United States Department of Labor
Employees' Compensation Appeals Board

JOSEPH STIRLING, Appellant	)	
and	)	**Docket No. 05-582**
	)	**Issued: June 6, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Joseph Stirling, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 11, 2005 appellant filed a timely appeal from a July 7, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, who found that his left knee condition due to a November 30, 1995 injury had resolved and that he failed to establish a left knee condition due to a September 30, 1993 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated authorization for medical treatment related to a November 30, 1995 medial meniscus tear; and (2) whether appellant has a left knee condition due to a September 30, 1993 employment injury.

FACTUAL HISTORY

On September 30, 1993 appellant, a 35-year-old letter carrier, filed a claim alleging that he sustained injury to his left hip and back that day when he fell in a driveway while delivering

mail. The Office accepted the claim for lumbosacral contusion/sprain and aggravation of lumbar spondylosis. Appellant did not stop work but performed light duty.

Appellant came under the treatment of Dr. E. Michael Okin, an attending Board-certified orthopedic surgeon. On October 28, 1994 he saw appellant regarding the September 30, 1993 injury and symptoms of low grade back discomfort. He recommended exercises and continued appellant on light duty. In a November 29, 1994 report, Dr. Okin noted that a computerized tomography (CT) scan of the back did not reveal any disc herniation. Due to complaint of low back pain radiating to the left lower extremity, further diagnostic testing was obtained, which revealed facet arthropathy of the lumbar spine. A left knee magnetic resonance imaging (MRI) scan was obtained on January 26, 1995, which revealed moderate-sized joint effusion and evidence of a tear of the posterior horn of the lateral meniscus. On January 30, 1995 Dr. Okin noted that appellant had returned to full duty and continued to experience low back discomfort and problems with his left knee. He noted that appellant's gait was normal, with a full range of motion of the back and discomfort with straight leg raising to 90 degrees. Examination of the left knee revealed tenderness over the medial joint line. On February 13, 1995 Dr. Okin reviewed the left knee MRI scan and noted degenerative changes of the medial meniscus and suggestion of a tear of the lateral meniscus, although appellant's symptoms were medial and not lateral. Appellant was continued on physical therapy for treatment of a chronic lumbosacral sprain.[1]

On December 1, 1995 appellant filed a claim alleging that on November 30, 1995 he injured his left shoulder, arm, neck, elbow, back, knee and hip, when he fell on ice. The Office accepted the claim for multiple contusions, left shoulder and lumbar sprains. Appellant did not stop work but continued on light duty.[2]

On December 11, 1995 Dr. Okin addressed appellant's recent fall on ice. Physical examination of the lumbar spine revealed a full range of motion without significant discomfort with negative straight leg raising tests. The left knee revealed a full range of motion, with tenderness over the posterior medial joint line. Neurological examination of the upper extremities was intact, with some discomfort of the left shoulder but no muscle weakness or instability. He stated that appellant had multiple contusions related to the fall which would gradually resolve and recommended light duty. On December 27, 1995 Dr. Okin diagnosed resolving strain of the lumbosacral spine, resolving left knee contusion and a sprain/strain of the left rotator cuff. On January 3, 1996 the physician noted appellant's continued complaints over the medial compartment of the left knee. Dr. Okin stated that past MRI scan testing revealed a lateral meniscus tear but that it was not of any significance since appellant was asymptomatic as to that finding. On January 30, 1996 the physician stated: "[Appellant] most likely has a tear of the posterior horn of the medial meniscus," noting he had discussed the possibility of an arthroscopy of the left knee. Appellant was not interested in the procedure and was treated

[1] A May 11, 1995 MRI scan of the lumbar spine revealed degenerative disc disease at L5-S1 with bulging of the annulus fibrosis. No other abnormalities were found.

