

by his job.¹ On December 21, 2000 Dr. Thomas M. Stiles, an attending Board-certified orthopedic surgeon, performed left knee surgery, including chondroplasty of the patella and medial femoral condyle, removal of loose bodies, partial anterior synovectomy, and debridement of Baker and meniscal cysts. The procedure was authorized by the Office.

Appellant stopped work at the time of his surgery and returned to limited-duty work at the employing establishment in March 2000. He received appropriate Office compensation for periods of disability. Appellant returned to his regular work in April 2001. In an April 18, 2003 decision, the Office granted him a schedule award for a 27 percent permanent impairment of his left leg.

Appellant reported increased left knee symptoms and, in October 2002, started working in a limited-duty position for the employing establishment. The Office paid him compensation for periods of partial disability. On December 4, 2003 Dr. Stiles indicated that appellant reported that he was having no problems with left knee instability. He performed range of motion testing which showed good results and released appellant to perform his regular work for the employing establishment. Appellant returned to his regular work in mid December 2003.

The findings of a March 30, 2004 magnetic resonance imaging (MRI) scan of appellant's left knee showed moderate-to-high-grade patellar chondromalacia, minimal knee joint effusion, and a small popliteal bursal synovial cyst. There was no sign of a meniscal tear or intra-articular bodies. On May 5, 2004 Dr. Stiles stated that appellant's left knee symptoms were essentially the same and indicated that the March 2004 MRI scan showed some patellar chondromalacia but not any bony loose bodies.

On December 5, 2005 appellant filed a claim alleging that he sustained a recurrence of disability on October 25, 2005 due to his accepted left knee injury.² He stated that his left knee started to hurt a few weeks prior to the filing of his recurrence claim.

In a November 2, 2005 note, Dr. Stiles stated that appellant reported left knee pain and an inability to flex the knee. He indicated that x-ray obtained on that date did not show any change in the fixation devices of appellant's left knee and noted that he had mild effusion. The findings of a November 7, 2005 MRI scan of the left knee showed minimum joint effusion, large septate popliteal synovial cyst, Grade 2 medial patellar facet chondromalacia. There was no evidence of a meniscal tear, acute ligamentum, osseous injury or bony abnormality involving the tibial plateau. On November 9, 2005 Dr. Stiles stated that examination showed a posterior medial mass on the left knee and considerable crepitation with flexion and extension.

On November 28, 2005 Dr. Stiles stated that appellant reported having acute anterior medial pain of the left knee which began several days prior. He planned to perform left knee surgery to include debridement of the patella. On December 9, 2005 Dr. Stiles stated that he performed an arthroscopic patella shave and debridement of appellant's medial femoral condyle.

¹ Appellant indicated that he first became award of his condition on November 2, 2000.

² It does not appear that appellant stopped work on October 25, 2005 but he did stop work for various periods shortly thereafter.

On December 27, 2005 he noted appellant's left quadriceps were "coming back nicely" and a mild effusion of the left knee.

In a March 28, 2006 letter, the Office requested that appellant submit additional factual and medical evidence in support of his recurrence of disability claim. Appellant submitted a copy of the left knee surgery performed by Dr. Stiles which included chondroplasty of the patella and medial femoral condyle, removal of several loose bodies and partial suprapatellar synovectomy. He also submitted several notes from January 2006 in which Dr. Stiles indicated that his left knee condition was gradually improving. On January 26, 2006 Dr. Stiles noted that appellant had good range of left knee motion without effusion and returned him to work without restrictions.

In a June 13, 2006 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after October 25, 2005 due to his accepted left knee injury.

On September 14, 2006 appellant requested reconsideration of his claim. In a July 3, 2006 report, Dr. Stiles stated, "It is my opinion, that the injury to [appellant's] left knee was a new injury. This is superimposed on an old problem that he had in his knee as a result of a prior injury." Appellant also submitted a September 25, 2006 report in which Dr. Stiles diagnosed traumatic arthritis of the left knee with chondromalacia and meniscal tear.

