

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNY D. McCOY and DEPARTMENT OF THE INTERIOR, NATIONAL
PARK SERVICE, BUFFALO NATIONAL RIVER, Harrison, AR

*Docket No. 02-1898; Submitted on the Record;
Issued November 6, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a left knee or right foot injury on August 27, 1997, as alleged; and (2) whether appellant's August 27, 1997 employment injury caused disability for work beginning March 6, 1999, the date he retired.

On August 27, 1997 appellant, then a 64-year-old full-time seasonal maintenance worker,¹ sustained an injury while unloading stacks of green oak lumber from a large utility trailer. According to his September 19, 1997 claim form, when he released the chains, the lumber fell off the trailer and onto his legs and feet, causing bruises and pain. He did not stop work.

On August 29, 1997 Dr. Don R. Vowell, a Board-certified orthopedic surgeon, related the following history of injury:

"He was on the job on August 27, 1997 when a band holding some lumber broke and 1,500 pounds of lumber fell off a truck onto his left thigh and bounced down and struck him on the dorsum of his left foot and also struck his right ankle. He has had pain with weight bearing on the left foot since that time. He has had some contusions and abrasions."

On physical examination Dr. Vowell found a contusion of the left lateral thigh with some mild swelling, good range of motion, no knee pain or tenderness, a small transverse abrasion just below the knee on the lateral calf, some tenderness and swelling on the dorsum of the left foot and pain with manipulation of the mid foot, no ankle or subtalar pain and a contusion about two inches above the medial malleolus of the right ankle with some bruising and swelling. An x-ray of the left foot showed no bony abnormalities, only a little joint irregularity typical for gout.

¹ As a seasonal employee, appellant worked from March through September and was furloughed from October through February.

Appellant returned to the clinic three weeks later with increased swelling and constant pain with weight bearing. On September 18, 1997 Dr. Charles A. Ledbetter, a Board-certified orthopedic surgeon and Dr. Vowell's associate, noted the following findings: "Physical examination reveals a large degree of swelling over the left foot with pain to palpation over the base of the mid metatarsals." He reviewed the initial x-rays and confirmed that they were negative. Repeat x-rays, however, showed a fracture of the left second and third metatarsal base. Appellant was placed in a fracture walker. He filed his notice of injury and claim for compensation the following day.

An x-ray on October 27, 1997 showed that appellant was healed. He still had some pain in his foot and in the arch. Dr. Ledbetter took him off the fracture walker: "I will see him back one final time in three weeks and x-ray him on return."

On November 24, 1997 Dr. Ledbetter reported:

"This is a [w]orkman's comp[ensation] injury he sustained when lumber fell on his thigh and knee and rolled down on his feet. He has had right knee pain associated with this injury, but it has gotten worse. Originally, it was not enough for him to complain about it, but now it has increased in intensity. He did have initial ecchymosis about the knee when I saw him, but essentially asymptomatic. Now he is not."

An x-ray of the knee showed no abnormality. Appellant reported symptoms of buckling and giving way and symptoms of possible locking. Dr. Ledbetter recommended a magnetic resonance imaging (MRI) scan.

On December 3, 1997 Dr. Ledbetter reported the following:

"The MRI [scan] is reviewed, and it is very strange appearing. He has an intraosseous ganglion cyst, which is in the proximal tibial adjacent to the posterior cruciate ligament in the lateral compartment. He has a ganglion cyst in the anterior horn of the lateral meniscus. He has a complex tear of the posterior horn of the medial meniscus. We will plan on doing surgery on him, which will include an arthroscopy for the posterior horn medial meniscus tear and for the intra-articular ganglion cyst. He will then have to have an open arthrotomy for removal of the cyst that is in the subchondral bone on the lateral tibial plateau, which is an intraosseous ganglion cyst that almost appears to be rupturing through the cortex."

Appellant underwent surgery on December 30, 1997, during which Dr. Ledbetter performed, among other procedures, a partial meniscectomy of the right medial meniscus. The Office of Workers' Compensation Programs accepted his claim for contusion of the left foot, fracture of the left second and third metatarsal base and meniscus tear, right knee. The Office authorized appellant's arthroscopy.

When appellant's seasonal furlough ended, Dr. Ledbetter released him to return to limited duty on March 2, 1998. On June 10, 1998 he continued appellant's restrictions. On September 21, 1998 he reported that appellant complained of intermittent swelling of his right

knee and pain at night. Dr. Ledbetter reported that appellant had moderate degenerative arthritis of the knee joint with symptoms that worsened with work. On February 26, 1999 Dr. Ledbetter began to note both of appellant's knees. He stated that appellant returned for a yearly follow up of his knees: "Even though he is retired from work he continues to have some medial compartment pain especially on the right." He noted an increasing medial compartment degenerative arthritis of the right knee joint.