[2] The Board notes that appellant sustained no wage loss while in his light-duty job and thus was not placed on the periodic rolls.

conservatively.[3] On May 14, 1996 Dr. Okin indicated that appellant's left knee injury of November 30, 1995 was an exacerbation of his September 30, 1993 injury, stating: "I believe he has a torn medial meniscus or possibly chondromalacia…." On May 16, 1996 the Office accepted that appellant accepted a torn medial meniscus as employment related.

Appellant was referred by the Office for examination by Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon, regarding residuals due to the 1993 injury. In a January 25, 1996 report, Dr. Eckbold reviewed the history of injury and medical treatment and listed findings on physical examination. He noted that examination of the upper extremities revealed full range of motion and that rotator cuff strength was intact. In the supine position, appellant had straight leg raising to 70 degrees and to 90 degrees while sitting. He noted that a CT scan of June 6, 1994 revealed no disc herniation and underdevelopment of the posterior arch at L5-S1. Dr. Eckbold concluded that appellant had subjective complaints with no objective orthopedic or neurological deficits of the spine or extremities. In a February 20, 1996 supplemental report, Dr. Eckbold opined that there were no residuals of the September 30, 1993 work injury.

On May 20, 1998 Dr. Okin listed appellant's complaint of left shoulder, knee and low back pain, stating that the "[s]igns and symptoms have not changed since I have been following him."

In a May 13, 1999 report, Dr. Steven J. Valentino, a second opinion Board-certified osteopathic surgeon, reviewed a history of the November 30, 1995 employment injury and noted that appellant was performing limited-duty work. A February 27, 1996 MRI scan of the left shoulder was reported as being normal. Dr. Valentino stated that appellant's left shoulder and lumbar strains had resolved and that the medical records did not substantiate a torn left knee medial meniscus. A physical examination showed full range of motion of the elbows, shoulders, hands and wrists and a normal neurologic examination. Dr. Valentino described appellant's lumbosacral flexibility as "complete, intact and painless." An examination of the left knee revealed the absence of synovitis, effusion, internal derangement or tendinitis and negative patellofemoral compression and inhibition tests. Dr. Valentino opined that appellant's left shoulder strain, lumbar strain and left knee conditions had resolved. In support of this conclusion, he noted that appellant had normal objective findings and did not require any further medical treatment. In an attached work capacity evaluation (Form OWCP-5C), Dr. Valentino concluded that appellant had no physical limitations regarding the November 30, 1995 injury.

On June 17, 1999 the Office issued a notice of proposed termination of medical benefits based upon Dr. Valentino's report, which found that appellant had no continuing residuals due to the November 30, 1995 employment injury.

By decision dated July 19, 1999, the Office finalized the termination of appellant's medical benefits for his November 30, 1995 employment injury.

Appellant requested an oral hearing by letter dated August 7, 1999, which was held on February 2, 2000. In a May 24, 1999 report, Dr. Okin noted that appellant had a chronic

[3] The record indicates that on April 30, 1996 Dr. Okin requested authorization for arthroscopy for a right knee torn medial meniscus, which was scheduled for May 13, 1996.

lumbosacral spine strain with degenerative disc disease. On December 31, 1999 Dr. Okin reported that appellant also had complaint of impingement syndrome type symptoms in his left shoulder. He indicated that surgery was deferred but attributed the ongoing complaints to the November 30, 1995 injury, which exacerbated the left shoulder, left knee and low back. Dr. Okin again noted that an MRI scan revealed a lateral meniscus tear of the knee but that it was not compatible with appellant's symptomotology. He concluded that appellant could not return to his regular duties as a letter carrier.

By decision dated March 22, 2000, the Office hearing representative affirmed the July 19, 1999 termination of medical benefits. He found that Dr. Okin's December 31, 1999 report created a conflict with Dr. Valentino's opinion as to whether appellant had any residuals related to any injury sustained in his employment. The Office hearing representative instructed the Office to consolidate appellant's 1993 and 1995 injury claims.

