

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

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G.W., Appellant )

and )

**DEPARTMENT OF DEFENSE, DEFENSE )  
FINANCE & ACCOUNTING SERVICE, )  
Cleveland, OH, Employer )**

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**Docket No. 08-62**

**Issued: February 3, 2009**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 9, 2007 appellant filed a timely appeal from the September 18, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative who denied his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability commencing July 10, 2006 causally related to his January 12, 1996 injury.

**FACTUAL HISTORY**

This case has previously been before the Board. The facts and the circumstances of the Board's March 7, 2003 decision are hereby incorporated by reference.<sup>1</sup> On January 12, 1996

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<sup>1</sup> Docket No. 02-2005 (issued March 7, 2003).

appellant, then a 42-year-old claims examiner, sustained injury to his left knee. The Office accepted the claim for a torn meniscus and arthroscopic surgery was performed on March 21, 1996. It subsequently accepted an aggravation of osteoarthritis of the left knee with arthroscopic debridement performed on August 26, 1996. The Office also accepted a consequential right ankle injury, left ankle gout, left knee total replacement, left knee arthropathy with manipulation performed on January 28, 1999 and left knee adhesive capsulitis/tendinitis with total knee arthroplasty revision performed on March 10, 2000.

In a June 5, 2006 note, Dr. Dean Pahr, an osteopath, advised that appellant's medication made him drowsy but that he was motivated to return to work. On June 6, 2006 appellant returned to full-duty work without restrictions. In a June 26, 2006 note, Dr. Pahr indicated that appellant was doing well, but that his leg gave out and he was experiencing more symptoms in the left knee. He noted that appellant was trying his best to work but might not be able to sustain his work schedule with chronic pain. On July 10, 2006 Dr. Pahr noted his treatment of appellant for chronic pain in his legs. He noted that pain medication had significant side effects and that appellant could not perform his work duties while on medication. Dr. Pahr stated: "Therefore, he is in a difficult situation. Unable to think clearly he needs to be off the medicines to work and he needs the pain medications for pain symptom control. Because of this dilemma, appellant is unable to work and he may be eligible for disability retirement at this point."

In a June 27, 2006 report, Dr. John H. Wood, a Board-certified orthopedic surgeon, noted that appellant was seen with a four-month history of right knee pain. He recommended that appellant continue with his medication, home exercises, heat and rest. An x-ray obtained that date was reported as showing osteoarthritis of the right knee patellofemoral joint. Dr. Wood recommended that appellant work sedentary duty from June 26 through August 1, 2006.

On July 12, 2006 appellant filed a claim for wage-loss compensation commencing July 10, 2006. On August 2, 2006 he stated that on June 9, 2006 as he stood up at his desk to walk to the printer, his knee buckled and he fell.

By letter to Dr. Pahr dated August 29, 2006, the employing establishment requested clarification of appellant's capacity to work. It noted that light- or limited-duty work assignments could be accommodated in accordance with any physical limitations. The employing establishment noted that appellant's position was sedentary and that extra breaks could be allowed due to any side effects from appellant's medications. The employing establishment provided Dr. Pahr a position description.

In an August 28, 2006 note, Dr. Pahr indicated that appellant was showing significant motivation to return to work and noted that working from his home was reasonable. He noted that appellant wished to work out of his home so that he did not have to walk on cement floors at work.

A bone scan performed on August 30, 2006 was interpreted by Dr. Viktor Krebs, a Board-certified orthopedic surgeon, as showing right knee patellofemoral osteoarthritis and probable postsurgical changes associated with the left knee prosthesis.

On October 23, 2006 Dr. Pahr indicated that appellant could work part time, noting that appellant believed that he could do his work at home. He stated that appellant “cannot sustain the cement flooring at his present workplace.” Dr. Pahr also noted that appellant did very poorly with pain medications which made him excessively drowsy.

On December 18, 2006 appellant requested that his attending physician be changed to Dr. Mark Allen as Dr. Pahr was leaving the pain management practice. On that date Dr. Pahr indicated that appellant was doing well but continued to experience pain and had issues with sleep apnea. In a report dated November 14, 2006, Dr. Raymond Salomone noted that appellant had moderate obstructive sleep apnea and excessive daytime sleepiness.