Effective March 6, 1999 appellant took voluntary retirement. The reason for retirement was given as follows: "Employee is eligible for retirement."

On August 31, 1999 Dr. Ledbetter stated that appellant continued to have increasing amounts of pain and stiffness in his knees: "He has trouble getting up and he can barely get up. When he does the pain gets a little bit better." Dr. Ledbetter noted significant chondromalacia patellae and reported that x-rays showed medial compartment degenerative arthritis of the knee joints with increasing amounts of arthritic changes." He requested authorization for a series of injections in both knee joints. Appellant requested a change of physicians.

On October 9, 2000 Dr. James A. Arnold, an orthopedic surgeon, reported as follows:

"As you know [appellant] had both knees arthroscoped on January 14, 2000. He had some degenerative changes of both knees as well as some degenerative changes of his right foot which I injected at that time. He has osteoarthritic changes of the femoral condyle as documented by the operative note and photographs. I certainly agree that standing, bending, squatting, stooping and lifting would not be in his best interest in view of the condition of his knees. I understand why, after returning to work after his 1997 incident, this would cause continued difficulty with the above changes in his knees. With all those factors in mind, I think it would be unwise for him to continue these activities."

On January 10, 2001 appellant filed a notice of recurrence. He specified no date of recurrence but stated that he was required to exceed his light-duty restrictions by lifting 50-pound boxes and climbing ladders. On February 8, 2001 the Office accepted appellant's claim of recurrence and advised that his case remained open for medical care of his left foot and right knee. The Office noted that appellant was receiving medical care for his left knee and right foot, which were not a part of his workers' compensation case, and that the medical evidence did not support total disability for work. Appellant requested a formal decision on the matter.

In a decision dated June 14, 2001, the Office found that the medical evidence did not support a relationship between the original injury and appellant's left knee or right foot conditions. The Office also found that the medical evidence did not support total disability for work.

Appellant requested an oral hearing before an Office hearing representative and submitted his medical records. In a September 7, 1999 report, Dr. Arnold noted that appellant was in his usual state of health until October 1998: "Apparently 800 pounds of lumber fell off of a truck causing him to injure both knees." He diagnosed "classic degenerative meniscus tears

both knees with partial meniscectomy on the right” and added: “At any rate, this injury appears to be related to his October [sic] 1998 injury with subsequent meniscus pathology.”

On December 17, 2001 Dr. Arnold reported as follows:

“I saw [appellant] in the office today and examined him fully. I talked with both he and his wife at length and it appears his knee injuries are related to the August 27, 1997 injury to the best of my knowledge.... He is better since his surgery but still is unable to do heavy labor that requires any prolonged squatting, stooping, lifting or bending.”

On December 14, 2001 Dr. Ledbetter reviewed his treatment of appellant. He first saw appellant in October 1993 for left knee pain, which occurred while lifting an 800-pound beam with 3 other men at the employing establishment. Appellant sustained a twisting injury to his knee. When appellant was seen on November 19, 1993 his left knee problems had resolved and his range of motion was almost normal, but he was having difficulty with his right knee. By December 1993 appellant was having difficulty with both knees. His associate, Dr. Vowell, injected appellant’s right knee in 1996.

At the hearing, which was held on January 11, 2002, appellant appeared and testified. On January 25, 2002 he filed a claim for compensation for wage loss beginning March 6, 1999.

In a decision dated April 12, 2002, the hearing representative affirmed the Office’s June 14, 2001 decision on appellant’s left knee and right foot conditions and on the issue of compensation for wage loss.

The Board finds that appellant has not met his burden of proof to establish that he sustained a left knee or right foot injury on August 27, 1997, as alleged.

A person who claims benefits under the Federal Employees’ Compensation Act² has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of his claim, including the fact that he sustained an injury at the time, place and in the manner alleged.³ To establish that, an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant’s statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

⁴ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

Appellant claims that he injured his left knee and right foot on August 27, 1997 when lumber fell onto his legs and feet. When he saw Dr. Vowell two days after this incident, however, he made no mention of a left knee injury. The history of injury he related was that lumber fell off a truck onto his left thigh and bounced down and struck him on the dorsum of his left foot and also struck his right ankle. Consistent with this history, Dr. Vowel found a contusion of the left lateral thigh with some mild swelling, a small transverse abrasion just below the knee on the lateral calf, some tenderness and swelling on the dorsum of the left foot and pain with manipulation of the mid foot, no ankle or subtalar pain and a contusion about two inches above the medial malleolus of the right ankle with some bruising and swelling. Appellant had good range of motion and no left knee pain or tenderness.

