U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLEMMIE T. PERRY and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Atlanta, GA

Docket No. 02-2136; Submitted on the Record;
Issued March 24, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award for a permanent impairment of her left lower extremity as a result of a May 4, 1990 employment injury.

On May 9, 1990 appellant, then a 43-year-old manager, filed a claim for traumatic injury, Form CA-1, alleging that on May 4, 1990 she injured her left knee during an employment-related volleyball game while in travel status.

Upon returning home, appellant sought treatment from the physicians at Kaiser Medical Facility. In a treatment note dated May 15, 1990, a physician reviewed appellant's history of injury while on travel and further noted that appellant reported a prior history of an occasional sore knee. The physician diagnosed left knee strain, noted that internal derangement was doubtful and prescribed medication and immobilization, to be followed by exercise.

In a report dated June 20, 1990, Dr. Roy Rubin, a Board-certified orthopedic surgeon, noted appellant's history of the May 4, 1990 injury and that appellant denied any prior knee problems. Dr. Rubin stated that an arthrogram performed on June 9, 1990 revealed some irregularity of the medial meniscus consistent with degenerative changes but no definite tear. Following physical examination, he noted that appellant had medial joint line tenderness and equivocal Steinman and McMurray's tests. He stated that appellant walked without limping, had full range of motion and no ligament instability. Dr. Rubin diagnosed a possible torn medial meniscus, not revealed on arthrogram and recommended that appellant undergo arthroscopic surgery if her symptoms did not improve.

On July 16, 1990 the Office of Workers' Compensation Programs accepted appellant's claim for left knee strain and dislocation of the left knee.

In a treatment note dated July 20, 1990, appellant's physical therapist noted that appellant stated that her knee was feeling pretty good until she climbed approximately 30 flights of stairs over the weekend while looking at condominiums.

In reports dated September 10, 1990, Dr. Rubin indicated that appellant had undergone arthroscopic surgery. The record does not contain an operative report and he did not discuss his surgical findings. In follow-up reports dated November 30, 1990 and February 13, 1991, Dr. Rubin noted that appellant was doing well and that her knee was remarkably stable with no effusion and no giving way.

In a report dated February 24, 1992, Dr. Rubin noted that he had not seen appellant in about a year and that she now presented complaining of insidious onset of pain and stiffness in the left knee with no recent injury. He noted that surgery in September 1990 had revealed an anterior cruciate ligament (ACL) injury, which was treated conservatively. On physical examination Dr. Rubin noted that appellant, who remained overweight, had no effusion, a slightly positive Lachman's sign, no pivot shift, full range of motion, no extension lag, some discomfort in the medial side to Steinman external rotation test but unremarkable McMurray's and Appley tests. He noted that she had some tenderness along the medial side, but stated that he could not definitely tell if it was in the joint line consistently. X-rays revealed only a tiny retropatella spur. Dr. Rubin diagnosed recurrent knee pain, an ACL deficient knee and a possible torn medial meniscus and prescribed medication and physical therapy.

On June 17, 1992 appellant filed a partially completed claim for a recurrence of disability, Form CA-2a, causally related to her accepted May 4, 1990 left knee condition. Appellant stated that she has had ongoing trouble with her left knee and did not provide a specific date of recurrence. Appellant's claim form contained a new home address. She submitted a May 28, 1992 medical report from Dr. Rubin, in which he stated that appellant had an estimated 20 percent permanent impairment of her left lower extremity due to the May 4, 1990 injury.

By letter dated August 30, 1993, sent to appellant's old address, the Office requested that appellant file a completed form for a recurrence of disability, Form CA-2a and requested that she submit a detailed narrative medical report discussing the causal relationship between the treated condition and the originally accepted injuries.

On February 17, 1994 the Office noted that appellant's claim for a recurrence was being closed as appellant failed to respond to its requests for additional medical evidence.

By letter dated April 26, 1994, appellant notified the Office that she had a new home address.

On May 31, 1994 the Office received an attending physician's report, Form CA-20, dated May 23, 1994 from Dr. Emory Chapman, a Board-certified orthopedic surgeon at Kaiser. Dr. Chapman noted the history of appellant's May 4, 1990 injury and further noted that he first examined appellant on April 8, 1994. He diagnosed chondromalacia of the patella with a possible small tear of the medial meniscus. He indicated by check mark that this condition was causally related to her employment, noting that appellant had pain and stiffness with prolonged sitting or standing. Dr. Chapman further noted that arthroscopic release and meniscectomy were planned.

