United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 07-2080**
	)	**Issued: February 4, 2008**
DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, New York, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2007 appellant filed a timely appeal of a May 29, 2007 merit decision of the Office of Workers' Compensation Programs, which denied modification of decisions dated August 16 and December 22, 2006 denying his recurrence of disability claim. 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 sustained a recurrence of disability on July 20, 2004 causally related to his accepted May 6, 1982 employment-related injury.

FACTUAL HISTORY

On May 7, 1982 appellant, then a 48-year-old special agent, filed a traumatic injury claim alleging that on May 6, 1982 he hurt his right knee, leg, elbow and shoulder while subduing a defendant who resisted arrest. The Office accepted the claim for internal derangement and torn cartilage of the right knee and authorized surgery.

On September 9, 2004 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on July 20, 2004. He stated that, following the May 6, 1982 employment injury, he had limited mobility that varied in duration. Appellant stated that he experienced pain in his right leg, arm and hands.

By letter dated May 30, 2006, the Office notified appellant that the evidence submitted was insufficient to establish the claimed recurrence of disability. It advised him about the additional factual and medical evidence he needed to submit to establish his claim. The Office requested that the employing establishment submit factual evidence regarding the claim.

The Office received unsigned progress notes covering intermittent dates from April 9, 1984 through July 26, 2005 that addressed appellant's right knee problem.

A September 30, 2004 medical report of Dr. Nancy E. McHugh, a Board-certified orthopedic surgeon, reviewed a history of the May 6, 1982 employment injury. She stated that, since this injury, appellant was not curtailed from repelling out of a helicopter into the jungle and performing investigations in various locations in South America. Dr. McHugh further stated that, after appellant retired from the employing establishment, he worked as a state agent. She reported normal findings on physical examination. On x-ray examination Dr. McHugh reported a loose body at the medial and lateral joint line, a large retropatellar cyst and an area of obvious defect around the prostate secondary to radiation therapy. She recommended a magnetic resonance imaging (MRI) scan to rule out medial and lateral meniscus tears and chondromalacia patella of the right knee. A September 30, 2004 MRI scan performed by Dr. Elliott H. Sumers, a Board-certified radiologist, demonstrated a chronic tear of the anterior cruciate ligament (ACL), a 13 millimeter (mm) cyst beneath the tibial spines that was probably related to an old ACL tear and thinning of the patellar cartilage. He did not find any evidence of a meniscal tear. On October 7, 2004 Dr. McHugh prescribed heat and ice for appellant's right knee.

Reports covering intermittent dates from May 30 to August 1, 2005 appellant's physical therapists addressed his right cervical radiculopathy at C7.

Reports and test results of Dr. Kenneth A. Schwartz, a Board-certified radiologist, found that appellant had bilateral carpal tunnel syndrome, right cervical radiculopathy and degenerative disc disease at C4-5 to C6-7 with midline disc protrusions at C4-5, C5-6, C6-7 and C7-T1, and maybe right ulnar neuropathy of the right wrist and a trigger finger in his left middle finger.

A May 31, 2005 report of Dr. Barry I. Krosser, a Board-certified orthopedic surgeon, stated that appellant's right knee had a fair amount of crepitus in the patellofemoral joint on physical examination. He found no acute swelling of the knee. Dr. Krosser recommended a short course of therapy. In a July 26, 2005 report, he provided normal findings on physical examination of appellant's right knee and provided a treatment plan for pain.

In a June 28, 2006 letter, appellant explained that he delayed in filing a CA-2a form because he believed that his pain would resolve itself with minor home treatments. He filed the claim when the pain did not resolve. Appellant retired from the employing establishment, noting that prior to July 20, 2004 he had not experienced any incident that affected his arm and knee. He related that, while attempting to go up the stairs at home, he experienced pain which

continued and significantly limited his mobility. Appellant submitted a June 22, 2006 prescription from Dr. Arthur J. Pidoriano, a Board-certified orthopedic surgeon, which ordered physical therapy.

In treatment notes dated November 30, 2005 and January 25, 2006, Dr. Krosser addressed appellant's right knee complaints. He found a little crepitus behind the right knee but stated that the knee was neurologically intact. Dr. Krosser also found mostly bad patellofemoral disease.

In a July 7, 2006 report, Dr. Martin K. Melman, a Board-certified internist, stated that appellant had sustained traumatic injuries in the line of duty. He opined that appellant recently experienced a recurrence of right arm, elbow and knee pain which required a work up.

In treatment notes dated July 20, 2006, Dr. Pidoriano opined that appellant sustained patellofemoral pain following an ACL deficient knee for 20 years.

By decision dated August 16, 2006, the Office denied appellant's claim. It found that he failed to establish a recurrence of disability on July 20, 2004 due to his May 6, 1982 employment injury. The Office found that appellant sustained an intervening injury related to his work in the security field over the prior 10 years after retiring from the employing establishment.

In a September 7, 2006 letter, appellant requested a review of the written record by an Office hearing representative.

By decision dated December 22, 2006, a hearing representative affirmed the August 16, 2006 decision. He found that appellant failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability on July 20, 2004 due to his accepted employment injury.

In a February 13, 2007 letter, appellant requested reconsideration. In a January 5, 2007 treatment note, Dr. Pidoriano found that appellant suffered from a chronic ACL deficient knee with secondary chondromalacia of the patella and patellar tendinitis. He opined that these conditions were directly related to the May 6, 1982 employment injury.