On May 3, 2000 the Office referred appellant to Dr. Robert Liebenberg, a Board-certified orthopedic surgeon, selected as the impartial medical specialist to resolve the conflict in the medical opinion evidence. In a report dated July 26, 2000, Dr. Liebenberg stated that appellant addressed two injuries at work, the first in 1991 and the second in 1995. He noted that appellant continued working after the initial injury, first at light duty and then in his regular position. After the 1995 injury, appellant experienced pain in the lumbar region radiating to the lower extremities and to the left shoulder and knee. Dr. Liebenberg described appellant's left knee complaints as "primarily anteromedial" and "increased by increasing activity." A physical examination showed 40 degrees of flexion with "a mild list which was convex to the right," no palpable spasm or muscle tightness and straight leg raising to 70 degrees. Shoulder range of motion was 100 degrees elevation, external rotation and abduction was 65 degrees, adduction was 30 degrees and internal and external rotation was present just to the low back with complaint of pain. There was no instability or atrophy present with the shoulder. An examination of the left knee showed no effusion, negative Fairbank's, Steinman's and McMurray's tests, a stable knee and normal patella gliding. Appellant complained of some tenderness over the patellofemoral joint. Dr. Liebenberg stated that he would postpone further discussion or conclusions until he received the medical record from the Office.

In an August 15, 2000 report, Dr. Liebenberg reviewed the history of appellant's work injuries in 1993 and 1995. He addressed the medical reports of record, including those of Dr. Okin and Dr. Valentino. Based on appellant's medical history and physical examination, Dr. Liebenberg stated that an objective diagnosis of appellant's lumbar spine had not been established. He noted that a chronic strain had not been documented and that appellant had degenerative disc disease that was not due to either employment-related injury. Dr. Liebenberg stated that any exacerbation of the degenerative disc disease would not be long-standing and would resolve after several weeks or months following injury. He opined that appellant's ongoing lumbar back pain could not be associated with the accepted soft tissue injuries and that his accepted lumbar condition had resolved. With respect to the left shoulder condition, Dr. Liebenberg stated that there were no objective abnormalities or diagnosis to explain appellant's subjective complaints of pain. As to the accepted left knee condition, the physician stated that a lateral meniscus tear was demonstrated on MRI scan but, as noted by Dr. Okin, this finding did not correlate with appellant's symptoms, which were medial in nature. On this basis, Dr. Okin had deferred surgery. Dr. Liebenberg stated that appellant's medical complaints had

not been well documented by objective testing and that any soft tissue injury, such as a sprain or contusion, resolved several weeks to a few months following injury and was not responsible for appellant's continuing complaints. Dr. Liebenberg concluded that there was no objective evidence to support that appellant had residuals of the accepted employment-related conditions.

By decision dated September 1, 2000, the Office found that appellant failed to establish that he had any continuing residuals due to his accepted employment injuries. The Office found that the weight of the evidence was represented by the opinion of Dr. Liebenberg.

On January 11, 2001 appellant's counsel noted that he had requested an oral hearing by letter dated September 29, 2000 and had not heard from the Office concerning the request. He submitted additional medical reports from Dr. Okin regarding treatment of appellant's back, left shoulder and left knee, which the physician attributed to the accepted employment injuries. On April 10, 2001 the Office denied appellant's request for a hearing as untimely filed.

On September 7, 2001 appellant filed an appeal with the Board, which was docketed as No. 01-2190. By decision dated May 23, 2002, the Board set aside the April 10, 2001 decision denying appellant's request for a hearing and remanded the case to the Office for further development regarding whether a timely hearing request was made through application of the mailbox rule.[4] On December 9, 2002 a hearing was held before the Branch of Hearings and Review.

In a May 8, 2003 decision, the Office hearing representative found that appellant did not have any residuals due to his accepted low back and left shoulder injuries sustained on November 30, 1995 based on the report of Dr. Liebenberg.[5] However, the Office hearing representative found further clarification of the physician's opinion was required regarding the nature and extent of any continuing residuals related to the accepted torn left knee medial meniscus.

