

FACTUAL HISTORY

This is the second appeal in this case.¹ By order dated June 14, 2007, the Board dismissed appellant's appeal at his request so that he could file a request for reconsideration with the Office.

On March 30, 1996 appellant, then a 48-year-old correctional officer, filed a claim alleging that he developed degenerative joint disease of the left knee beginning January 18, 1996 due to a traumatic injury that he sustained at work on September 9, 1993.² The Office accepted his claim for degenerative arthritis of the left knee. Appellant received medical treatment through March 19, 1996. On November 14, 2005 he filed a claim for a recurrence of disability. Appellant indicated that his accepted left knee degenerative arthritis had worsened.

In reports dated March 25 and April 10, 1996, Dr. Robert D. McCurry, an attending Board-certified family practitioner, stated that appellant injured his left knee on September 9, 1993 when he hyperextended the knee while carrying a roll of floor mats down a flight of stairs. His last medical visit was on March 19, 1996 at which time he complained of continued left knee pain. Dr. McCurry diagnosed degenerative joint disease of the left knee due to the September 9, 1993 employment incident. He stated that appellant's degenerative knee condition would slowly progress over time. Accelerated progression would occur the more time he spent standing on his feet.

In a December 2, 2005 report, Dr. Christian A. Gallery, an attending Board-certified family practitioner, stated that he examined appellant for hip and knee pain on May 1, 2002. Appellant did not indicate a possible cause of his condition. Dr. Gallery saw him again on July 3, 2002 for leg pain with "unclear cause."

By letter dated February 8, 2006, the Office asked appellant to submit additional evidence, including a rationalized medical opinion explaining how his recurrence of disability on November 14, 2005 was causally related to his January 18, 1996 employment injury. No additional evidence was received.

By decision dated March 17, 2006, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability on November 14, 2005 causally related to his January 18, 1996 accepted left knee degenerative arthritis.

On July 26, 2007 appellant requested reconsideration and submitted additional medical evidence. In notes dated July 19, 2006, Dr. Aimee S. Klapach, an attending Board-certified orthopedic surgeon, provided a history of left knee pain dating from 1993 when appellant hyperextended his knee at work. In 1996 appellant was diagnosed with degenerative joint

¹ See Docket No. 06-1649 (issued June 14, 2007).

² It appears that the Office accepted that appellant sustained a left knee strain at work on September 9, 1993. In a June 17, 1996 memorandum, an Office medical adviser stated that appellant's onset of left knee degenerative arthritis began at the time of the September 9, 1993 work incident. He stated, "[T]he degenerative arthritis of the left knee had its onset at that time -- a rather common cause of arthritis of this type. There does not seem to be any evidence of preexisting arthritis which may have been aggravated." (Emphasis omitted.)

disease. Dr. Klapach provided findings on physical examination and diagnosed mild left knee degenerative joint disease and probable left hip osteoarthritis. In notes dated February 14, 2007, Dr. Klapach reviewed the medical history given by appellant and provided findings on physical examination. She noted that x-rays of his left knee revealed mild medial joint space narrowing. Dr. Klapach diagnosed mild left knee degenerative joint disease. In a report dated February 14, 2007, she provided findings on physical examination and diagnosed osteoarthritis of the left knee. Dr. Klapach stated:

“A history of the worsening condition is given by [appellant]. When I evaluated [him] in July of 2006, he noted an injury in 1993 when he was working for the [employing establishment] while ambulating on stairs, missed a step and hyperextended his knee. [Appellant] had pain and catching at that time. In 1996, he noted [that] he started having some swelling and was given the diagnosis of degenerative joint disease. Since that time, [appellant] has had on and off pain and swelling, no subsequent documented injury. He has been treated with several anti-inflammatories. Since his last visit on [July 19,] 2006, [appellant] continues to have some aching pain.... He notes pain medially and anteriorly. [Appellant] notes some clicking and popping. He does have some aching at nighttime. The anti-inflammatories are offering good relief.”

