

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TIMOTHY TROLIO and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA

*Docket No. 00-1793; Submitted on the Record;  
Issued May 16, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on September 2, 1998 causally related to his accepted May 3, 1997 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on September 2, 1998 causally related to his accepted May 3, 1997 employment injury.

On May 12, 1997 appellant, then a 38-year-old tractor operator, filed a claim for an occupational disease (Form CA-2) assigned number A3-227028, alleging that on May 3, 1997 he first realized that his strained knees were caused by factors of his employment. Appellant stated that he strained his knees while moving large sections of shelving and books in a library. He stopped work from July 7, 1997 and returned to work on September 17, 1997 without restrictions.

By letter dated September 2, 1997, the Office of Workers' Compensation Programs accepted appellant's claim for bilateral knee strain.

On March 18, 1998 appellant filed a traumatic injury claim (Form CA-1) assigned number A3-233743 for his May 3, 1997 employment injury. In a March 11, 1998 letter regarding appellant's eligibility for continuation of pay, the Office advised the employing establishment that appellant's claim had been accepted as a traumatic injury claim and not as an occupational claim because appellant's injury occurred over the course of only one day or one work shift. In an internal memorandum dated March 25, 1998, the Office indicated that appellant's claim assigned number A3-233743 was a duplicate of his claim assigned number A3-227028 and that the former claim should be deleted.

On September 8, 1998 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability. He indicated that he returned to his regular work subsequent to his

May 3, 1997 employment injury with certain physical restrictions. Appellant also submitted a request for knee surgery.

By letter dated November 4, 1998, the Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Thomas Ward, a Board-certified orthopedic surgeon, for an examination and to determine whether the requested surgery was warranted.

Dr. Ward submitted a December 3, 1998 medical report finding that appellant's disability from his May 3, 1997 employment injury ceased on September 17, 1997.

In a January 14, 1999 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on September 2, 1998 causally related to his May 3, 1997 employment injury. In an October 20, 1999 letter, appellant, through his counsel, requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated March 16, 2000, the Office denied appellant's request for modification based on a merit review of the claim.

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.<sup>1</sup>

In support of his recurrence claim, appellant submitted an August 9, 1997 report of Dr. Edgar Fearnow, a Board-certified radiologist, indicating the results of magnetic resonance imaging (MRI), which included no evidence of a meniscal tear of significant ligamentous or tendinous abnormality and small focal dorsal patellar defect with intact and unremarkable appearing overlying articular cartilage. This evidence predated appellant's claimed recurrence of September 2, 1998 and, therefore, did not address whether appellant's disability on this date was causally related to his May 3, 1997 employment injury.

In further support of his claim, appellant submitted the September 2, 1998 medical treatment notes of Dr. Ward indicating that he injured his knees a year and a half ago while lifting at work. Dr. Ward noted that appellant's right knee improved significantly, but that appellant had persistent left knee pain. He also noted his findings on physical examination and diagnosed "possible" painful plica of the left knee. Dr. Ward further noted his discussion with appellant regarding arthroscopic surgery and its impact if appellant indeed had plica. He stated "I advised him that I could not guarantee him that this is his diagnosis. This could only be determined at the time of surgery. There is also a possibility of some chondromalacia of his patella which could be debrided." Appellant also submitted Dr. Ward's report of the same date

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<sup>1</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

providing a diagnosis of “probable” painful plica of the knee. Dr. Ward’s treatment notes, as well as his report, failed to provide a definite diagnosis and to address whether appellant’s “possible” and “probable” conditions were disabling due to his May 3, 1997 employment injury.

A January 28, 1999 medical report of Dr. Peter F. Sharkey, a Board-certified orthopedic surgeon, indicated that appellant had a work-related injury two years ago and appellant’s complaint of pain over the medial aspect of the knee. He provided his normal findings on physical and objective examination. Dr. Sharkey diagnosed pain in the left knee with “probable” plica, “possible” meniscal pathology. He concluded that appellant was a good candidate for arthroscopy. Dr. Sharkey failed to provide a definite diagnosis and to address whether appellant’s “possible” and “probable” conditions were disabling due to his May 3, 1997 employment injury.

Dr. Sharkey’s February 10, 1999 report describing appellant’s arthroscopy of the left knee, which was performed on February 8, 1999, did not address whether appellant had any disability causally related to his May 3, 1997 employment injury.

Test results dated February 2, 1999 failed to provide a diagnosis and to address whether appellant had any disability causally related to his accepted employment injury.

The February 17, 1999 treatment notes of appellant’s physical therapist are of no probative value, inasmuch as a physical therapist is not a physician under the Federal Employees’ Compensation Act and, therefore, is not competent to give a medical opinion.<sup>2</sup>

In a February 25, 1999 letter, Dr. Sharkey indicated that appellant underwent left knee arthroscopy with lateral meniscectomy and excision of a loose body. He noted that appellant had mild degenerative changes throughout his knee and appellant’s subsequent medical treatment.

The Board finds that the December 3, 1998 second opinion report of Dr. Ward constitutes the weight of evidence. In his report, he provided a history of appellant’s May 3, 1997 employment injury and medical treatment and his findings on physical examination. Dr. Ward stated:

“At this time the problems with [appellant’s] knees are not related to the original injury of May 3, 1997. There is no history of any new injury. At this point in time his examination is entirely within normal limits and the [MRIs] are essentially unremarkable. At this point in time he should continue to work without any restrictions. [Appellant] was instructed to continue on his exercise program to strengthen the musculature in his knees. The disability that he had from his original injury of May 3, 1997 ceased as of September 17, 1997. It would be my opinion that he has made a complete and total recovery from his original injury of May 3, 1997, namely sprains of both his knees. At this point in time, his examination is entirely within normal limits and with a normal MRI. He can continue to work without any restrictions.”

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<sup>2</sup> 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

Dr. Ward's opinion is well rationalized and based on an accurate factual and medical background. Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability on September 2, 1998 causally related to his May 3, 1997 employment injury, he has failed to satisfy his burden of proof.

The March 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
May 16, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member