On April 17, 1996 the Office received an unsigned and undated claim for a schedule award, Form CA-7. The reverse side of the form was signed by the employing establishment on April 2, 1994.

By letter dated April 25, 1996, the Office requested that Dr. Rubin evaluate appellant in order to determine her entitlement, if any, to a schedule award.

By letter to appellant dated May 7, 1996 and sent to her old address, the Office advised appellant that medical bills she had submitted were not payable as her claim had been closed pending the receipt of the requested detailed narrative medical reports.

In a response dated August 28, 1996, appellant again informed the Office of her new address and stated that Dr. Chapman had referred her to Dr. David J. Covall, who determined that she required additional surgery. Appellant requested authorization for additional knee surgery and reiterated her prior request for a schedule award for her left lower extremity. Appellant also submitted an August 14, 1996 form report from Kaiser, diagnosing a medial meniscal tear of the left knee.

By letter dated October 21, 1996, the Office noted that with the exception of a partially completed 1994 Form CA-20 report, the record contained no medical treatment notes since 1992. The Office reminded appellant that her left knee claim was only accepted for left knee strain and dislocation of the left knee, with two surgeries and that chondromalacia and meniscal tear were not accepted conditions. The Office requested that appellant submit all relevant medical reports, including the operative reports from her September 1990 and June 1994 surgeries, the recent magnetic resonance imaging (MRI) scan report and a narrative medical report explaining why the requested additional surgery was causally related to her 1990 accepted knee injury. The Office further informed appellant that a schedule award could not be pursued as additional surgery was planned and her knee had not reached maximum medical improvement.

In an October 18, 1996 attending physician's report, Dr. David J. Covall, a Board-certified orthopedic surgeon, noted that appellant had no history of preexisting knee conditions and that he had examined her on July 26, August 14 and October 8, 1996. Dr. Covall stated that an MRI scan had been performed and diagnosed knee joint effusion with a three millimeter Baker's cyst, advanced chondromalacia of the patella with areas of meniscal degeneration and a moderate tear in the mid substance of the ACL with early arthritis. He indicated by check mark, that the diagnosed conditions were causally related to appellant's employment.

As appellant did not respond to the Office's October 21, 1996 letter, appellant's claim was again closed. Subsequently, the Office received a September 16, 1997 letter from appellant, in which she stated that a third surgery performed at Kaiser in October 1996, had not relieved her symptoms of pain, tenderness, slipping and swelling. She stated that Kaiser refused to provide her with a complete report explaining the extent of her injury and that, therefore, she was requesting referral to an orthopedic surgeon for a complete evaluation.

On May 26, 1998 the Office advised appellant of the information necessary to adjudicate her claim, including all medical records a detailed narrative medical report from her treating physician explaining the causal relationship between her current knee condition and her 1990

employment injury and an evaluation of permanent impairment. The Office reminded appellant that she had been advised of the documentation required in its letter dated October 21, 1996 and reiterated that it was appellant's responsibility to obtain and submit the requested information.

By letter dated June 22, 1998, appellant stated that she had never received the Office's October 21, 1996 letter. She stated that she had already submitted all of the requested information and that if the Office did not have this information, it must be lost. Appellant stated that Kaiser would not provide any additional medical reports and again requested referral to an orthopedic surgeon for a second opinion.

On July 23, 1999 the Office reiterated its request for additional medical evidence.

By letter dated September 20, 1999, the Office informed appellant that if the requested medical evidence was not received within 30 days, her claim for a schedule award would be denied.

On October 1, 1999 appellant submitted a September 9, 1999 medical report from Dr. Covall, who noted that appellant had a history of multiple knee surgeries in the past, both right and left. He added that appellant most recently underwent left knee surgery in 1996 and that she still complained of medial and lateral pain and of the knee giving way, swelling and locking. Dr. Covall noted that appellant weighed 234 pounds and that she had not performed any exercises recently due to discomfort. On physical examination, Dr. Covall noted trace effusion, medial joint line tenderness, some crepitus and anterior instability and stated that x-rays revealed moderate degenerative osteoarthritis, particularly in the medial compartment and the patellofemoral joint. He diagnosed chronic anterior cruciate ligament injury and osteoarthritis of the left knee and stated that appellant did have permanent impairment of the left knee. Dr. Covall did not discuss the causal relationship, if any between appellant's diagnosed left knee conditions and her 1990 employment injury.

In a decision dated October 31, 2000, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence was insufficient to establish that her current left knee condition was causally related to her May 4, 1990 employment injury.