On December 18, 2006 Dr. Howard Epstein, a Board-certified internist, noted that appellant had persistent back pain and hip pain. He diagnosed sacroiliitis and checked a box indicating that he believed that appellant’s condition was caused or aggravated by his employment.

In a January 5, 2007 letter, appellant advised that he went back to work on June 6, 2006 with small dosage of medications. However, as it did not adequately control his pain or the swelling in his left leg, his physician recommended that he take a full dosage which controlled the pain but caused drowsiness and left him unable to focus. On June 9, 2006 appellant fell at work. He noted that Dr. Pahr took him off work as of July 17, 2006 due to the side effects of the medication and because the employing establishment has a strict policy concerning no sleeping on the job.

In a medical report dated January 7, 2007, Dr. Mark A. Roth, a Board-certified internist, noted that appellant has been a patient since 1989. Between June 6 and July 17, 2006, appellant was receiving pain-controlling medication that did not adequately relieve his symptoms. As a result, Dr. Pahr increased the dosage of appellant’s medicine which resulted in side effects including drowsiness and cognitive impairment. Dr. Roth noted that appellant was currently experiencing impaired ambulation, including falls, as well as leg pain. He recommended additional evaluation and diagnostic studies before appellant returned to work.

By decision dated January 24, 2007, the Office denied appellant’s claim for wage loss commencing July 17, 2006.

On January 29, 2007 appellant requested a review of the written record. On February 2, 2007 he changed this to a request for an oral hearing.

In a January 25, 2007 note, a Dr. Mark L. Allen noted that appellant was first seen by Dr. Pahr on February 9, 2005 for persistent intractable pain of the knee related to a workers’ compensation injury which caused him significant disability and functional limitations. He reviewed Dr. Pahr’s October 23, 2006 assessment, stating that he believed appellant could work but needed special considerations. In notes dated February 6 and 23, 2007, Dr. Allen indicated that appellant could be released to sedentary work without frequent bending or lifting more than 10 pounds and adequate desk room to stretch his legs and feet. On April 3, 2007 he advised that appellant continued to complain of severe intractable pain in his back and legs, with most of the pain in his knee. In a May 8, 2007 letter, Dr. Allen reiterated that appellant had chronic knee

pain related to a workers' compensation injury with difficulty standing, walking or sitting for long periods of time. He opined that appellant was unable to perform his duties as he required medication to maintain functionality due to the work-related injury. Dr. Allen opined, "I believe these medications preclude him from doing his work as he explains it to me..."

In an August 19, 2006 note, Dr. William Saar, an osteopath, stated that appellant was a patient of his previous practice seen for bilateral ankle pain and in follow up after the removal of bone spurs of his medial malleolar region on the right. He noted that appellant's symptoms were consistent with irritation of his posterior tendon. Appellant wished to work at home as getting up and down on the concrete floor at work was too much for his ankles to handle. Dr. Saar noted that appellant had multiple issues with his lower extremities and questionable reflex sympathetic dystrophy or sympathetic maintained pain, which was complicating his ankle condition. In a May 4, 2007 note, a Dr. Curtis W. Smith diagnosed chondromalacia of the right knee, fracture of the right ankle and osteoarthritis of the right knee. He noted that appellant's range of motion was good but that there was pain at the extremes. Appellant also submitted a June 12, 2007 letter from the employing establishment denying his request to work at home.

At the hearing held on July 10, 2007, appellant testified that his job was not really sedentary. He had to get up to retrieve prints from the microfiche machine which hurt his knee. Appellant also had to walk down a hall to go to the restroom. He noted that he had a failed knee replacement followed by a second surgery. Appellant had returned to work on June 6, 2006 and described a thin layer of carpet over thick concrete which caused pressure on his knees. He indicated that his medications made him disoriented and wobbly. Appellant returned to work in March 2007 but essentially did nothing until June 2007 when his retirement benefits were approved.

By decision dated September 18, 2007, the Office hearing representative affirmed the January 24, 2007 decision.