In a June 18, 2003 supplemental report, Dr. Liebenberg noted that a January 26, 1995 MRI scan revealed a tear of the lateral meniscus, as well as joint effusion. He noted that the statement of accepted facts provided that appellant sustained a tear of the medial meniscus related to the November 30, 1995 injury. Dr. Liebenberg observed that, since the MRI scan was obtained prior to the 1995 injury, the lateral meniscus tear could not be ascribed to this incident. Dr. Liebenberg stated:

> "I do not find evidence on an objective study that the patient has a tear of the medial meniscus. Perhaps there is evidence to which I have no access at the present time. Absent such evidence, I am unable to deliver an opinion to a reasonable degree of medical certainty that a tear of the medial meniscus if such injury is present, is related to the work-related injury in November 1995. Since a medial meniscus tear was not visualized on the January 1995 MRI [scan] and

[4] Docket No. 01-2190 (issued May 23, 2002).

[5] As there was no appeal of this aspect of the decision within one year, it is not an issue before the Board in the current appeal. *See* 20 C.F.R. §§ 501.2(c) and 501.3(d).

since to the best of my knowledge the patient has not had a more accurate diagnostic test such as an arthroscopy, which might have revealed such a tear, I must conclude that a medial meniscus tear could not have been caused by the 1993 work-related injury."

By decision dated September 5, 2003, the Office determined that appellant no longer had any residuals due to his accepted left knee condition.

Appellant, through counsel, requested an oral hearing in a September 8, 2003 letter. A hearing was held on April 22, 2004 at which appellant testified. Additional medical report from Dr. Okin were submitted.

In a decision dated July 7, 2004, the Office hearing representative found that appellant did not have any residuals due to his accepted November 30, 1995 left knee condition as the evidence did not demonstrate a torn medial meniscus of the left knee. The hearing representative modified the September 5, 2003 decision, to find that appellant did not sustain a left knee injury due to the September 30, 1993 employment injury.

LEGAL PRECEDENT

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.[6]

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist is given special weight when well rationalized and based on a proper medical and factual background.[7]

ANALYSIS

Appellant initially sustained injury on September 30, 1993 when he fell on a driveway, accepted for a lumbosacral sprain and contusion and aggravation of lumbar spondylosis. There was no claim at that time for a left knee injury and none was accepted by the Office as related to this incident. The record reflects that appellant did not stop work and he did not sustain any wage loss due to this injury. He was treated by Dr. Okin, who recommended light-duty work. The initial reports of the physician addressed appellant's back discomfort, but diagnostic testing did not reveal a disc herniation. On January 26, 1995, some 16 months after the 1993 injury, a left knee MRI scan was reported as showing evidence of a tear of the posterior horn of the lateral meniscus. On January 30, 1995 Dr. Okin noted that appellant was returned to regular duty. On February 13, 1995 he addressed the left knee MRI scan, noting degenerative changes. He indicated, however, that the torn lateral meniscus was not significant as appellant's left knee

[6] *See John F. Glynn*, 53 ECAB 562 (2002).

[7] *See Richael O'Brien*, 53 ECAB 234 (2001).

complaints pertained to the medial aspect of the knee and not the lateral side to which he was asymptomatic.

On November 30, 1995 appellant slipped and fell on ice. In a January 3, 1996 report, Dr. Okin noted that left knee examination revealed tenderness over the medial joint line and stated: "My impression is flap tear of the medial meniscus, which probably progressed a little bit with the most recent injury." Appellant's claim was accepted for multiple contusions and, among other conditions, a torn left knee medial meniscus.

By decision dated July 19, 1999, the Office terminated appellant's medical benefits based on the report of Dr. Valentino. This decision was affirmed by an Office hearing representative on March 22, 2000. The hearing representative determined that Dr. Okin's December 31, 1999 report created a conflict of medical opinion with Dr. Valentino and directed consolidation of appellant's 1993 and 1995 injury claims and referral to an impartial medical specialist.

