

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**PAUL D. FURMAN, Appellant**

**and**

**DEPARTMENT OF TRANSPORTATION,  
FEDERAL RAILROAD ADMINISTRATION,  
Cambridge, MA, Employer**

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**Docket No. 05-1918  
Issued: December 7, 2005**

*Appearances:*  
*Paul D. Furman, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On September 15, 2005 appellant filed a timely appeal of a merit decision of an Office of Workers' Compensation Programs' hearing representative dated February 17, 2005 which found that he did not sustain a recurrence of disability beginning November 17, 2003 causally related to his June 27, 1995 employment injury. Appellant also appeals the Office's July 6, 2005 merit decision which denied modification of the hearing representative's February 17, 2005 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that he sustained a recurrence of disability beginning November 17, 2003 causally related to his June 27, 1995 employment injury.

## **FACTUAL HISTORY**

On July 12, 1995 appellant, then a 48-year-old supervisory railroad safety specialist, filed a traumatic injury claim alleging that on June 27, 1995 he twisted his right knee while walking in a yard inspecting cars and locomotives. Appellant stopped work on August 18, 1995. By decision dated October 19, 1995, the Office denied appellant's claim. The Office found the evidence of record insufficient to establish that he sustained an injury while in the performance of duty. In a decision dated July 11, 1996, an Office hearing representative found the evidence submitted by appellant sufficient to further develop the medical evidence. The hearing representative vacated the Office's October 19, 1995 decision and remanded the case to the Office. After further development of the evidence, the Office, in an October 15, 1996 letter, accepted appellant's claim for a torn right medial meniscus and approved right arthroscopic surgery. Appellant underwent right knee surgery on December 9, 1996 which was performed by Dr. Frederick S. Ayers, a Board-certified orthopedic surgeon. On January 28, 1997 Dr. Ayers released appellant to full-duty work which he returned to on February 1, 1997.

On November 17, 2003 appellant filed a claim alleging on that date he sustained a recurrence of disability causally related to the June 27, 1995 employment injury. By letter dated January 6, 2004, the Office advised appellant about the type of factual and medical evidence he needed to submit to establish his recurrence of disability claim.

In response, appellant stated in a January 10, 2004 letter that he sustained a degenerative condition as a result of the December 9, 1996 knee surgery and there was a possibility of further intervention if there was a worsening of his symptoms. He further stated that he had been performing and continued to perform his normal work activities. Appellant indicated that he did not participate in any unusual hobbies or sport activities for a man his age, noting that he fished, walked, swam and engaged in other similar activities which did not put any undo stress on his knee or body. He further noted that he had not sustained any new injuries at work or elsewhere. Appellant stated that, at that time, his knee had worsened to the point that it was almost unbearable as there was constant pain coming from that area regardless of the activity he was involved in, including sleeping. In a February 25, 2004 letter, appellant responded to the Office's reply to his January 10, 2004 letter. He stated that he was scheduled for surgery to determine the cause of his discomfort. Appellant indicated that his treating physician stated that this was the only way he could determine the cause and remedy the discomfort as it was a degenerative condition that would only worsen until corrected.

By decision dated March 2, 2004, the Office denied appellant's recurrence of disability claim. The Office found the evidence of record insufficient to establish that he sustained a recurrence of disability beginning November 17, 2003 causally related to the June 27, 1995 employment injury.

In a March 22, 2004 letter, appellant requested an oral hearing before an Office hearing representative. He submitted unsigned treatment notes covering intermittent dates from April 27, 1992 through September 20, 1999 which contained Dr. Ayers' typed name. These treatment notes related to appellant's right knee, shoulder and back problems. Appellant also submitted a February 23, 2004 medical report of Dr. Arthur J. Bowman, Jr., a Board-certified orthopedic surgeon, who stated that he was going to perform arthroscopic surgery on appellant's left

shoulder and right knee to determine his problem. In a March 11, 2004 report, Dr. Bowman indicated that an arthroscopic examination of appellant's right knee revealed fairly severe chondromalacia involving the lateral compartment. He also indicated that appellant underwent a shaving procedure. Dr. Bowman stated, "I think this is probably a progression from an injury that he had many years ago. It certainly is nothing that just happened currently." He further stated that appellant would eventually require joint replacement. Dr. Bowman noted that the stitches had been removed, the wounds were well healed and there was no evidence of infection or phlebitis. He also noted that weight bearing was tolerated and stated that he would continue to follow appellant periodically. Dr. Bowman also provided the results of an arthroscopic examination of appellant's left shoulder.

By decision dated February 17, 2005, an Office hearing representative affirmed the Office's March 2, 2004 decision. The hearing representative found the evidence submitted by appellant insufficient to establish that he sustained a recurrence of disability beginning November 17, 2003 causally related to the June 27, 1995 employment injury.

Appellant requested reconsideration by letter dated April 3, 2005. He submitted an unsigned treatment note dated March 11, 2005 which contained Dr. Bowman's initials. The treatment note indicated appellant's discomfort in the right knee. The treatment note revealed that appellant suffered from traumatic arthritis in the lateral compartment of the knee based on a review of an operative note. Appellant also had a chondroplasty of the lateral femoral condyle and a lateral tibial plateau. The treatment note found that these changes were traumatic in origin.

By decision dated July 6, 2005, the Office denied modification of the Office's February 17, 2005 decision. The Office found that the March 11, 2005 treatment note was insufficient to establish that appellant sustained a recurrence of disability beginning November 17, 2003 causally related to the June 27, 1995 employment injury.

### **LEGAL PRECEDENT**

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>1</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.<sup>2</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.<sup>3</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally

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<sup>1</sup> 20 C.F.R. § 10.5(x) (2005).

<sup>2</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>3</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

related to the employment injury.<sup>4</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>5</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>6</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>7</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained a torn right medial meniscus. On November 17, 2003 he sought compensation for his ongoing right knee problems. The Board finds that appellant has failed to submit rationalized medical evidence establishing that the claimed recurrent right knee problems are causally related to his accepted employment-related torn right knee medial meniscus of June 27, 1995.

Appellant submitted unsigned treatment notes that contained Dr. Ayers' typed name and Dr. Bowman's typed initials which related to his right knee, shoulder and back problems. These treatment notes are of no probative value because they are not signed by a physician.<sup>9</sup> As the treatment notes lack proper identification, the Board finds that they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.

Appellant submitted Dr. Bowman's February 23, 2004 medical report in which he stated that he was going to perform arthroscopic surgery on appellant's left shoulder and right knee to determine his problem. The Board finds Dr. Bowman's report insufficient to establish appellant's burden of proof as it fails to address whether his current right knee problems are causally related to the accepted employment injury. The Board also finds Dr. Bowman's March 11, 2004 report in which he opined that appellant's severe chondromalacia involving the lateral compartment of the right knee was "probably" a progression from an injury that he had many years ago as it did not happen currently is insufficient to establish appellant's burden of

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<sup>4</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); see also 20 C.F.R. § 10.104(a)-(b).

<sup>5</sup> *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>6</sup> See *Ricky S. Storms*, *supra* note 4; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>7</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>8</sup> See *Ricky S. Storms*, *supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> *Id.*

proof. Dr. Bowman's opinion is speculative and equivocal in nature as to causal relationship and, thus, of little probative value.<sup>10</sup>

As appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability beginning November 17, 2003 that was causally related to his June 27, 1995 employment injury, he has not met his burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of disability beginning November 17, 2003 causally related to his June 27, 1995 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 6 and February 17, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 7, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> *Ricky S. Storms, supra* note 4.