

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LESSIE McKINNEY and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Gainesville, FL

*Docket No. 03-63; Submitted on the Record;  
Issued May 6, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 29, 2002; and (2) whether appellant established that she sustained a left medial and lateral meniscus tear as a result of the accepted work injury.

On February 7, 2002 appellant, then a 61-year-old claims clerk, was placing clipboards in a box underneath a counter when her chair tipped over and she fell out landing on her left knee.<sup>1</sup> The Office accepted the claim for a left knee contusion. Appellant was off work from February 7 until March 8, 2002, when she returned to regular duty. She took annual leave from April 1 to 5, 2002 and went on sick leave beginning April 8, 2002, alleging left knee pain. She has not returned to work since April 8, 2002.

Appellant was initially treated for her left knee contusion at the employing establishment outpatient clinic by Dr. David M. Ferriss, a Board-certified physician in preventive medicine. X-rays of the left knee were taken and showed degenerative changes but no fracture or dislocation. Appellant was prescribed Motrin and told to apply ice/heat on her knee as needed. Dr. Ferriss released appellant to light duty on February 8, 2002. She was told to perform sedentary work only and that her left leg was to remain elevated while at work.

In a March 7, 2002 treatment note, Dr. Ferriss related that "[appellant] states that she is 100 [percent] better. States left knee swelling now all gone (confirmed on physical examination)." The diagnosis was listed as "left knee contusion resolved."

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<sup>1</sup> The record indicates that appellant had a prior work-related right knee injury consisting of a meniscus tear and that she underwent an arthroscopy of the right knee on February 1, 1999.

On April 11, 2002 appellant underwent a magnetic resonance imaging of the left knee that showed a tear of posterior horn of the medial meniscus and posterior horn of the lateral meniscus without evidence of ligamentous tear or large joint effusion.

In an attending physician's report dated April 17, 2002, Dr. May Montrichard, a Board-certified family practitioner, noted that appellant sustained an acute trauma to the left knee on February 7, 2002. The diagnosis was medial meniscus tear of the left knee, which the physician attributed to appellant's work injury. It was noted that she was totally disabled from work beginning April 10, 2002 until she could be evaluated by an orthopedic specialist.

In a patient status report dated April 17, 2002, Dr. Montrichard opined that appellant could return to work on May 8, 2002 following her consultation with an orthopedic specialist scheduled for May 7, 2002. The diagnosis was listed as "torn cartilage." Physical restrictions were no kneeling or squatting work.

In a May 7, 2002 report, Dr. Clinton G. Bush, a Board-certified orthopedic surgeon, noted appellant's history of right knee arthroscopy in 1999 and her work-related injury on February 7, 2002. Dr. Bush recorded physical findings and referenced degenerative changes of the left knee on x-ray. Under "Impression" the physician listed (1) torn left medial and lateral menisci; and (2) degenerative arthritis of the lateral compartments of both knees. He recommended that appellant undergo a left knee arthroscopy.

Appellant subsequently filed a CA-7 claim for continuing compensation for wage loss beginning May 8, 2002.

On June 17, 2002 the Office issued a notice of proposed termination of compensation. The Office advised appellant that the medical evidence established that she was no longer disabled as a result of her left knee contusion and that she had no continuing residuals due to her accepted work injury. Appellant was given 30 days to submit additional evidence or argument if she disagreed with the proposed order.

The Office also sent a letter to Dr. Bush on June 17, 2002 requesting his medical rationale for attributing appellant's diagnosed left lateral or medial meniscus tears to her February 7, 2002 work injury.<sup>2</sup>

In a decision dated August 29, 2002, the Office terminated appellant's wage-loss compensation and medical benefits. The Office noted that the evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions of medial and lateral meniscus tear and the work injury of February 7, 2002.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

Once an Office accepts a claim, it has the burden of justifying termination or modification of benefits. After it has determined that an employee has disability causally related

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<sup>2</sup> A response from Dr. Bush was not forthcoming.

to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup>

In this case, the Office accepted that appellant fell out of her chair at work on February 7, 2002 sustaining a contusion to her left knee. She received appropriate compensation until the Office terminated her compensation effective August 29, 2002. The Board agrees with the Office's decision to terminate compensation based on a March 7, 2002 treatment note from Dr. Ferriss stating that appellant was "100 [percent]" better and that her left knee contusion was resolved. The Board has reviewed the medical record and finds that appellant returned to her regular job with restrictions by March 7, 2002. Because she obtained no further medial treatment for a left knee contusion after that date and since she was cleared to work by her treating physician with the understanding that her left knee contusion was resolved, the Board finds that the Office met its burden of proof in terminating appellant's compensation for the accepted condition of a left knee contusion.

Appellant filed a CA-7 claim for continuing compensation for wage loss beginning May 8, 2002. She submitted a CA-20 attending physician's report from Dr. Montrichard stating that she sustained a medial meniscus tear of the left knee causally related to the acute trauma on February 7, 2002.

Since the Office has only accepted the claim for a left knee contusion, appellant bears the burden of proof to establish that her left medial or lateral meniscus tears are causally related to the February 7, 2002 work injury.<sup>4</sup> Although Dr. Montrichard does not provide a rationale for causally relating appellant's diagnosed condition to her work injury, the Board finds that the issue requires further medical development.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. The Office has an obligation to see that justice is done.<sup>5</sup> The Board notes that, while the report from Dr. Montrichard was not sufficiently rationalized to carry appellant's burden of proof on causation, it raises an inference in the record that appellant's work-related injury on February 7, 2002 caused in addition to the left knee contusion, a tear in appellant's medial and lateral meniscus of the left knee. Dr. Montrichard's opinion that appellant's left medial and lateral meniscus tear stands uncontradicted in the record and creates an uncontroverted inference in support of appellant's claim for compensation for that condition. While appellant has the burden to establish entitlement to compensation, the Office

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<sup>3</sup> *Robert D. Reynolds*, 49 ECAB 561 (1998); *Wiley Richey* 49 ECAB 166 (1997); *Regina C. Burke*, 43 ECAB 399 (1992).

<sup>4</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or specific conditions of employment. As part of the burden of proof, a claimant must present rationalized medical evidence based on a complete factual and medical background, showing causal relation. *See Ezra D. Long*, 46 ECAB 791 (1995); *Mark A. Cacchione*, 46 ECAB 148 (1994).

<sup>5</sup> *Mark A. Cacchione*, *supra* note 4; *Cheryl A. Monell*, 40 ECAB 545 (1989); *see also Horace Langhorne*, 29 ECAB 820 (1978).

shares the responsibility in the development of the evidence.<sup>6</sup> In light of the outstanding issue of whether appellant's left medial or lateral meniscus tears are causally related to the February 7, 2002 work injury, the Board finds that the Office must further develop the claim.

The decision of the Office of Workers' Compensation Programs dated August 29, 2002 is affirmed, in part, and remanded, in part, for further consideration consistent with this opinion.

Dated, Washington, DC  
May 6, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Corlisa L. Sims (Smith)*, 46 ECAB 172 (1994).