By decision dated May 29, 2007, the Office denied modification of it prior decisions. It found that appellant failed to establish that he sustained a recurrence of disability on July 20, 2004 due to his accepted May 6, 1982 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[1]

[1] 20 C.F.R. § 10.5(x).

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.[2] 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.[3] 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 related to the employment injury.[4] Moreover, the physician's conclusion must be supported by sound medical reasoning.[5]

ANALYSIS

The Office accepted that appellant sustained internal derangement of the right knee while in the performance of duty on May 6, 1982. On September 9, 2004 he sought compensation for his right knee, arm and hand conditions. The Board finds that appellant has failed to submit rationalized medical evidence establishing that his claimed recurrent knee, arm and hand conditions were caused or aggravated by his accepted employment-related internal derangement of the right knee.

The progress notes covering intermittent dates from April 9, 1984 through July 26, 2005 addressed appellant's right knee condition. However, the treatment notes do not address the causal relationship of his current knee problems to his May 6, 1982 employment-related injury. The Board finds that these treatment notes are insufficient to establish appellant's claim.

Dr. McHugh's September 30, 2004 report reviewed a history of the May 6, 1982 employment injury. She stated that, following this injury, appellant did not refrain from jumping out of a helicopter into the jungle and performing investigations in various locations in South America. Dr. McHugh indicated that after appellant retired from the employing establishment he worked as a state agent. She reported normal findings on physical examination. On x-ray examination Dr. McHugh reported a loose body at the medial and lateral joint line, a large retropatellar cyst and an area of obvious defect around the prostate secondary to radiation therapy. Her October 7, 2004 prescription ordered heat and ice for appellant's right knee. Dr. McHugh did not state that appellant had any recurrent disability due to his right knee condition causally related to the accepted May 6, 1982 employment injury. The Board finds that her reports are insufficient to establish his claim. Although Dr. Sumers found a chronic tear of the ACL, a 13 mm cyst beneath the tibial spines that was probably related to an old ACL tear and thinning of the patellar cartilage, he did not relate these findings to appellant's accepted employment injury. Similarly, Dr. McHugh did not address whether the MRI scan findings related to the 1982 employment injury.

[2] *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[3] *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

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

[5] *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

Dr. Schwartz stated that appellant had bilateral carpal tunnel syndrome, right cervical radiculopathy and degenerative disc disease at C4-5 to C6-7 with midline disc protrusions at C4-5, C5-6, C6-7 and C7-T1 and possible right ulnar neuropathy of the right wrist and a trigger finger in the left middle finger. The Board notes that the Office has not accepted appellant's claim for any right hand, wrist or cervical conditions. Dr. Schwartz failed to address how the bilateral carpal tunnel syndrome, right cervical radiculopathy and degenerative disc disease with midline disc protrusions were caused by the May 6, 1982 employment injury. As these conditions have not been accepted as employment related, appellant has not established disability caused or contributed to by the 1982 injury to his right knee.

Dr. Krosser found that appellant's right knee had a fair amount of crepitus in the patellofemoral joint and there was no acute swelling of the knee. In treatment notes dated November 30, 2005 and January 25, 2006, he found a little crepitus behind the right knee but stated that the knee was neurologically intact. Dr. Krosser also noted patellofemoral disease. However, he did not address whether the crepitus and patellofemoral conditions were caused by the accepted employment-related injury. The Board finds that Dr. Krosser's report and treatment notes are insufficient to establish appellant's claim. His July 26, 2005 report provided normal findings on examination of appellant's right knee. Dr. Pidoriano's June 22, 2006 prescription ordered physical therapy. This medical evidence is similarly deficient as the physicians did not address whether appellant's current knee condition was causally related to his May 6, 1982 employment-related injury.

On July 20, 2006 Dr. Pidoriano opined that appellant sustained patellofemoral pain following an ACL deficient knee for 20 years. A January 5, 2007 treatment note stated that appellant's chronic ACL deficient knee with secondary chondromalacia of the patella and patellar tendinitis were directly related to the May 6, 1982 employment injury. While generally concluding that appellant's patellar condition was related to the 1982 injury, Dr. Pidoriano did not provided adequate medical rationale explaining how or why his condition was caused by the accepted employment injury.[6] Such rationale is important given the 24 years between the accepted injury to the physician's brief statement on causal relation. The Board finds that his treatment notes are insufficient to establish appellant's claim.

Dr. Melman's July 7, 2006 report stated that appellant had sustained traumatic injuries in the line of duty. He opined that appellant recently experienced a recurrence of right arm, elbow and knee pain which required a work up. Dr. Melman did not address how appellant's recurrent symptoms were caused by the May 6, 1982 employment-related injury. The Board finds that his report is insufficient to establish appellant's claim.

The reports of appellant's physical therapists do not constitute probative medical evidence. A physical therapist is not "a physician" as defined under the Federal Employees' Compensation Act.[7]

[6] *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

[7] 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

Appellant failed to submit rationalized medical evidence establishing that his disability on July 20, 2004 resulted from the effects of his employment-related internal derangement of the right knee. The Board finds that 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 on July 20, 2004 causally related to his accepted employment-related injury.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2007 and December 22 and August 16 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 4, 2008
Washington, DC

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

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

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