By letter dated November 28, 2000, appellant requested a review of the written record and submitted additional medical reports, including a treatment note dated June 8, 1994 from Dr. Chapman, noting that appellant had history of having twisted her left knee playing volleyball in May 1990. He stated that arthroscopy performed in September 1990 revealed a 90 percent ACL tear but a normal meniscus. The physician further noted that appellant "reinjured her knee recently" and has had continued pain and swelling. Dr. Chapman noted a preoperative diagnosis of torn meniscus left knee. There is no postoperative diagnosis given.

Appellant also submitted a November 21, 2000 report from Dr. Covall, who noted that she had a history of long-standing knee problems and had undergone three arthroscopies on the left knee. Dr. Covall noted that physical examination revealed slight valgus deformity with 1+ effusion, medial and lateral joint line tenderness, positive crepitus through range of motion and positive Lachman and anterior drawer tests. The physician noted that x-rays showed osteoarthritic changes with joint space narrowing, especially on the medial compartment of the

left knee and other osteophytic changes about the joint. Dr. Covall stated that in light of appellant's left knee anterior cruciate ligament laxity, prior partial meniscectomies and her degree of osteoarthritis, she had a 14 percent permanent impairment of the whole body, or a 30 percent permanent impairment of the left lower extremity, pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Covall concluded that appellant had reached maximum medical improvement and would slowly worsen over time based on the arthritic changes. The physician did not explain the causal relationship, if any, between appellant's current diagnosed conditions and her May 4, 1990 accepted employment injury.

In a decision dated April 6, 2001, an Office hearing representative found that appellant was not entitled to a schedule award for her left lower extremity.

The Board finds that appellant has failed to establish that she is entitled to a schedule award for a permanent impairment of her left lower extremity as a result of her May 4, 1990 employment injury.

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.404 of the implementing federal regulation,[2] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

A claimant seeking compensation under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work, for which compensation is claimed is causally related to the employment injury.[4] Causal relation is a medical question that can generally be resolved only by medical opinion evidence.[5] The medical evidence required is generally rationalized medical opinion evidence, which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6] Neither the fact that appellant's condition became apparent during a period of employment nor

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *See James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[4] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[5] *Robert G. Morris*, 48 ECAB 238 (1996).

[6] *David M. Ibarra*, 48 ECAB 218 (1996).

appellant's belief that the condition was caused by her employment is sufficient to establish a causal relationship.[7]

In this case, appellant has not submitted sufficient rationalized medical evidence, which supports that her current left knee condition is causally related to her May 4, 1990 accepted left knee strain and dislocation. The Board notes that while appellant did undergo arthroscopic surgery in September 1990, June 1994 and October 1996, the record does not contain any operative notes from these surgeries discussing the nature of the surgical procedures or the surgical findings, aside from the February 24, 1992 comment from Dr. Rubin that the 1990 arthroscopy revealed an ACL injury. In addition, despite several requests, the record does not contain any rationalized narrative medical reports from appellant's treating physicians explaining the causal relationship, if any, between her left knee conditions, her left knee surgeries and her May 4, 1990 employment injury. The only medical reports containing any comment on the issue of causal relationship are the May 23, 1994 and October 8, 1996, form reports from Drs. Chapman and Covall, respectively, on which the physicians checked a box marked "yes" to indicate that the diagnosed conditions were causally related to appellant's employment. However, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a claim.[8] The need for rationalized medical evidence is especially important in this case. The medical record contains a May 15, 1990 treatment note, indicating a prior history of left knee pain, a July 20, 1990 treatment note indicating that appellant's current knee was not symptomatic until she walked up 30 flights of stairs visiting condominiums and a June 8, 1994 treatment note stating that appellant had recently reinjured her knee. These discrepancies, inconsistencies and contradictions concerning the cause of appellant's left knee condition create doubt that her current left knee condition is causally related to the accepted May 4, 1990 injury.[9] While appellant asserts that the Office authorized some, if not all of her surgeries, the Board has held that the mere fact that the Office may have authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment is employment related.[10] Therefore, the Board finds that the Office properly denied appellant's schedule award claim.

[7] *Charles E. Evans*, 48 ECAB 692 (1997).

[8] *Beverly J. Duffey*, 48 ECAB 569 (1997).

[9] *See Mary Joan Coppolino*, 43 ECAB 988 (1992).

[10] *Dale E. Jones*, 48 ECAB 648 (1997).

The April 6, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member