In an October 23, 2006 decision, the Office denied appellant's request for further review of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An individual 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 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

ANALYSIS -- ISSUE 1

On April 4, 2001 the Office accepted that appellant sustained a meniscal cyst and internal derangement of his left knee due to the walking required by his job. On December 21, 2000 Dr. Stiles, an attending Board-certified orthopedic surgeon, performed left knee surgery, including chondroplasty of the patella and medial femoral condyle, removal of loose bodies, partial anterior synovectomy, and debridement of Baker's and meniscal cysts. Appellant

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

returned to regular work for the employing establishment and claimed that he sustained a recurrence of disability on October 25, 2005 due to his accepted left knee injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after October 25, 2005 due to his accepted left knee injury. Appellant submitted several notes from November 2005 in which Dr. Stiles indicated that he reported left knee symptoms such as pain, crepitation and an inability to flex the knee. The findings of November 7, 2005 MRI scan testing of the left knee showed minimum joint effusion, large septate popliteal synovial cyst, Grade 2 medial patellar facet chondromalacia without evidence of a meniscal tear, acute ligamentum, osseous injury or bony abnormality involving the tibial plateau.⁶ Appellant submitted a surgery report from December 2005 describing the left knee surgery performed by Dr. Stiles which included chondroplasty of the patella and medial femoral condyle, removal of several loose bodies, and partial suprapatellar synovectomy. In several notes from January 2006, Dr. Stiles described the improvement of appellant's left knee condition; he returned appellant to work on January 26, 2006 without restrictions.

While these reports of Dr. Stiles show that appellant reported left knee symptoms and had additional left knee surgery per the recommendation of Dr. Stiles, they do not show that appellant sustained a recurrence of disability on or after October 25, 2005 due to his accepted left knee. These reports are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.⁷ Dr. Stiles did not provide any opinion on the cause of appellant's left knee condition beginning in late 2005. He did not provide an opinion that appellant sustained an employment-related recurrence of disability as alleged.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁸ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.⁹

⁶ It should be noted that these findings are similar to the findings of the March 30, 2004 MRI scan testing. The record does not contain any reports showing treatment of appellant's left knee condition between mid 2004 and November 2005.

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁸ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁹ The record does not contain a claim for reimbursement for the December 2005 surgery or a final decision of the Office addressing this matter. Therefore this matter is not currently before the Board. See 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁰ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹¹ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.¹² When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹³ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

ANALYSIS -- ISSUE 2

In support of his September 14, 2006 reconsideration request, appellant submitted July 3 and September 25, 2006 reports of Dr. Stiles. The submission of these reports does not constitute a basis for reopening appellant's claim for merit review because the reports do not address the particular issue involved in this case, *i.e.*, whether appellant sustained a recurrence of disability on or after October 25, 2005 due to his accepted left knee injury.¹⁵ In his July 3, 2006 report, Dr. Stiles stated, "It is my opinion, that the injury to [appellant's] left knee was a new injury. This is superimposed on an old problem that he had in his knee as a result of a prior injury." However, the question of whether appellant might have sustained a new injury is not the subject of the present claim. Dr. Stiles mentioned a "prior injury" but he did not describe the nature of the injury or provide a clear opinion that appellant sustained a recurrence of disability due to his accepted left knee injury.¹⁶ In a September 25, 2006 report, Dr. Stiles diagnosed traumatic arthritis of the left knee with chondromalacia and meniscal tear. He did not provide any opinion about the cause of the observed condition.

Appellant has not established that the Office improperly denied his request for further review of the merits of its June 13, 2006 decision under section 8128(a) of the Act, because the evidence and argument he submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered

¹⁰ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² 20 C.F.R. § 10.607(a).

¹³ 20 C.F.R. § 10.608(b).

¹⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁵ *See supra* note 14 and accompanying text.

¹⁶ The issue of whether appellant sustained a new left knee injury was not adjudicated by the Office.

by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after October 25, 2005 due to his accepted left knee injury. The Board further finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 23 and June 13, 2006 decisions are affirmed.

Issued: January 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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