The Office referred the case to Dr. Liebenberg, selected as the impartial medical specialist. Examination of the left knee revealed no effusion, negative testing and normal patella gliding. He noted appellant's complaint over the patellofemoral joint line. On August 15, 2000 the physician reviewed the 1993 and 1995 histories and the reports of Dr. Okin and Dr. Valentino. As to the accepted left knee condition, he noted that a tear of the lateral meniscus was demonstrated on MRI scan testing. However, as noted by the attending physician, appellant's complaints were medial and it was decided not to treat appellant operatively. Dr. Liebenberg noted that appellant's persistent medial knee complaints had not been documented by objective testing. He concluded, therefore, that appellant had sustained a soft tissue injury to the left knee, which resolved within a few weeks or few months and was not responsible for his continued knee pain.

In the May 8, 2003 decision, a second Office hearing representative affirmed the denial of medical benefits for the accepted low back and left shoulder conditions. He remanded the case for clarification of Dr. Liebenberg's opinion as to the nature and extent of any continuing residuals causally related to the accepted torn left medial meniscus.

On June 18, 2003 Dr. Liebenberg addressed the January 26, 1995 MRI scan findings, which revealed a tear of the lateral meniscus. He acknowledged that the statement of accepted facts noted that appellant had sustained a tear of the medial meniscus in the November 30, 1995 injury. Dr. Liebenberg observed that the findings reported on the January 1995 MRI scan could not be ascribed to the November 1995 incident, therefore, the lateral meniscus preexisted this accepted injury. He reviewed the evidence and noted that there was no objective diagnostic study to establish a tear of the medial meniscus. Dr. Liebenberg stated that a medial meniscus tear was not visualized on the January 1995 MRI scan and appellant had not subsequently undergone further diagnostic testing to establish such a tear. He concluded that a medial meniscus tear was not caused by the 1993 injury. Dr. Liebenberg stated: "I am unable to deliver an opinion to a reasonable degree of medical certainty that a tear of the medial meniscus, if such injury is present, is related to the work-related injury in November 1995."

In the July 7, 2004 decision, the Office hearing representative found that appellant did not establish having residuals of the accepted November 30, 1995 left knee torn medial meniscus.

He modified the September 5, 2003 decision to find that appellant did not sustain a left knee injury due to the September 30, 1993 injury. The Board finds, however, that, while the medical evidence from Dr. Liebenberg clearly establishes that the 1993 employment injury did not result in any left knee condition, the practical effect of the July 7, 2004 decision is a rescission of the accepted condition of a left knee medial meniscus tear due to the 1995 employment injury. Dr. Liebenberg noted that the January 1995 diagnostic MRI scan was the only objective study of record and obtained prior to the November 1995 fall on ice. Although he could rule out the lateral meniscus tear as arising from either the 1993 or 1995 employment injuries, he stated that he could not deliver an opinion based on reasonable medical certainty concerning a medial meniscus tear related to the 1995 injury. This diagnosis was accepted by the Office based on the reports of Dr. Okin, who noted that appellant declined arthroscopic procedure of the left knee following the 1995 injury. The Office did not notify appellant that it was contemplating rescission or actually rescinding acceptance of the torn left knee medial meniscus condition in its decision. The Office must correctly inform a claimant as to the grounds on which a rejection rests.[8] Moreover, the Office's finding that residuals of an accepted 1995 employment injury ceased or resolved is not supported by the medical evidence from the impartial medical specialist. Dr. Liebenberg formulated his opinion consistent with the statement of accepted facts.

CONCLUSION

The Board finds that appellant has not established that he sustained a left knee condition causally related to his September 30, 1993 employment injury. The Office did not meet its burden of proof to rescind acceptance of a torn medial meniscus causally related to the November 30, 1995 injury.

[8] *See John M. Pittman*, 7 ECAB 514 (1955).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2004 is affirmed, in part, and reversed, in part.

Issued: June 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board