appellant has not established his entitlement to compensation for intermittent periods of disability after April 6, 1998 causally related to his January 5, 1998 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee" of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period 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.² An award of compensation may not be based on surmise, conjecture, speculation or appellant's own belief that there is causal relationship between his claimed condition and his employment.³ To establish causal relationship, appellant must submit a medical report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.

In support of his claim for compensation, appellant submitted two form reports dated May 29 and June 22, 1998, in which a physician diagnosed left lower extremity lymphedema, left knee degenerative joint disease and a torn medial meniscus, and checked "yes" that the conditions were caused or aggravated by employment.⁴ The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.⁵

In his March 27, 1998 report, Dr. Kolettis diagnosed torn medial meniscus in the right and left knee, a chronic sprain of the left ankle and congenital lymphedema of the left lower extremity, but did not relate these conditions to appellant's fall at work in January 1998. Similarly, in his May and June 1998 office visit notes, Dr. Kolettis discussed his treatment of

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Donald W. Long*, 41 ECAB 142 (1989).

⁴ The name of the physician is not legible.

⁵ *Lee R. Haywood*, 48 ECAB 145 (1996).

appellant for lymphedema and pain in the left knee but did not address the relevant issue of causation. Thus, these office notes and his March 1998 report are insufficient to meet appellant's burden of proof.⁶

In a deposition dated August 20, 1999, Dr. Kolettis opined that appellant's fall at work in January 1998 aggravated the degenerative changes in his knees and that he "very likely had a new injury to his knee, that being a medial meniscus tear." He described the mechanism by which appellant may have torn his medial meniscus when he fell and reiterated that appellant had torn his medial meniscus if he had "no significant problem with his knees before this incident."

Dr. Kolettis did not provide any rationale for his finding that appellant's January 1998 employment injury, accepted by the Office for a right knee contusion, aggravated preexisting degenerative changes in appellant's knees.⁷ He also did not explain why appellant had no pain in his left knee until three months after his employment injury or why the problems with his left extremity were not due to his preexisting lymphedema. Further, Dr. Kolettis' finding that appellant "very likely" tore his medial meniscus during his fall is speculative and thus of diminished probative value.⁸

Dr. Kolettis also opined that appellant's employment injury caused a torn medial meniscus provided that he accurately described his knee as asymptomatic before the fall. However, the Board has held that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.⁹ As Dr. Kolettis' opinion is speculative, equivocal and unsupported by medical rationale, it is insufficient to establish appellant's claim.

⁶ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁷ *Carolyn F. Allen*, 47 ECAB 240 (1995) (medical reports not containing rationale on causal relation are entitled to little probative value).

⁸ *Albert S. Williamson*, 47 ECAB 569 (1996).

⁹ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The decisions of the Office of Workers' Compensation Programs dated October 14, 1999 and December 24, 1998 are hereby affirmed.

Dated, Washington, DC
February 12, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member