U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEN S. SMITH and DEPARTMENT OF THE ARMY,
DEPARTMENT OF PUBLIC WORKS, Fort Steward, GA

Docket No. 01-2256; Submitted on the Record;
Issued May 3, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issues are: (1) whether appellant has met his burden of proof in establishing that his knee condition was causally related to his October 2, 2000 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On October 2, 2000 appellant, then a 40-year-old domestic equipment repairman, twisted his left knee while walking in the shop at the employing establishment. In a January 17, 2001 decision, the Office denied appellant's claim on the grounds that appellant had not met his burden of proof in establishing that his condition was caused by the October 2, 2000 incident. In a February 21, 2001 letter, appellant requested reconsideration. In a March 29, 2001 merit decision, the Office denied appellant's request for modification of the January 17, 2001 decision. The Office noted that the medical report submitted by appellant was signed by a physician's assistant and not a physician and therefore did not constitute medical evidence. In a May 25, 2001 letter, appellant again requested reconsideration. In a June 22, 2001 merit decision, the Office denied appellant's request for modification. In an August 2, 2001 letter, appellant again requested reconsideration. In an August 24, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that he had not submitted new and relevant medical evidence nor raised substantive legal questions in his request for reconsideration.[1]

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

In a November 14, 2000 note, Dr. John P. George, a Board-certified orthopedic surgeon, stated that appellant had fluid in his knee and appeared to have a medial meniscus tear. He

[1] The Board notes that appellant filed another request for reconsideration on August 28, 2001. At the same time he appealed to the Board. The Office, in a September 5, 2001 letter, informed appellant that he could not request reconsideration and an appeal simultaneously. He was instructed to choose one avenue of appeal. The record does not contain any response from appellant. The Board will therefore assume that appellant wished to continue with the current appeal and not reconsideration.

related that approximately one month previously appellant had "stepped funny" and had knee pain since that time. Approximately one week previously appellant had squatted and felt his left knee catch and lock. In a November 16, 2000 report, Dr. J. Bennett Edwards, a Board-certified radiologist, stated that a magnetic resonance imaging (MRI) scan showed a small tear of the posterior horn of the medial meniscus. After the Office's January 17, 2001 decision, appellant submitted a February 15, 2001 report signed by Mickey McBroom, a physician's assistant dictating for Dr. George. Mr. McBroom noted that Dr. George had indicated in his November 14, 2000 note that appellant had injured himself approximately one month previously when he stepped funny. Mr. McBroom stated that this note corroborated the information appellant provided in Dr. George's chart and other reports submitted with the employment injury in relation to the October 2, 2000 incident when he twisted his left knee entering the shop area to get parts. He noted that appellant had pain in his knee since the incident. Mr. McBroom stated that the report adequately explained how the October 2, 2000 incident was tied to appellant's continuing knee pain. The Office properly found that this report did not constitute medical evidence as it was signed by a physician's assistant, who is not considered a physician under the Federal Employees' Compensation Act.[2]

However, after the Office's March 29, 2001 decision, appellant submitted a copy of the February 15, 2001 report which was signed by Dr. George. The February 15, 2001 report therefore became competent medical evidence. As such, the report, combined with Dr. George's November 14, 2000 note, related appellant's torn medial meniscus to the October 2, 2000 employment injury. The uncontradicted medical evidence, while not sufficient to establish appellant's burden of proof, is sufficient to require further development of the medical evidence.[3] The case must therefore be remanded for such further development. The Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate physician for an examination, diagnosis, and reasoned opinion on whether appellant's left knee condition, particularly the tear of the medial meniscus, was causally related to appellant's October 2, 2000 employment injury. After further development as it may find necessary, the Office should issue a *de novo* decision.[4]

[2] *Lyle E. Dayberry*, 49 ECAB 369 (1998).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] In light of the Board's decision, it is unnecessary for the Board to consider whether the Office properly denied appellant's request for reconsideration in its August 24, 2001 decision.

The decisions of the Office of Workers' Compensation Programs, dated August 24, June 22, March 29 and January 17, 2001, are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
May 3, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member