United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 09-1681**
	)	**Issued: April 8, 2010**
DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, Fountain City, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2009 appellant filed a timely appeal of a December 23, 2008 decision of the Office of Workers' Compensation Programs affirming the denial of his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability beginning on October 23, 2007 causally related to his accepted employment injury.

FACTUAL HISTORY

On May 14, 1991 appellant, then a 29-year-old deckhand, filed a traumatic injury claim alleging that on that day he injured his left knee after it was struck with a piece of equipment. He stopped work that day. Appellant returned to light duty on July 1, 1991 until approximately November 1991 when he was laid off. He was rehired and returned to regular duty on or about

June 1992. The Office accepted the claim for acute mid substance tear, posterior cruciate ligament (PCL) left; knee bucket-handle tear, lateral meniscus left knee; and left knee arthroscopy. On June 4, 1991 appellant underwent arthroscopic left partial lateral meniscectomy. He resigned from the employing establishment in 1997 and continued working at various jobs in the private sector.

Initial reports included a June 4, 1991 surgical report from Dr. Bradford Currier, a Board-certified orthopedic surgeon, who performed an arthroscopic left partial lateral meniscectomy. In an October 31, 1991 report, he diagnosed PCL deficient knee and no evidence of retear of the lateral meniscus. On January 30, 1992 Dr. Currier released appellant from treatment and advised him to follow up as needed. On June 29, 1992 he noted that appellant was working full time without restrictions. Dr. Currier found excellent short-term result following partial lateral meniscectomy and debridement of the PCL stump. He noted that appellant could develop degenerative arthritis long term but that no further treatment was necessary unless appellant had problems. Dr. Currier found that appellant had 7 percent impairment for his PCL moderate laxity and 3 percent impairment for partial removal of his lateral meniscus for a total of 10 percent whole person impairment under Minnesota's compensation guidelines.

The claim was dormant until October 23, 2007 when appellant filed a claim for a recurrence of disability causally related to his May 14, 1991 work injury. He asserted that the recurrence occurred "on and off" since the 1991 work injury whenever he worked or walked for a longtime on hard surfaces. Appellant noted that, since leaving the employing establishment, he had worked in a factory. He was currently self-employed and did not indicate if he stopped work after the alleged recurrence. Appellant indicated that he sought compensation for medical treatment and lost time from work.

On January 7, 2008 the Office advised appellant of the medical evidence necessary to establish his recurrence claim and allowed him 30 days to submit such evidence. Appellant submitted a partial radiology report of his left knee dated May 20, 1991, with findings that included acute midsubstance tear of PCL, associated displaced bucket handle-type or flap tear of the lateral meniscus with posterior displacement of a large meniscal fragment and lateral collateral ligament injury.

In a June 22, 2007 magnetic resonance imaging (MRI) scan report of appellant's left lower extremity, Dr. James Vesely, a Board-certified diagnostic radiologist, found that appellant had abnormal configuration of medial and lateral menisci and no discrete meniscal tear. Dr. Vesely noted that the anterior cruciate ligament (ACL) and PCL did not appear completely disrupted although they appeared thinner than usually seen. He also noted some bowing and lax appearance of the PCL, triocompartmental articular cartilaginous irregularity, mild degenerative spurring and serpiginous proximal tibial abnormality consistent with bone infarct. Dr. Vesely determined that these findings could be due to a chronic or partial ACL tear and functional deficiency.

In a January 18, 2008 report, Dr. Dean Krueger, an osteopath specializing in family medicine, described appellant's 1991-work injury and noted his chronic history of left knee problems that dated back to 1991. He also noted that appellant had continued problems with his left knee ACL and PCL injury. Dr. Krueger reviewed appellant's 2007 MRI scan of the left

knee. He noted that appellant had filed a claim for his left knee injury. Dr. Krueger reviewed the medical evidence and opined that "there is a legitimate concern here for his injury." He diagnosed left knee arthralgia, hyperlipidemia and seizure disorder.

In a February 19, 2008 x-ray report of appellant's right knee, Dr. Christopher Kelley, a Board-certified diagnostic radiologist, noted negative findings for acute fracture, dislocation or subluxation. In a report of the same date, Dr. Chris Cornett, an orthopedic surgeon, noted that appellant reported sustaining a left knee injury in 1991 that resulted in PCL deficiency and lateral meniscus tear. Appellant also reported chronic knee pain and instability that progressively worsened with time. Upon examination, Dr. Cornett found evidence of posterior instability, medial joint line pain, full motion and early arthritic changes. He noted that it was difficult to assess whether appellant's pain was related to posterior instability or early degenerative changes.

In a March 12, 2008 decision, the Office denied appellant's claim finding the evidence insufficient to establish that the claimed recurrence resulted from the accepted work injury.

On March 18, 2008 appellant requested an oral hearing, which was held *via* telephone on October 6, 2008.