This is the most contemporaneous evidence in the record on what happened to appellant and on the injuries he sustained. The evidence supports that he sustained a contusion about two inches above the medial malleolus of the right ankle with some bruising and swelling. The evidence does not support an injury to the right foot itself and in no way supports an injury to the left knee.

It was three months later, on November 24, 1997, that Dr. Ledbetter first reported knee complaints, but these related to appellant's right knee, not his left. Left knee complaints did not find their way into the medical record until February 26, 1999, a year and a half after the incident in question, when appellant returned to Dr. Ledbetter for a yearly follow up of his "knees." Dr. Ledbetter reported that appellant continued to have some medial compartment pain "especially on the right." By August 31 of that year, Dr. Ledbetter was reporting an increasing amount of pain and stiffness in appellant's knees, significant chondromalacia patellae and medial compartment degenerative arthritis of both knee joints with increasing amounts of arthritic changes. The medical record did not mention a right foot condition until October 9, 2000, when Dr. Arnold noted that appellant had some degenerative changes in his right foot, for which he provided an injection on January 14, 2000.

Appellant's failure to inform his initial medical care providers that he injured his left knee or right foot on August 27, 1997; his failure to relate left knee or right foot complaints; the fact that he received no medical attention for his left knee or right foot following the August 27, 1997 incident; and his failure to mention a left knee or right foot injury when he filed for workers' compensation together cast serious doubt on his claim that he injured his left knee and right foot when lumber fell from the trailer on August 27, 1997. The Board finds that appellant has not met his burden of proof to establish that these injuries occurred as alleged.

Although Dr. Arnold reported that the degenerative changes in appellant's left knee and right foot appeared to be related to the August 27, 1997 injury to the best of his knowledge, his opinion is of little probative or evidentiary value. The record shows a significant prior history of left knee complaints. Dr. Ledbetter reported that he first saw appellant in October 1993 for left knee pain, which occurred while lifting an 800-pound beam with 3 other men at the employing establishment. Appellant, he reported, sustained a twisting injury to his knee. Left knee problems resolved by November 19, 1993 but returned the following month, when appellant had difficulty with both knees. Dr. Arnold not only failed to report this history, he indicated on a February 14, 2002 form report that there was no history or evidence of concurrent or preexisting injury or disease or physical impairment. The history on which he relied was that 800 pounds of

lumber fell off of a truck causing appellant to injury both knees. Again, this is not supported by the factual or medical evidence contemporaneous to the event, evidence which Dr. Arnold did not review. Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁵ Dr. Arnold also offered no medical reasoning to explain how the August 27, 1997 incident caused or aggravated degenerative conditions in appellant's left knee or right foot.⁶

The record supports that appellant sustained a contusion about two inches above the medial malleolus of the right ankle on August 27, 1997, but it fails to establish that appellant suffered a left knee or right foot injury, as alleged. The Board will affirm the Office's April 12, 2002 decision.

The Board also finds that appellant has not met his burden of proof to establish that his August 27, 1997 employment injury caused disability for work beginning March 6, 1999, the date he retired.

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁷ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁸

The Office accepts that appellant sustained an injury in the performance of duty on August 27, 1997 and has accepted his claim for contusion of the left foot, fracture of the left second and third metatarsal base and meniscus tear, right knee. It remains for appellant to establish that one or more of these accepted medical conditions totally disabled him for work beginning on March 6, 1999. As part of his burden, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁹

Appellant has submitted no such evidence. His chondromalacia and degenerative arthritis may have made it increasingly difficult for him to perform physical activities such as standing, bending, squatting, stooping and lifting, but the evidence does not show that these medical conditions are related to the unloading incident on August 27, 1997. Further, appellant's personnel record gives no indication that he was medically disqualified from his position or that he took disability retirement. It shows instead that he retired voluntarily on March 6, 1999 because he was eligible to do so. Appellant has not met his burden of proof to establish that his

⁵ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

⁶ The Board has held that medical conclusions unsupported by rationale are also of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

⁷ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *Tracey Smith-Cashen*, 38 ECAB 568, 572-73 (1987).

injury-related conditions totally disabled him from work beginning March 6, 1999. The Board will affirm the Office's April 12, 2002 decision on the issue of compensation for wage loss.

The April 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member