### **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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>2</sup> A person 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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

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<sup>2</sup> R.S., 58 ECAB \_\_\_\_ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

conclusion with sound medical reasoning.<sup>3</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>4</sup>

### ANALYSIS

The Office initially accepted appellant's claim for left knee torn meniscus. A left knee arthroscopy was performed on March 21, 1996 and arthroscopic debridement on August 26, 1996. The Office also accepted a consequential injury of right ankle sprain, left ankle gout arthropathy, left knee total knee replacement, left knee arthropathy with manipulation performed on January 28, 1999 and left knee adhesive capsulitis/tendinitis with total knee arthroplasty revision performed on March 10, 2000. Appellant returned to work full duty without restriction on June 6, 2006. He fell at work on June 9, 2006 and the Office paid benefits from June 13 through July 7, 2006. Appellant filed a claim for wage-loss compensation beginning July 10, 2006. However, the medical evidence of record does not establish that he sustained a recurrence of disability on that date.

Dr. Pahr provided primary treatment for appellant's pain. On July 10, 2006 he indicated that appellant needed to be off medication in order to work due to side effects. He opined that, due to the dilemma of his medication causing drowsiness, appellant was unable to work. The employing establishment requested that Dr. Pahr clarify his opinion on appellant's capacity for work, noting that it could accommodate his restrictions and provide for breaks. Dr. Pahr did not directly respond to the inquiry.

On August 28, 2006 he noted appellant's stated preference to work from home in order to avoid working on cement floors at the employing establishment. On October 23, 2006 Dr. Pahr stated that appellant could return to work but that medication made him drowsy. On December 18, 2006 he advised that appellant continued to experience chronic pain. However, none of these reports is sufficient to establish a recurrence of disability. Dr. Pahr does not clearly address a worsening of appellant's accepted conditions. Rather, he commented on appellant's stated preference to work from home. He noted that appellant had the capacity to work and the employing establishment advised the physician that it could accommodate restrictions for light- or limited-duty work and allow for breaks to accommodate any side effects from appellant's medication. Dr. Pahr did not provide any narrative report addressing how appellant's accepted conditions caused disability for work on or after July 10, 2006. His recommendation that appellant be allowed to work from home merely consists of a repetition of appellant's preference and is not a sufficient basis on which to pay compensation.<sup>5</sup>

On January 2, 2007 Dr. Allen noted that appellant had reflex sympathetic dystrophy secondary to the work trauma of January 12, 1996. However, this is not a condition that was accepted by the Office as due to the employment injury. Moreover, Dr. Allen did not provide sufficient explanation in support of his stated conclusion on causal relationship. He did not

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<sup>3</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>5</sup> *See Laurie S. Swanson*, 53 ECAB 517 (2002).

provide a rationalized medical opinion stating how the reflex sympathetic dystrophy would arise some 10 years after the employment injury. In subsequent reports, Dr. Allen reviewed appellant's treatment by Dr. Pahr and noted that he had difficulty at work. On February 6, 2007 he released appellant to sedentary work with modifications for adequate desk room and lifting limited to 10 pounds, which would indicate that he could perform the limited-duty position he held in June 2006. The record establishes that appellant returned to work in March 2007 and subsequently retired in June of that year. In a May 8, 2007 letter, Dr. Allen opined that appellant was unable to perform his duties due to his medications precluding his ability to do his work "as he explains it to me...." It is apparent that Dr. Allen relied on appellant's own opinion of his capacity for work rather than formulating a probative medical opinion based on a full history of appellant's work duties

The remaining medical reports of record are similarly deficient. The August 30, 2006 bone scan of Dr. Krebs provided no opinion as to appellant's disability for work as of July 10, 2006. Dr. Epstein addressed appellant's sleep apnea which is not an accepted work-related condition. Dr. Saar treated appellant for bilateral ankle pain and irritation of the posterior tendon. Although he noted appellant's preference to work from home, the physician did not provide an opinion explaining how the accepted conditions caused or contributed to appellant's disability on or after July 10, 2006. Dr. Saar is merely reiterating appellant's description of his symptoms and his desire to work at home.<sup>6</sup> The Board finds that appellant has not provided sufficient medical evidence to establish that he sustained a recurrence of disability commencing July 10, 2006.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability as of July 10, 2006 causally related to his January 12, 1996 injury.

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<sup>6</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs January 24 and September 18, 2007 are affirmed.

Issued: February 3, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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