

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEWIS THURSTON and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Decatur, GA

*Docket No. 00-647; Submitted on the Record;  
Issued February 7, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant's disability beginning May 18, 1999 was causally related to his accepted January 23, 1999 employment injury.

On January 28, 1999 appellant, then a 44-year-old nursing escort, filed a notice of traumatic injury alleging that, on January 23, 1999, while pushing and pulling a bed off the elevator, he hit his knee on the bed, causing a bruise and twisted right knee.

On June 15, 1999 appellant's claim was accepted for a right knee strain.

In a decision dated August 11, 1999, the Office of Workers' Compensation Programs denied appellant's claim for compensation from May 18 through June 11, 1999 on the grounds that the evidence failed to show that appellant was disabled as a result of his injury.

The Board finds that appellant has not established that his knee surgery and recovery from May 18 to June 11, 1999 are related to his accepted injury.

An employee seeking benefits under the Federal Employees' Compensation Act,<sup>1</sup> 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 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.<sup>2</sup> These are the

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<sup>1</sup> 5 U.S.C. § 8101 *et. seq.*

<sup>2</sup> *Ronelle Smith*, 47 ECAB 781 (1996); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In this case, Dr. Joseph Johnson, Board-certified in diagnostic radiology, performed a right knee arthroscopy with debridement on May 18, 1998. His postoperative diagnosis was osteochondral defect of the right medial femoral condyle and trochlea. In a June 11, 1999 report, Dr. Johnson noted that appellant still complained of pain three weeks after his arthroscopic procedure. The report stated that appellant's knee was "stable" but he felt he could not return to his usual employment. The physician noted that "we did not agree on [his] return-to-work status" and appellant requested to see another physician.

On July 8, 1999 the Office received Dr. Johnson's report dated June 11, 1999. He diagnosed degenerative joint disease of the right knee and indicated by a checkmark that the condition found was caused or aggravated by appellant's employment. Dr. Johnson added that the degenerative changes and cartilage lesion "could be aggravated by his fall."

In a clinical note dated June 11, 1999, Dr. Johnson stated that appellant could return to light duty on June 14, 1999.

The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.<sup>4</sup> Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. Dr. Johnson did no more than check "yes" to the form question, on causal relationship, his opinion is insufficient to discharge appellant's burden of proof. Moreover, Dr. Johnson is speculative in indicating that appellant's degenerative changes and cartilage lesion "could" have been aggravated by the work incident. Furthermore, none of the medical evidence submitted establishes that appellant underwent knee surgery as a result of the accepted work injury, a right knee strain. Accordingly, appellant did not meet his burden of proof to establish that he was disabled from May 18 to June 11, 1999 due to the accepted work accident of January 23, 1999.

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<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

The August 11, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
February 7, 2001

Michael J. Walsh  
Chairman

Priscilla Anne Schwab  
Alternate Member

Willie T.C. Thomas, Member, dissenting:

Appellant herein sustained a bruised and twisted right knee on January 23, 1999. Appellant reported to the employing establishment clinic on the date of injury with a history of knee hit on bed and twisted. He reported pain in the medial aspect of his right knee on walking. The examining physician noted an audible "cracking" sound on flexion/extension and increased swelling laterally. The physician ordered x-rays to detect a possible fracture diagnosed a ligament strain, prescribed Motrin, rest for 24 hours and ice and elevation of the extremity.

On a follow-up examination on January 28, 1999 appellant was released to sedentary duty with as little walking as possible. On January 28, 1999 a report of emergency treatment from the employing establishment reported that appellant should wear a knee brace for two months.

On June 15, 1999 the Office accepted the claim for a right knee strain. The Office noted in this letter that "your employer states that you have had knee surgery. Please provide all medical reports concerning your knee condition, including any relating to prior knee problems."

On June 11, 1999 appellant submitted Forms 7a, leave buy back worksheet/certification and election contending that he was disabled due to the employment injury and requesting to repurchase leave used for the period May 18 through June 11, 1999.

