

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MILDRED D. OWENS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, MD

*Docket No. 01-634; Submitted on the Record;  
Issued February 11, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on November 30, 1998 causally related to her March 14, 1991 and September 26, 1992 employment injuries; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a hearing.

On March 14, 1991 appellant, then a 46-year-old social insurance specialist, sustained a right knee sprain in the performance of duty.

On September 26, 1992 appellant sustained a contusion and synovitis of the left knee when her right knee gave out and she fell onto her left knee.

In a report dated November 5, 1993, Dr. Robert Keehn, appellant's attending orthopedic surgeon, stated that he initially evaluated appellant for her March 14, 1991 employment injury and related that she had pain in both knees. He noted that x-rays revealed some mild arthritic changes. Dr. Keehn stated:

"I have always felt that [appellant] may have an underlying meniscal tear, but my working diagnosis was strain of the knee. Surely this should have resolved in two years. I explained to [appellant] that she may have strained the knee upon underlying degenerative arthritis."

The record shows that appellant underwent right knee surgery on January 18, 1994.

In a report and notes dated January 26, 1994, Dr. Keehn diagnosed an osteochondral defect, chondromalacia and degenerative arthritis of the right knee.

In notes dated February 9, 1996, Dr. Keehn stated that appellant had swelling in her knees due to persistent synovitis and arthritis.

In notes dated December 2, 1996, Dr. Keehn stated that appellant still had pain in her knees and legs and diagnosed mild arthritic changes.

In notes dated February 20, 1998, Dr. Keehn provided findings on examination and indicated that she had mild arthritic changes but was not a candidate for surgery.

In a report dated October 26, 1998 and a note dated January 11, 1999, Dr. Keehn stated that appellant had bilateral osteoarthritis of her knees.

On November 30, 1999 appellant filed a claim for a recurrence of disability on November 30, 1998 causally related to her March 14, 1991 and September 26, 1992 employment injuries.

By decision dated December 6, 1999, the Office denied appellant's claim for a recurrence of disability.

In an undated letter received by the Office on January 28, 2000, appellant requested an oral hearing.

By decision dated May 15, 2000, the Office denied appellant's request for a hearing on the grounds that the request was untimely and that the issue in the case could be resolved through a request for reconsideration and the submission of additional medical evidence.

In a letter dated June 26, 2000, Dr. Keehn stated:

"[Appellant] has been a patient of mine for nine years from injuries she sustained to her knees. She sustained an injury to the right knee on March 14, 1991 and the left knee on September 26, 1992. She has undergone extensive treatment including arthroscopy and conservative measures including physical therapy, medications, bracing and Synvisc treatment to each knee."

"[Appellant] has persistent complaints of pain, locking and giving way of both knees. Both injuries she sustained in 1991 and 1992 are work related. I feel that her present condition is permanent. I feel that she needs ongoing treatment for both knees. I feel that the ongoing treatment that she will require is causally connected to the accepted work injury that she sustained to the right knee on March 14, 1991 and the left knee on September 26, 1992."

By letter dated July 9, 2000, appellant requested reconsideration and submitted additional evidence.

In a report dated August 9, 2000, Dr. Keehn stated that appellant had work-related injuries to her right knee and left knee in 1991 and 1992. He stated:

"As you know, [appellant] has been a patient of mine for nine years. She had work-related injuries to her right knee on March 14, [1991] and to the left knee on [September] 26, [1992]."

"It was my feeling that [appellant] sustained sprain/strains of the knees superimposed on underlying arthritis of her knees. I do agree with you that strains, in all likelihood, resolve within a period of time; however, if an injury was superimposed on degenerative arthritis of the knees, the patient's complaints can be persistent. It is, therefore, my opinion that [appellant's] complaints of both knees are persistent and on a permanent basis. She did undergo arthroscopic surgery for the right knee in January of 1994. At that time, I did note that she had a defect about her right medial femoral condyle and chondromalacia patella, as well as degenerative joint disease of her right knee. I felt that these complaints were causally connected to her injuries of 1991 and based on the degenerative arthritis of the knee as noted.

"In summary, [appellant] sustained injuries to both knees, right and left, in 1991 and 1992 respectively. She has degenerative arthritis of both knees, which I feel was exacerbated from the injuries that she sustained which were work related. Therefore, I feel that she needs ongoing treatment for both knees and feel that her complaints are permanent in nature."

By decision dated October 10, 2000, the Office denied modification of its May 15, 2000 decision on the grounds that the evidence submitted was not sufficient to warrant modification.

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

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>

In a June 26, 1999 report, Dr. Keehn, appellant's attending orthopedic surgeon, stated:

"[Appellant] has been a patient of mine for nine years from injuries she sustained to her knees. She sustained an injury to the right knee on March 14, 1991 and the left knee on September 26, 1992.

"[Appellant] has persistent complaints of pain, locking and giving way of both knees. Both injuries she sustained in 1991 and 1992 are work related. I feel that her present condition is permanent. I feel that she needs ongoing treatment for both knees. I feel that the ongoing treatment that she will require is causally connected to the accepted work injury that she sustained to the right knee on March 14, 1991 and the left knee on September 26, 1992."

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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 Bruso*, 33 ECAB 1138, 1140 (1982).

In a report dated August 9, 2000, Dr. Keehn stated his opinion that appellant sustained sprain/strains of the knees superimposed on underlying arthritis of her knees. He stated that strains generally resolve within a period of time but, if an injury was superimposed on degenerative arthritis of the knees, the patient's complaints could be persistent. Dr. Keehn further stated:

"It is, therefore, my opinion that [appellant's] complaints of both knees are persistent and on a permanent basis. She did undergo arthroscopic surgery for the right knee in January of 1994. At that time, I did note that she had a defect about her right medial femoral condyle and chondromalacia patella, as well as degenerative joint disease of her right knee. I felt that these complaints were causally connected to her injuries of 1991 and based on the degenerative arthritis of the knee as noted.

"In summary, [appellant] sustained injuries to both knees, right and left, in 1991 and 1992 respectively. She has degenerative arthritis of both knees, which I feel was exacerbated from the injuries that she sustained which were work related. Therefore, I feel that she needs ongoing treatment for both knees and feel that her complaints are permanent in nature."

While Dr. Keehn's reports are not sufficiently rationalized to establish that appellant sustained a recurrence of disability on November 30, 1998 causally related to her March 14, 1991 and September 26, 1992 employment injuries, the reports do suggest a possible causal relationship and are sufficient to require further development by the Office.<sup>3</sup>

The Board's resolution of the first issue in this case renders the second issue moot.

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<sup>3</sup> See *John J. Carbone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated October 10 and May 15, 2000 are set aside and the case is remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC  
February 11, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member