

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID L. LEVIN and DEPARTMENT OF THE NAVY,  
PEARL HARBOR NAVAL SHIPYARD, HI

*Docket No. 02-1925; Submitted on the Record;  
Issued December 20, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has any continuing disability or residuals on or after February 1, 1998 causally related to his accepted employment injuries; and (2) whether appellant has more than 12 percent permanent impairment of his left lower extremity for which he has received a schedule award.

This case has previously been before the Board on appeal on three occasions. In its July 10, 1989 decision, the Board found that the impartial medical examiner's report was insufficient to constitute the weight of the medical opinion evidence as it was insufficiently rationalized and not based on a proper factual background.<sup>1</sup> The Board determined that the Office of Workers' Compensation Programs failed to meet its burden of proof to terminate appellant's compensation benefits. Following this decision, the Office reinstated appellant's compensation benefits and then terminated his benefits again by decision dated January 26, 1998. Appellant appealed this decision to the Board. In a decision dated June 16, 2000, the Board found that the Office met its burden of proof to terminate appellant's compensation benefits effective February 1, 1998.<sup>2</sup> The Board further found that appellant had failed to submit sufficient medical evidence establishing continuing disability on or after February 1, 1998 due to this employment injuries. The facts and the circumstances of the case as set forth in the Board's prior decisions are adopted herein by reference.

Following the Board's June 16, 2000 decision, appellant requested reconsideration on September 15, 2000 and submitted additional medical evidence. By decision dated December 18, 2000, the Office denied this request as untimely and found that appellant had failed to submit clear evidence of error. Appellant appealed this decision to the Board by letter dated March 16, 2001. In an Order Granting Remand dated September 18, 2001,<sup>3</sup> the Board

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<sup>1</sup> 40 ECAB 1076 (1989).

<sup>2</sup> Docket No. 99-1019.

<sup>3</sup> Docket No. 01-1194.

granted the Director's motion to remand appellant's claim for the Office to consider whether to reopen appellant's claim for consideration of the merits.

In a decision dated November 15, 2001, the Office denied modification of the June 16, 2000 decision of the Board, finding that the medical evidence submitted was insufficient to overcome the weight of the impartial medical examiner, Dr. Bruce E. Bradley, a Board-certified orthopedic surgeon. Appellant requested reconsideration on January 22, 2002 and by decision dated April 12, 2002, the Office again denied modification of its prior decisions.

The Board finds that appellant has failed to meet his burden of proof in establishing any continuing disability on or after February 1, 1998.

As the Board found that the Office met its burden of proof to terminate appellant's compensation benefits in its June 16, 2000 decision, the burden shifted to appellant to establish that he had further disability or medical residuals causally related to his accepted employment injury.<sup>4</sup> To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

Following the June 16, 2000 decision of the Board, appellant submitted additional medical evidence including a report dated August 24, 2000 from Dr. Bradley J. Watters, a Board-certified orthopedic surgeon, who noted appellant's employment injury on September 14, 1978 and his medical history. He noted that appellant reported aching and soreness within his left knee, with occasional catching and occasional sharp jabbing pain. Dr. Watters provided his findings on physical examination noting that appellant had full range of motion and stability to stress. He stated, "There is an occasional catch with a motion of the knee in flexion/extension and there is some pain coming from the patellofemoral joint, and mild crepitus coming from the patellofemoral joint with motion." Dr. Watters stated that appellant had diffuse aching with squatting or a forced valgus or varus grind, but no catching or locking and nothing suggestive of further meniscal tearing. He reviewed appellant's x-rays dated August 24, 2000 and found mild medial and lateral compartment arthrosis with the joint space narrowed on weight-bearing x-rays. Dr. Watters diagnosed mild early degenerative changes in the left knee aggravated by appellant's work-related injury and surgeries. He suggested conservative care at that time including appropriate work activities and avoidance of excessive stress to the knee. Dr. Watters

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<sup>4</sup> *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>5</sup> *James Mack*, 43 ECAB 321 (1991).

did not provide work restrictions nor an impairment rating for schedule award purposes. However he did indicate that he disagreed with Dr. Bradley's report who found that appellant had no objective evidence of a knee pathology as appellant had radiographic evidence of joint space narrowing which was consistent with his arthrotomy and medial meniscectomy and early degenerative changes in the knee. Dr. Watters stated that it was well recognized that a meniscectomy may lead to earlier degenerative changes within the knee and that this was apparent on appellant's x-rays.

On December 11, 2001 Dr. Watters reviewed x-rays and performed a physical examination. He stated that appellant experienced mild aching with an occasional click or catch, but no irregular crepitus and no severe pain. Dr. Watters diagnosed mild degenerative changes in the left knee secondary to prior medial and lateral meniscectomies including mild narrowing of the medial and lateral compartments of a millimeter and the beginning of some early bone spurs with some sharpness of the joint margins about the medial compartment as well as around the notch in the trochlear groove. He recommended that appellant undergo a physical capacity evaluation to determine his work abilities. Dr. Watters also stated that he did not do permanent impairment evaluations for appellant's condition, but that the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* awarded 22 percent impairment of the lower extremity for total medial and lateral meniscectomies.<sup>6</sup> He stated that he had not reviewed appellant's operative reports to reach a conclusion on that aspect of appellant's claim.