Appellant submitted a report from the Veterans Administration Hospital dated April 12, 1999 signed by Dr. Johnson, who reported that this was an orthopedic follow-up and that appellant complained of popping and effusion and denied any complaints prior to the employment injury. Physical examination revealed range of motion was 0 to 140 degrees; no

effusion; ligaments were stable on the ACL and PCL; Grade 1 on the MCL and LCL and tender to palpation on the lateral joint line with negative McMurrays's and Appleys. Dr. Johnson's assessment was rule out lateral meniscal tear. The plan included a magnetic resonance imaging (MRI) scan of the right knee.

Appellant also submitted a report of the MRI dated April 27, 1999 and interpreted by radiologist Dr. Karen Louise Shoffner, whose impressions were:

1. Minimal medial femoral tibial compartment DJD.
2. Suspect patellofemoral arthritis, degenerative versus post traumatic
3. Medial meniscal posterior horn degeneration signal without definite tear. Minimal sized medial popliteal (Baker's cyst) is present. Considered additional 3-D volume MRI sequence with reconstructions through the medial meniscus for further evaluation (radial and longitudinal slices can be performed).
4. Intemediate signal within the ACL on T1 weighted sequences, which is otherwise believed to be intact.
5. Small effusion. Small fluid present within the deep infrapatellar bursa.
6. Questionable proximal patellar tendinitis. Employing establishment's medical records reveal on May 3, 1999 appellant was scheduled for a diagnostic scope to be later scheduled.

The record also contains the operative report dated May 19, 1999. Under *Indication For Surgery*, Dr. Johnson stated:

“[Appellant] is a 44-year-old male who is an employee of the [employing establishment] who was seen in the clinic by one of the attending orthopedists and who, on examination, felt that he possibly had a medial meniscus tear and after discussing the risks and benefits of knee arthroscopy with possible debridement or excision of a torn meniscus, the patient understanding these risks and benefits desired to proceed.”

The preoperative diagnosis was “[p]ossible medial meniscal tear of the right knee.” The postoperative diagnosis was “osteochondral defect of the right medial condyle and osteochondral defect of the right femoral trochlea.”

In a letter dated July 9, 1999, the Office requested additional information from appellant including a physician's opinion supported by medical explanation as to the causal relationship between his current medical condition and work injury of January 23, 1999.

In addition, the claims examiner stated:

“It is noted that you have been diagnosed with preexisting degenerative joint disease of the right knee. Your physician must also explain for which condition knee surgery was performed: the knee sprain on January 23, 1999, or the preexisting degenerative joint disease of the right knee.”

In a report dated October 5, 1999, Delores Herandez of the employing establishment reported that Dr. Page had determined that appellant was unable to perform the full range of duties of the position; that appellant had been placed on light duty but that the Department of Labor had not accepted the injury as work related; that appellant was being sent off duty until such time as he is able to return to full-unrestricted duty.

By decision dated August 11, 1999, the Office denied appellant's request to repurchase leave on the grounds that there was insufficient evidence to support disability for the period claimed.

From a careful perusal of the total evidence of record, I must conclude that the record supports that appellant sustained an employment-related traumatic injury on January 23, 1999; that he suffered continuing symptoms that required him to wear a brace; that his physicians suspected he had sustained a tear of the medial meniscus; that arthroscopy surgery was performed to diagnose and treat the torn meniscus; and that an osteochondral defect was discovered during surgery as well as degenerative joint disease.

The record clearly establishes that the only reason for the surgery was to diagnose and treat appellant's employment-related right knee injury. The record does not contain any evidence of preexisting knee problems or degenerative joint disease. The record also establishes that appellant could not return to the full duties of his job until he fully recovered from the knee surgery.

Appellant has established that his January 23, 1999 traumatic injury, arthroscopic surgery and subsequent disability for work for the period claimed is directly causally related to the employment injury. For the foregoing reasons, I would reverse the decision of the Office and award appellant benefits for the period commencing May 11, 1999. Because appellant is being denied payment of his surgical expenses, medical expenses and forced off work until such time as he has recuperated and can perform all of the duties of his position, I feel compelled to record this dissent.

Willie T.C. Thomas  
Member