* * *

“Based on the history given to me by [appellant] on [July 19,] 2006 and [February 14,] 2007, I feel his history is consistent with an injury that occurred in 1993 when he was working for the [employing establishment], ambulating, had a misstep and hyperextended his knee. He had pain and catching in his knee. Over the subsequent three years [appellant] started having increased swelling. He was evaluated by a physician in 1996. I do not have access to those records. [Appellant] was given a diagnosis of degenerative joint disease at that time. Since that time[,] until my appointment on July 19, 2006[,] he had on and off pain and swelling and required anti-inflammatories. Through the history, I did not note any subsequent injury. Since I last saw [appellant] at his visit on [July 19,] 2006 to today, he continues to have aching and pain.... The worsening of his degenerative arthritis was a natural progression of his condition ... documented at the time of his 1996 visit.”

By decision dated September 14, 2007, the Office upheld its denial of appellant’s claim for a recurrence of disability.

LEGAL PRECEDENT

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a

³ Charles H. Tomaszewski, 39 ECAB 461 (1988).

physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

“*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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁶

ANALYSIS

Appellant has the burden to provide medical evidence establishing that he sustained a recurrence of disability beginning November 14, 2005 due to a worsening of his accepted left knee degenerative arthritis. However, it is well established that proceedings under the Federal Employees’ Compensation Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷ The Office has an obligation to see that justice is done.⁸ Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.⁹

Dr. Klapach examined appellant on July 19, 2006 and February 14, 2007. She provided a history of left knee pain dating from 1993 when appellant hyperextended his knee at work. In 1996 appellant was diagnosed with degenerative joint disease. Dr. Klapach provided findings on physical examination and diagnosed mild left knee degenerative joint disease and probable left hip osteoarthritis. She noted that x-rays of his left knee revealed mild medial joint space narrowing. Dr. Klapach stated that appellant provided a history of a worsening of his left knee condition since the 1996 diagnosis of degenerative joint disease. Since 1996 appellant experienced pain, swelling, clicking and popping and required anti-inflammatory medication. He did not indicate that he had sustained any intervening injury since 1996. Dr. Klapach noted that the history provided by appellant was consistent with an injury that occurred in 1993 when he hyperextended his knee at work, developed increased swelling over the next three years and was diagnosed with degenerative joint disease in 1996. Dr. Klapach opined that “The worsening of his degenerative arthritis was a natural progression of his condition ... documented at the time of his 1996 visit.”

⁴ *Lourdes Davila*, 45 ECAB 139 (1993).

⁵ *Michael Stockert*, 39 ECAB 1186 (1988).

⁶ 20 C.F.R. § 10.5(x).

⁷ *See Udella Billups*, 41 ECAB 260 (1989).

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *See Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

Dr. Klapach noted a worsening of appellant's symptoms since 1996 and opined that it was a natural progression of his left knee degenerative arthritis. X-rays revealed medial joint space narrowing.¹⁰ An Office medical adviser noted in 1996 that there was no evidence that appellant's left knee arthritis preexisted his original 1993 accepted left knee strain. Thus, the record indicates that appellant's traumatic left knee injury in 1993 precipitated the left knee degenerative arthritis diagnosed in 1996. In 1996 Dr. McCurry stated that appellant's accepted degenerative knee condition would slowly progress over time. The progression would be accelerated with long periods of standing. Although the medical evidence is not sufficient to establish that appellant's claimed November 14, 2005 recurrence of disability was causally related to his accepted left knee degenerative arthritis, it does suggest such a causal relationship, and is sufficient to require further development of the medical evidence. On remand, the Office should refer appellant to an appropriate medical specialist for an examination and evaluation of whether his left knee degenerative arthritis worsened after 1996 such that he sustained a recurrence of disability on November 14, 2005. After such further development as it deems necessary, the Office should issue an appropriate decision on appellant's claim.

CONCLUSION

The Board finds that this case requires further development of the medical evidence. On remand, the Office should refer appellant to an appropriate specialist for an examination and evaluation as to whether his accepted left knee arthritis worsened to the point that he sustained a recurrence of disability on November 14, 2005. After such further development as the Office deems necessary, it should issue an appropriate decision.

¹⁰ The record does not show whether x-rays were taken in 1996. On remand, the Office should determine whether any such x-rays exist. If so, a physician could compare the 1996 and 2006 x-rays to determine whether there was a change in appellant's cartilage level which might indicate a worsening of his left knee arthritis.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2007 is set aside and the case is remanded for further development consistent with this decision.

Issued: April 14, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board