

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE M. MAESNER and DEPARTMENT OF AGRICULTURE,
SOIL & CONSERVATION SERVICE, Portland, OR

*Docket No. 00-151; Oral Argument Held March 6, 2001;
Issued May 15, 2001*

Appearances: *Clarence M. Maesner, pro se; Paul J. Klingenberg, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a left knee injury causally related to an August 9, 1991 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Office accepted that appellant sustained a right knee contusion and avulsion anterior tibial space of the right knee. Appellant also underwent right knee surgeries and received schedule awards for a 76 percent permanent impairment to the right leg.

By decision dated October 10, 1997, the Office determined that appellant had not established a left knee condition as causally related to the August 9, 1991 employment injury. In a decision dated February 17, 1999, an Office hearing representative affirmed the prior decision. By decision dated July 20, 1999, the Office denied appellant's request for reconsideration without merit review of the claim.

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

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

In a report dated December 15, 1997, Dr. Paul J. Duwelius, an orthopedic surgeon, noted that an October 20, 1992 bone scan indicated the inferior aspect of the left patella was a likely site of trauma. Dr. Duwelius discussed appellant's medical history, and stated:

“Causation of the left knee was a direct result of the initial fall on the marble floor, and was exaggerated by having to bear 80 percent of the 250[-]pound body weight on the left knee from August 9, 1991 to February 28, 1997 through the succession of three operations in three years. Without the right knee operations, the left knee would have never needed the total knee replacement.

“Causation accelerated development of subchondral necrosis of bone (spontaneous osteonecrosis, osteochondritis dissecans, or full blown severe degenerative osteoarthritis). It resulted in total knee replacement in February 1997.”

The Board notes that the hearing representative did not discuss this report in the February 17, 1999 Office decision. In a previous report dated March 31, 1997, Dr. Duwelius had stated that appellant injured both his knees in the August 9, 1991 fall, with the left knee becoming aggravated as a result of the right knee injury.

The Office discounted Dr. Duwelius' opinion because of what it determined was an inaccurate history.

The Board finds that, while appellant referred his right knee on the original claim form, there is nothing in his statement that precludes a finding that his left knee also struck the floor.³ An August 13, 1991 witness statement from his wife indicated that his left knee did strike the floor, and an August 13, 1991 form notes, “extent yet unknown for left knee,” in the description of injury. There is no inconsistency in the record that precludes a factual finding that appellant struck his left knee in the August 9, 1991 fall.

Whether he sustained an injury is a medical question, and Dr. Duwelius provided a medical opinion that appellant did sustain trauma to the left knee, which was aggravated as a consequence of relying on the left knee due to the right knee injury and surgeries. This uncontroverted medical opinion is sufficient to require further development of the medical evidence.⁴ While appellant has the burden of proof to establish his claim, the Office shares responsibility in the development of the evidence.⁵

³ On his August 12, 1991 claim form, appellant stated that as he was leaving the elevator at work, the toe of his left foot caught in an upturned carpet and he “came down” on his right knee. At the hearing, appellant stated that his left knee was hyperextended.

⁴ See *Robert A. Redmond*, 40 ECAB 796 (1989).

⁵ *William J. Cantrell*, 34 ECAB 1233 (1983).

Accordingly, the case will be remanded to the Office to secure reasoned medical evidence that resolves the issues presented.⁶ After such further development as the Office deems necessary, it should issue an appropriate decision.

The July 20 and February 17, 1999 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
May 15, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ In view of the Board's finding, the issue of whether the Office properly denied appellant's request for reconsideration will not be addressed.