Dr. Watters provided a history of injury and findings based on his physical examination and on x-rays. He concluded that appellant's early degenerative changes as demonstrated on x-ray were due to his employment injury. Dr. Watters supported this conclusion by noting that it was well recognized that a meniscectomy may lead to earlier degenerative changes within the knee and that this was apparent on appellant's x-rays.

Despite the opinions offered, Dr. Watters' reports are insufficient to meet appellant's burden of proof of establishing continuing disability due to his employment injury on or after February 1, 1998 nor to create a conflict with the December 21, 1992 report of Dr. Bradley, the impartial medical specialist. As Dr. Watters noted, he did not base his reports on a complete review of the medical record including appellant's operative reports. Furthermore, although Dr. Watters provided an opinion that appellant has a condition which he believed was related to appellant's employment injury and resultant surgeries, Dr. Watters does not provide any opinion regarding appellant's disability to perform the duties of his date-of-injury position of marine machinist. Dr. Watters did not address appellant's work restrictions and did not provide any opinion regarding whether appellant could or could not perform the same duties as required by the date-of-injury position. Without a rationalized medical opinion regarding the nature and extent of appellant's disability for work, appellant has not established that he remains entitled to compensation for loss of wages due to disability for work. As appellant has not provided the necessary medical opinion evidence to establish his continuing employment-related condition, he has not met his burden of proof for this aspect of his claim.

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<sup>6</sup> The Office granted appellant a schedule award for 12 percent permanent impairment of his left leg on May 24, 1982.

The Board further finds that appellant has submitted sufficient medical opinion evidence for the Office to further develop his claim for medical benefits. Although Dr. Watters did not address the issue of appellant's disability for work and consequently his entitlement to wage-loss compensation, he concluded, based on objective medical findings, that appellant had a continuing condition as a result of his accepted employment injuries and resultant surgeries. Dr. Watters examined x-rays on both August 24, 2000 and December 11, 2001 and found that appellant had early degenerative changes in both the medial and lateral compartments of his left knee. He found that the changes had progressed from August 24, 2000 to December 11, 2001 and offered limited medical rationale in support of his opinion that these changes were due to appellant's injuries and resultant surgeries rather than to normal age-related changes. Dr. Watters stated that it was well recognized that a meniscectomy may lead to earlier degenerative changes within the knee and that this was apparent on appellant's x-rays.

These reports contain a history of injury, diagnosis and an opinion that appellant's degenerative condition is due to the accepted employment injury and resultant surgeries. While these reports are insufficient to meet appellant's burden of proof, they do raise an inference of causal relation, uncontroverted since Dr. Bradley's 1992 report almost ten years earlier, between appellant's accepted employment injury on September 14, 1978 and his degenerative changes in the left knee as demonstrated by x-ray in 2000 and 2001 and are sufficient to require the Office to undertake further development of this aspect of appellant's claim.<sup>7</sup> On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate physician to determine whether appellant is entitled to further medical benefits due to his 1978 employment injury.

The Board further finds that appellant has not established that he has more than 12 percent permanent impairment of his left lower extremity.

Appellant received a schedule award for 12 percent permanent impairment of his left lower extremity in 1982. In his January 12, 2002 request for reconsideration, appellant alleged that he was entitled to an additional 10 percent permanent impairment for a total of 22 percent permanent impairment of his left lower extremity based on the December 11, 2001 notes from Dr. Watters.

The schedule award provisions of the Federal Employees' Compensation Act<sup>8</sup> and its implementing regulation<sup>9</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

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<sup>7</sup> *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404 (1999).

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>10</sup>

In this case, Dr. Watters' December 11, 2001 note does not provide sufficient medical findings to support appellant's claim for an additional schedule award. Dr. Watters noted that appellant had normal range of motion and that his knee was stable to ligamentous testing with occasional click or catch but no irregular crepitus and no severe pain. He stated that appellant's left knee did not have effusion and that appellant was neurovascularly intact. Dr. Watters noted that appellant reported mild aching with no suggestion of a meniscal tear nor severe arthrosis. He reviewed appellant's x-rays which demonstrated mild narrowing of the medial and lateral compartments of one millimeter along with some early bone spurs and sharpness of the joint margins about the medial compartment as well as around the notch in the trochlear groove.

Dr. Watters suggested that appellant had 22 percent impairment due to total medial and lateral meniscectomies. However, he noted that he had not reviewed appellant's operative reports to confirm the total lack of menisci.

Although Dr. Watters provided his findings on physical examination and x-ray, he did not provide a reliable final impairment rating. Dr. Watters stated that he had not reviewed appellant's operative reports which he indicated that he believed was necessary prior to determining that appellant currently had 22 percent permanent impairment due to his employment injuries and resultant surgeries. As Dr. Watters' report is the only medical evidence in the record addressing appellant's permanent impairment and as he did not offer a definitive opinion since he had not reviewed the operative reports necessary to reach a conclusion, the Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he is entitled to an additional schedule award for permanent impairment of his left lower extremity or to require the Office to undertake further development of this aspect of his claim.

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<sup>10</sup> Robert B. Rozelle, 44 ECAB 616, 618 (1993).

The April 12, 2002 and November 15, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed regarding the issues of permanent impairment and disability for work, and remanded for additional development of the issue of whether appellant is entitled to further medical benefits due to his 1978 employment injury.

Dated, Washington, DC  
December 20, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member