Appellant subsequently submitted a November 4, 2008 report from Dr. Kevin MacDonald, an orthopedic surgeon who noted that appellant injured his left knee at work in 1991 when a beam struck his left tibia causing a posterior force on his left knee. Dr. MacDonald indicated that appellant's PCL was never reconstructed but that he underwent rehabilitation. He noted that appellant's left knee had symptoms of pain and instability and gave out at times. Dr. MacDonald found that appellant had a previous work injury to his left knee with deficient PCL and some mild degenerative changes in his left knee likely related to chronic instability, especially given appellant's young age. He determined that overall appellant was doing well. Dr. MacDonald advised that appellant follow up as needed. Appellant also submitted a March 11, 2008 physical therapy consultation report.

In a December 23, 2008 decision, an Office hearing representative affirmed the March 12, 2008 decision finding that appellant did not establish that the knee condition claimed in 2007 was causally related to the 1991 work 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[1] 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 she 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

[1] *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[2] Where no such rationale is present, medical evidence is of diminished probative value.[3]

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.[4]

In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.[5]

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed, or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report, which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.[6]

ANALYSIS

The Office accepted appellant's May 14, 1991 employment injury for acute mid substance tear, PCL left; knee bucket-handle tear, lateral meniscus left knee; and left knee arthroscopy. The record reflects that Dr. Currier released appellant from medical care on October 31, 1991 and that he returned to full duty on or about June 1992. Appellant filed a recurrence claim on October 23, 2007 for both wage loss and medical treatment although he did not identify a particular time at which he stopped work due to the work injury. The Board finds that the medical evidence is insufficient to establish a recurrence of disability or a medical condition causally related to the accepted left knee injury.

On November 4, 2008 Dr. MacDonald found that appellant had a previous left knee injury with deficient PCL and mild degenerative changes in his left knee likely related to chronic instability. Although he refers to appellant's original and current knee condition, he failed to explain whether appellant required medical treatment beginning October 23, 2007 due to the

[2] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008)*; Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[3] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[4] 20 C.F.R. § 10.5(y).

[5] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (January 1995).

accepted May 14, 1991 work injury.[7] Similarly, Dr. Krueger's January 18, 2008 report noted that appellant filed a claim for his left knee and opined that "there is legitimate concern here for his injury." However, this statement is broad and vague as it does not explain whether appellant's accepted knee injury attributed to his current left knee condition. This explanation is particularly important as there is no bridging evidence of medical treatment between October 31, 1991 and June 22, 2007 and appellant had been released to regular duty since 1992.

In his June 22, 2007 MRI scan report, of appellant's left knee, Dr. Vesely found abnormal configuration of medial and lateral menisci, thinner-appearing PCL and ACL and mild degenerative spurring. He opined that these findings "could be due" to chronic or partial ACL tear and functional deficiency. However, Dr. Vesely did not directly address whether appellant's current left knee condition was causally related to his originally accepted left knee injury. Medical evidence that 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] Likewise, Dr. Kelley noted x-ray findings but he did not specifically address causal relationship between the claimed recurrence beginning October 23, 2007 and the May 14, 1991 work injury. Accompanying Dr. Kelley's report was a February 19, 2008 report from Dr. Cornett. However, Dr. Cornett's report is insufficient as he did not specifically support causal relationship between appellant's current condition and the 1991 work injury and advised that it was difficult to determine whether his condition was related to posterior instability or degenerative changes.

A May 20, 1991 diagnostic report submitted by appellant is of no value in establishing his claim as it clearly predates the claimed recurrence. Moreover, the report from appellant's physical therapist is of no probative value as physical therapists are not considered physicians under the Federal Employees' Compensation Act and as a result, they are not competent to provide a medical opinion.[9] For these reasons, the medical evidence is insufficient to establish a recurrence of a medical condition causally related to the accepted left knee condition.

On appeal, appellant asserts that the medical evidence was not thoroughly evaluated as Dr. Currier's report provided percentages of loss and explained the long-term effects of his injury. However, a 1992 opinion from Dr. Currier regarding impairment in 1992 is not relevant to the issue before the Board, whether appellant sustained a recurrence in 2007. Appellant also asserts that his treating physicians documented that his present condition is directly caused by his May 1991 injury. As noted, he has the burden of proof to submit rationalized medical evidence establishing the relationship of the claimed recurrence to the original injury. While the record establishes that the 1991 work injury caused several left knee conditions, appellant has not submitted a physician's reasoned opinion in which the physician explains the reasons why appellant's current left knee condition is causally related to the 1991 work injury. This lack of

[7] *See Mary A. Ceglia*, 55 ECAB 656 (2004) (appellant has the burden of furnishing medical evidence from a 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 and supports that conclusion with sound rationale).

[8] *See K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

[9] *Barbara J. Williams*, 40 ECAB 649 (1989). *A.C.*, 60 ECAB __ (Docket No. 08-1453, issued November 18, 2008); 5 U.S.C. § 8101(2).

current medical evidence addressing causal relationship is the reason his recurrence claim has been denied.

CONCLUSION

The Board finds that appellant did not sustain a recurrence of disability beginning on October 23, 2007 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 23, 2008 is affirmed.

Issued: April 8, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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