

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHAWN J. FINNEY and DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, UT

*Docket No. 01-492; Submitted on the Record;  
Issued October 25, 2001*

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DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability in October 1994 causally related to his May 8, 1981 employment injury or any other factors of his employment.

The Board has reviewed the entire case record in this appeal and finds that appellant failed to establish that he sustained a recurrence of disability in October 1994 causally related to his May 8, 1981 employment injury or any other factors of his employment.

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.<sup>1</sup> This burden includes the necessity of furnishing medical evidence from a 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 rationale.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

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<sup>1</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>2</sup> See *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> See *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

Previously, the Board affirmed a May 6, 1996 decision of the Office of Workers' Compensation Programs denying appellant's claim for a recurrence of disability.<sup>4</sup> The Board's November 24, 1998 decision is herein incorporated by reference.

In its November 24, 1998 decision, the Board considered the evidence which was of record at the time the Office issued its May 6, 1996 decision. Therefore, in this appeal, the Board will address only the evidence submitted to the Office since the Board's November 24, 1998 decision.

Appellant filed a timely request for reconsideration of the Office's May 6, 1996 decision and submitted additional evidence.<sup>5</sup> By decision dated September 12, 2000, the Office denied modification of its May 6, 1996 decision.

In a report dated January 13, 1999, Dr. L. Michael Janeway, appellant's attending Board-certified orthopedic surgeon, stated that appellant's employment-related left knee injuries included arthritis, quadriceps mechanism instability, anterior cruciate and medial collateral ligament instability. He stated that he had treated appellant since his May 8, 1981 employment injury and that his original 1981 employment injury, subsequent injuries, and resulting degenerative changes had rendered him permanently disabled for all but sedentary work.

Dr. Janeway included a review of appellant's course of treatment for his left knee condition from 1981 to 1995. He stated:

"I feel [appellant] is capable of only sedentary work based on the physical pathology demonstrated. The prior ligament tears, coupled with the quadriceps mechanism instability, anterior cruciate and medial collateral ligament instability have rendered [appellant's] knee highly susceptible to misalignment. The records from 1988 show that [appellant's] condition had stabilized, but that he was still working under severe restrictions and was still highly susceptible to further aggravation and injury to his knee. The medical history is replete with such aggravations and reinjuries resulting from [appellant's] attempts to maintain a normal life. The arthritis which has developed as a result of the injuries, has in itself been the cause of an exacerbation of symptoms.

"Based upon both my examinations of [appellant] and the medical history, it is my medical opinion based on reasonable medical probability that [appellant's] current knee pathology is 80 percent directly and causally related to his industrial injury of May 8, 1981, the series of smaller traumas also incurred at work, and/or the treatment required for these injuries. The current knee pathology, as caused by the industrial injury of May 8, 1981 has caused [appellant] to be totally disabled from any employment whatsoever for the period running from

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<sup>4</sup> Docket No. 96-2406 (issued November 24, 1998). On December 14, 1994 appellant, then a 36-year-old aircraft mechanic, filed a claim for a recurrence of disability which he attributed to his May 8, 1981 employment injury.

<sup>5</sup> In support of his request for reconsideration, appellant also submitted evidence previously of record at the time of the Board's November 24, 1998 decision.

November 16, 1994 to the date of this letter. In my November 29, 1995 letter, I indicated that [appellant] would be able to do completely sedentary work subject to severe restrictions on his activity. I also stated that [appellant's] ability to work was also limited by his acute, chronic pain syndrome that developed as a result of the 1981 industrial injury. The combination of the pain, the severe restrictions, and the requirement for limited physical work has continued [appellant's] period of disability from the November 29, 1995 letter to the present.

“As indicated, [appellant] is restricted to nonphysical work involving lifting no more than 10 pounds at a time and occasionally (which means occurring from very little to up to one-third of the time) articles like docket files, ledgers and small tools. He should be restricted to occasional walking and must wear the brace for this activity. Postural limitations include need to lift leg and prohibited bending, stooping or squatting.”

However, this report contains conflicting statements. Dr. Janeway stated that appellant was capable of performing sedentary work with restrictions but also stated that appellant was totally disabled from November 29, 1994 to January 13, 1999. Additionally, he did not indicate whether he examined appellant between November 29, 1995 and January 13, 1999 and did not explain how he could determine appellant's capacity for work after November 29, 1995 if he did not examine him after that date. Due to these deficiencies, this report is not sufficient to establish that appellant sustained a recurrence of disability in October 1994 causally related to his May 8, 1991 employment injury or any other factors of his employment.

In reports dated May 9 and 14, 2000, Dr. Daniel J. Greenberg, a physician at a pain management clinic, stated that appellant had been treated at the clinic since January 1998 for chronic left knee pain. He stated that appellant's pain had lessened but he was restricted to nonphysical work involving lifting no more than 10 pounds at a time, only occasional walking wearing a knee brace and no bending, stooping, or squatting. However, Dr. Greenberg did not examine appellant at the time of his claimed recurrence of disability in 1994. Furthermore, he did not opine that appellant's condition was causally related to his May 8, 1981 employment injury or any other factors of his employment. Therefore, his reports do not establish that appellant sustained an employment-related recurrence of disability in October 1994.

The decision of the Office of Workers' Compensation Programs dated September 12, 2000 is affirmed.

Dated, Washington, DC  
October 25, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member