

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK ECKLEY and DEPARTMENT OF THE ARMY,
CORP OF ENGINEERS, Philadelphia, PA

*Docket No. 01-1466; Submitted on the Record;
Issued March 20, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on and after February 11, 1997 due to his July 20, 1989 employment injury.

This is the second appeal in the present case. In a July 11, 2000 decision, the Board set aside the Office of Workers' Compensation Programs' decisions dated July 13 and March 31, 1998. The Board found that the medical evidence submitted by appellant raised an uncontroverted inference of causal relationship between appellant's 1997 recurrence of disability and his accepted employment injury and was sufficient to require further development by the Office. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.¹

On August 18, 2000 the Office referred appellant for a second opinion to Dr. Richard E. Parsons, a Board-certified surgeon. The Office provided Dr. Parsons with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated September 20, 2000, Dr. Parsons indicated that he reviewed the records provided to him and performed a physical examination of appellant. He diagnosed appellant with deep venous thrombosis (DVT) in both lower extremities. Dr. Parsons noted that there were three causes of DVT: trauma; hypercoagulability and stasis. He noted that the cause of appellant's DVT of the left leg was trauma. Dr. Parsons further determined that appellant was likely hypercoagulable because he had multiple DVT's in the lower extremities. He opined that appellant's right DVT was not related to the previous trauma. Dr. Parson concluded that he could not correlate the initial trauma to the right lower extremity DVT or to the pulmonary embolus.

¹ Docket No. 99-1101 (Issued July 11, 2000).

Dr. Parsons' report was forwarded to the Office medical adviser who concurred in Dr. Parsons' opinion that appellant's need for medical treatment and employment restrictions were for appellant's underlying condition. The medical adviser indicated that appellant had an underlying propensity to form blood clots in an otherwise normal blood vessel with normal blood flow. He based his conclusion on the fact that the DVT recurred in appellant's right leg and was now bilateral; and there was no new trauma or prolonged bed rest which would have caused this condition.

By decision dated November 22, 2000, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after February 11, 1997 which was causally related to the accepted employment injury sustained July 20, 1989.

In a letter dated November 28, 2000, appellant requested a review of the written record. Appellant submitted a letter dated June 24, 1997 from his treating physician, Dr. Robert Centrone, an osteopath, who diagnosed appellant with DVT and noted it was directly related to his original work injury.²

By decision dated May 8, 2001, the Office hearing representative affirmed the November 22, 2000 decision on the grounds that appellant did not submit sufficient medical evidence to establish a causal relationship between his claimed recurrence of disability and his July 20, 1989 employment injury.

The Board finds that this case is not in posture for a decision due to a conflict in the medical evidence.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.³

In the present case, appellant has submitted evidence from his treating physician, Dr. Robert A. Centrone, an osteopath, who indicated in his reports dated June 24 and October 22, 1997 that appellant's current condition was causally related to his prior accepted injury of July 20, 1989. He noted that, at the time of appellant's initial injury, he was also diagnosed with a pulmonary embolism which occurred as a result of the DVT. Dr. Centrone further noted that the size of the clot meant that the injury would be permanent and that appellant would suffer

² In a letter dated November 28, 2000, appellant requested a schedule award. On January 30, 2001 the Office referred appellant for a second opinion to Dr. Byrne L. Solberg, Board-certified in physical medicine and rehabilitation, for determination of the extent of permanent partial impairment of the left leg. In a report dated February 14, 2001, Dr. Solberg determined appellant sustained a nine percent permanent impairment of the left lower extremity. In a report dated March 9, 2001, the Office medical adviser concurred in Dr. Solberg's determination. In a decision dated May 8, 2001, appellant was granted a schedule award for nine percent permanent impairment of the left lower extremity.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

recurrent DVT's and pulmonary thrombosis throughout his lifetime. On the other hand, an Office referral physician, Dr. Parsons, a Board-certified surgeon, in his report dated September 20, 2000, diagnosed appellant with DVT in both lower extremities, however, opined that appellant's right DVT was not related to the previous trauma. He stated that he "could not correlate the initial trauma to the right lower extremity DVT or the pulmonary embolus...." The Office medical adviser concurred in Dr. Parsons opinion that appellant's need for medical treatment and employment restrictions were for appellant's underlying condition. Accordingly, there exists a conflict in the medical evidence.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁴

Accordingly, the case will be remanded to the Office for resolution of the conflict. On remand the Office should refer appellant, along with a statement of accepted facts and the medical records, to an appropriate specialist for an impartial evaluation and report including a rationalized opinion as to whether appellant's condition is causally related to the July 20, 1989 employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated May 8, 2001 and November 22, 2000 are set aside and the case remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, DC
March 20, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁴ *Joseph D. Lee*, 42 ECAB 172 (1990).