

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMY L. COLEMAN and DEPARTMENT OF THE ARMY,
PINE BLUFF ARSENAL, Pine Bluff, AR

*Docket No. 01-1288; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

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

The issue is whether appellant established that he had a recurrence of disability causally related to his June 9, 1999 employment injury.

On June 9, 1999 appellant, then a 46-year-old supply technician, was stepping down from a ladder while doing inventory and felt his knee pop. The Office of Workers' Compensation Programs accepted appellant's claim for a right knee strain.¹

On August 7, 2000 appellant filed a claim for recurrence of disability effective June 10, 2000. He commented that he could not stand for more than five minutes and had never returned to full duty. On September 15, 2000 appellant filed another claim for a recurrence of disability. The employing establishment indicated that appellant was placed on limited duty after the June 9, 1999 employment injury. The employing establishment reported that appellant had resigned his federal position on August 12, 1999 for personal reasons. It noted that he was claiming loss of pay for his position in private employment beginning in June 2000.

In an October 26, 2000 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to establish that appellant's recurrence of disability claim was causally related to the employment injury. In a December 12, 2000 letter, appellant complained about the Office's decision and commented that he had requested a hearing before an Office hearing representative a month previously. In a February 15, 2001 decision, the Office denied appellant's request for a hearing on the grounds that the request was untimely filed. The Office reviewed appellant's request and found that the issue in the case could be equally well addressed by submitting new evidence and requesting reconsideration. In an undated letter, appellant requested reconsideration. In an April 23, 2001 merit decision, the Office denied appellant's request for modification of the prior decision.

¹ There is no indication in the record that appellant sought or received compensation due to the June 9, 1999 injury.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability effective June 10, 2000 that was causally related to his June 9, 1999 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.²

Appellant submitted several reports in support of his claim. In a June 17, 2000 report, Dr. Owen L. Kelly, an orthopedic surgeon, diagnosed a medial meniscus tear and recommended a right knee arthroscopy. There is no indication, however, that the arthroscopy was ever performed so the diagnosis of a medial meniscus tear cannot be confirmed. In an August 21, 2000 report, Dr. William W. Burnham, a Board-certified family practitioner, stated that appellant had painful feet and knee and was unable to work due to his pain. Dr. Burnham did not relate appellant's condition to the June 9, 1999 employment injury. His report, therefore, is not relevant to the issue in this case. In a September 6, 2000 report, Dr. John W. Barbaree, a chiropractor, indicated that appellant had pain in the cervical and lumbar regions of the spine. He diagnosed cervical sprain and strain, lumbosacral strain and sprain, bilateral knee compensation strain and bilateral plantar fasciitis. However, as a chiropractor, Dr. Barbaree can only be a physician under the Federal Employees' Compensation Act where he diagnosis a subluxation of the spine by x-ray. As Dr. Barbaree did not make such a diagnosis, he is not deemed a physician under the Act and his report is not deemed medical evidence. In a February 8, 2001 report, Dr. Jason Stewart, an orthopedic surgeon, indicated that appellant was seen for follow up to a right knee injury. He related that appellant had been scheduled for surgery but declined surgery due to fear of the procedure. Appellant stated that the knee pain had continued since the employment injury and had worsened. Dr. Stewart indicated that appellant had no atrophy of the leg or effusion. He noted tenderness in the knee but a full range of motion. In a cover letter, Dr. J. Michael Gruenwald, an orthopedic surgeon, stated that appellant's condition appeared to be a recurrence of his 1999 injury. Dr. Gruenwald did not give a firm diagnosis of appellant's condition, nor did he give any explanation for his conclusion that appellant's condition was related to the employment injury. His report, therefore, was speculative and equivocal and, as a result, was insufficient to meet appellant's burden of proof.

² *Dominic M. DeScala*, 37 ECAB 369 (1986).

The decisions of the Office of Workers' Compensation Programs, dated April 23 and February 15, 2001 and October 26, 2000, are hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member