

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER D. WOODALL and DEPARTMENT OF THE AIR FORCE,
WARNER ROBINS AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GA

*Docket No. 99-651; Submitted on the Record;
Issued January 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on September 25, 1996 causally related to his accepted employment injury.

On August 10, 1994 appellant, then a 43 year-old welder, filed a claim for traumatic injury (Form CA-1), alleging that he sustained an injury to his left knee on that date while in the performance of duty.

On September 7, 1994 Dr. David Wadley, a Board-certified radiologist, read a magnetic resonance imaging (MRI) taken that day as revealing "degenerative joint disease in the left knee, most likely the result of a previous trauma" and "compartmental joint space narrowing and thinning of the articular cartilage." He also noted that "no definite meniscus tear can be identified although degenerative meniscal changes are noted in the anterior horn of the medial meniscus."

On February 15, 1995 the Office of Workers' Compensation Programs notified appellant that it had accepted his claim for strain and internal derangement of the left knee.

On October 16, 1996 appellant filed a claim for a recurrence of disability, alleging that his recurrence occurred on September 25, 1996. On the reverse side of the form, the employing establishment stated that appellant returned to his regular work after his alleged recurrence of disability on September 27, 1996.

By letter dated January 22, 1997, the Office advised appellant regarding additional medical evidence he would need to help process his claim.

By decision dated March 25, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant had sustained a recurrence of disability.

In a letter dated September 22, 1997, appellant requested reconsideration.

In support of his request, appellant submitted a medical report dated September 1, 1997, from Dr. Robert A. Nelson, a Board-certified orthopedic surgeon, and appellant's treating physician. In his report, Dr. Nelson noted a familiarity with appellant's history of injury relating a left extremity fracture sustained in the 1970's and a work-related left knee injury in August 1994. He then stated that in February 1997 appellant was symptomatic in the left knee, which he treated with an injection of cortisone. Despite conservative measures, appellant's knee remained symptomatic, resulting in an arthroscopic procedure on June 24, 1997, which revealed "torn medial and lateral menisci and Grade III chondromalacia involving the medial and lateral compartments of the knee." Dr. Nelson stated:

"[Appellant] did sustain a work-related injury to the left knee. He has now undergone left knee arthroscopy. During his last office visit, he continued to exhibit pain and swelling in the left knee, especially with weight bearing and the knee was again injected with cortisone. [Appellant] is now post status left knee surgery with residual symptoms and will have permanent impairment to the left knee as a result of his injuries."

By merit decision dated October 9, 1997, the Office denied appellant's request for reconsideration. In an attached memorandum, the Office stated that the record did not include bridging evidence from 1994 to 1996 and also noted that appellant's MRI did not reveal a meniscus tear but did reveal evidence of a degenerative condition that was fewer than three weeks old.

By letter dated October 7, 1997 and received by the Office on November 13, 1997, appellant, through his representative, requested reconsideration.

In support of his request, appellant submitted an October 25, 1997 medical report from Dr. Nelson. He stated that, based on appellant's history of injury and "the manner in which he injured his knee at work in 1994, I can indeed say with a degree of medical certainty that (the) meniscal tear was a direct result of that injury." Dr. Nelson also noted that an MRI is but a diagnostic tool and is not always accurate. He added: "When an MRI fails to provide a conclusive finding for a patient's symptoms, arthroscopic surgery is the next logical step for further diagnosis. Many conditions are not diagnosed until such arthroscopy is performed. It is my opinion that this was the case with [appellant]."

In a February 11, 1998 merit decision, the Office denied modification of the September 10, 1997 decision.

On August 17, 1998 appellant, through his designated representative, requested reconsideration and submitted a June 13, 1998 medical report from Dr. Nelson.

In that report, Dr. Nelson stated that appellant's condition did not suddenly begin to deteriorate in September 1996, over two years after his injury. He stated: "[Appellant's] condition was caused by the August, 1994 injury. Following that injury the tear in the meniscus could have been slight and gone undetected even by an MRI. Over the course of the next two years he continued to work, the tear apparently worsened to the point that he eventually had to stop working altogether and ultimately came to arthroscopy for a more definite diagnosis and repair." Dr. Nelson also stated that he did not believe that appellant's current medical condition was related to his motorcycle accident, which occurred in the 1970's because "the onset of symptoms began after the work injury in 1994 and progressively worsened from that time up to the point he required surgery."

In an October 5, 1998 merit decision, the Office denied modification of its February 11, 1998 decision, denying reconsideration of its September 10, 1997 decision.

The Board finds that this case is not in posture for decision and requires further evidentiary development.

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.¹ When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.²

In this case, appellant's medical evidence consists of three reports from Dr. Nelson. He noted that appellant's condition was caused by the August 1994 injury and that his meniscus tear could have gone undetected by an MRI. Dr. Nelson further noted that appellant's condition could have worsened over the next two years until he required surgical repair. He also noted that appellant's medical condition was not related to the motorcycle accident, which occurred in the 1970's because appellant's symptoms began after the work injury in 1994 and progressively worsened.

Because Dr. Nelson's reports remain speculative regarding causal relationship, for example he notes that appellant's meniscus tear could have worsened over a two-year period, his reports are insufficiently rationalized to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that his medical condition is causally related to his work-related injury. Nonetheless, given the totality of Dr. Nelson's opinions which explained why the MRI was not dispositive regarding a diagnosis and why appellant's condition could have been causally related to his work-related injury, his reports raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.³ Additionally, the Board notes that in this case the record contains no medical

¹ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

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

³ *Id.*

opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

Therefore, upon remand the Office should prepare a statement of accepted facts and questions to be answered and refer appellant together with the record to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's claimed recurrence of disability was in any way causally related to his accepted employment injury. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated October 5 and February 11, 1998 are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC
January 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member