

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

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<b>M.L., Appellant</b>		)	
		)	
<b>and</b>		)	<b>Docket No. 07-1643</b>
		)	<b>Issued: September 15, 2008</b>
<b>DEPARTMENT OF THE AIR FORCE,</b>		)	
<b>BARNES AIR FORCE BASE, Natick, MA,</b>		)	
<b>Employer</b>		)	
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*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 June 4, 2007 appellant filed a timely appeal of the May 3, 2007 merit decision of the Office of Workers' Compensation Programs which affirmed its determination that he did not sustain a consequential neck or knee injury causally related to his accepted employment-related injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

**ISSUE**

The issue is whether appellant has established that he sustained a consequential neck or knee injury causally related to his September 23, 1985 and July 15, 1987 employment-related injuries.

**FACTUAL HISTORY**

This case has previously been before the Board. In an October 29, 1997 decision, the Board reversed the Office's termination of appellant's compensation on the grounds that he

refused an offer of suitable work.<sup>1</sup> The Board found that the impartial medical specialist's opinion was not entitled to special weight in finding that appellant could perform the duties of an offered supply clerk position. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>2</sup> Those relevant to the present issue are hereafter set forth.

By letter dated July 25, 2005, appellant requested that his congressman contact the Office to expand the acceptance of his claim to include his neck, arms, chest, legs and knee conditions which he contended were causally related to his September 23, 1985 and July 15, 1987 employment injuries.

By letter dated September 9, 2005, the Office advised Dr. Charles A. Wasicek, an attending Board-certified rheumatologist, that its records indicated that he was treating appellant for neck and knee conditions. It requested that he provide a diagnosis of appellant's current medical conditions and address whether he continued to experience residuals, disability or permanent impairment due to the accepted injuries. Dr. Wasicek was also requested to provide objective clinical findings, test results and medical rationale in support of his opinion.

In an October 10, 2005 report, Dr. Wasicek stated that appellant had pain in the cervical spine, chest wall, back, knee, foot, ankle, shoulder and hand. He opined that the pain was disabling and caused by the accepted employment injuries.

In a November 2, 2005 report, Dr. Paul S. Curtis, a Board-certified orthopedic surgeon, stated that appellant sustained lumbar intervertebral disc displacement without myelopathy, other unspecified back disorders and sciatica. The Office also received copies of reports already of record.

By decision dated December 5, 2005, the Office found the medical evidence insufficient to establish that appellant sustained a neck or knee injury as a consequence of his accepted employment injuries.

In an April 26, 2006 report, Dr. Curtis reiterated his prior diagnoses. He also stated that appellant sustained internal derangement of the knee. In a June 21, 2006 report, Dr. Curtis stated that the etiology of appellant's back, neck and left knee problems remained obscure. On July 13, 2006 he stated that he was unable to provide appellant's physical restrictions. Dr. Curtis recommended that appellant undergo a functional capacity evaluation.

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<sup>1</sup> Docket No. 97-760 (issued October 29, 1997).

<sup>2</sup> On July 16, 1987 appellant, then a 30-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) assigned claim number A01-258954 for a back injury he sustained on July 15, 1987. The Office accepted the claim for acute low back strain. Previously, on September 24, 1985, appellant filed a Form CA-1 assigned claim number A01-0241637 for injuries to his legs, chest, lower back and knees that he sustained on September 23, 1985. The Office accepted the claim for multiple bruises. By decision dated November 12, 1985, it found the evidence of record insufficient to establish appellant's claim. Appellant took no further action on this claim. In an internal Office memorandum, appellant's Form CA-1 assigned file number A01-258954 and appellant's Form CA-1 assigned file number A01-0241637 were consolidated to create a master case under file number A01-258954.

On July 20, 2006 appellant requested reconsideration of the Office's December 5, 2005 decision. He submitted copies of reports already of record. Appellant also submitted a June 21, 2006 report from Dr. Curtis who stated that he continued to experience neck pain. In reports dated July 26 and August 23, 2006, Dr. Curtis stated that appellant had Tietzes Disease. A July 26, 2006 chest x-ray report of Dr. Dean J. Phillips, a Board-certified radiologist, found that appellant had no acute cardiopulmonary disease.

By decision dated May 3, 2007, the Office denied modification of the December 5, 2005 decision. It found the evidence submitted by appellant insufficient to establish that he sustained a neck or knee condition causally related to his September 23, 1985 and July 15, 1987 employment-related injuries.

### **LEGAL PRECEDENT**

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.<sup>3</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>4</sup> With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds the evidence of record is insufficient to establish that appellant sustained consequential neck or knee conditions causally related to his September 23, 1985 injury, accepted for bruises on his legs, chest, lower back and knees, or July 15, 1987 injury accepted for a low back strain.

Dr. Wasicek reported that appellant had pain in the cervical spine, chest wall, back, knee, foot, ankle, shoulder and hand. He opined that appellant's pain and total disability were caused by the accepted employment injuries. A physician's diagnosis of pain, without more by way of an explanation, does not constitute a basis for payment of compensation.<sup>6</sup> Dr. Wasicek did not provide any medical rationale explaining how appellant's current symptoms were caused by or contributed to by the September 23, 1985 and July 15, 1987 employment injuries.<sup>7</sup> The Board finds that his report is insufficient to establish appellant's claim.

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<sup>3</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>4</sup> *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>5</sup> *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>6</sup> *Robert Broome*, 55 ECAB 0493 (2004).

<sup>7</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

Similarly, Dr. Curtis noted that appellant had lumbar intervertebral disc displacement without myelopathy, other unspecified back disorders, sciatica, internal derangement of the knee and Tietzes disease. Dr. Phillips' chest x-ray report found that appellant had no acute cardiopulmonary disease. These reports are similarly insufficient to establish appellant's claim as neither physician addressed the causal relationship between appellant's diagnosed conditions and his accepted employment injuries.

Dr. Curtis' June 21, 2006 report acknowledged that the etiology of appellant's back, neck and left knee problems remained obscure. This opinion is speculative and the Board finds that it is insufficient. Dr. Curtis' July 13, 2006 report revealed that he was unable to provide appellant's physical restrictions until a functional capacity evaluation was performed. This report did not address whether appellant had any current conditions causally related to his accepted employment injuries.

Appellant failed to submit probative medical evidence explaining how his accepted September 23, 1985 and July 15, 1987 employment-related conditions caused or contributed to his neck or knee conditions. He failed to demonstrate how these conditions arose as a natural consequence of his accepted injuries. The Board finds that the evidence of record is insufficient to discharge appellant's burden of establishing consequential to the accepted conditions of multiple bruises of the legs, chest, back and knees and low back strain.

#### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a consequential neck and knee injury causally related to his September 23, 1985 and July 15, 1987 employment-related injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 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