United States Department of Labor
Employees' Compensation Appeals Board

O.W., Appellant	)	
and	)	**Docket No. 09-2299**
	)	**Issued: July 8, 2010**
DEPARTMENT OF THE ARMY, FIRE PREVENTION & PROTECTION DIVISION, Fort Sam Houston, TX, 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 September 15, 2009 appellant filed a timely appeal from an August 12, 2009 merit decision of the Office of Workers' Compensation Programs 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 his accepted right knee condition causally related to his April 19, 1978 employment injury.

FACTUAL HISTORY

The Office accepted that on April 19, 1978 appellant, then a 27-year-old firefighter, sustained a right knee strain while playing volleyball in the performance of duty.[1]

[1] Appellant retired from the employing establishment in 2002.

On March 16 and 19, 2009 appellant filed claims alleging a recurrence of his medical condition commencing March 19, 2008. He stated that a March 2008 magnetic resonance imaging (MRI) scan of the right knee showed diminished size of the body and posterior horn of the medial meniscus related to his prior partial medial menisectomy.[2] Appellant contended that his current right knee condition was causally related to the April 19, 1978 employment injury. He noted that his current knee condition involved the same part of the knee as was injured on April 19, 1978.

By letter dated May 6, 2009, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence. In a June 17, 2009 letter, appellant stated that he received medical treatment for his employment injury.

Treatment notes dated April 21, 1978 to May 30, 1979 from the Department of the Navy medical dispensary advised that appellant sustained a strain and effusion with joint instability of the right knee on April 19, 1978.

In medical reports dated March 19 and April 9, 2008, Dr. Jesse C. DeLee, a Board-certified orthopedic surgeon, reviewed a history of appellant's employment injury. He advised that he had degenerative changes in the medial compartment, a torn meniscus rim and chondromalacia at the patella of the right knee.

A March 24, 2008 MRI scan of the right knee obtained by Dr. Larry Burk, an orthopedic surgeon, found a possible prior partial medial menisectomy with degenerative tears in the posterior horn and body remnants and postoperative fibrotic changes in the anterior medial joint capsule. Dr. Burk found Grade 3 chondromalacia in the medial patellar facet and medial joint compartment with focal subchondral cystic bone marrow reaction at the medial margin of the medial tibial plateau. There were also diffuse degenerative changes in the anterior cruciate ligament and a small joint effusion.

In an October 10, 2008 note, Kelly Cooper, a physician's assistant associated with Dr. David L. Fox, an attending Board-certified orthopedic surgeon, listed a history of appellant's accepted injury. On physical examination, Ms. Cooper reported essentially normal findings regarding the right knee with mild swelling and tenderness to palpation in the medial joint line. Appellant was unable to tolerate McMurray testing. An x-ray of the right knee showed mild to moderate degenerative joint disease that was most notable in the medial compartment. An MRI scan of the right knee demonstrated Grade 3 chondromalacia in the medial patellar facet and medial compartment and postoperative changes in the medial meniscus. Ms. Cooper advised that appellant had degenerative joint disease. In an October 10, 2008 addendum, Dr. Fox reviewed Ms. Cooper's treatment note and addressed the treatment plan for appellant's pain over the medial joint line of the right knee.

[2] On September 4, 1980 appellant underwent a medial menisectomy to treat internal derangement of his right knee, a condition he claimed was a result of his May 30, 1979 injury. This condition has not been accepted by the Office.

In an October 10, 2008 note, Deedie Kelly, an assistant to Dr. Fox referred, to a telephone conversation she had with appellant about the side effects he experienced after receiving an injection on that date to treat his right knee pain.

In an August 12, 2009 decision, the Office denied appellant's recurrence of disability claim. The medical evidence was found insufficient to establish that he was totally disabled commencing March 19, 2008 due to his April 19, 1978 employment injury.

LEGAL PRECEDENT

A recurrence of a medical condition means a documented need for further medical treatment after the release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[3]

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.[4] An employee has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between the recurrence of his medical condition and his accepted employment injury.[5] 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.[6] Moreover, the physician's conclusion must be supported by sound medical reasoning.[7]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[8] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[9] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[10]

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[3] 20 C.F.R. § 10.5(y).

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

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

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

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

[8] *See Ricky S. Storms*, *supra* note 6; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[9] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

[10] *See Ricky S. Storms*, *supra* note 6; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

ANALYSIS

The Office accepted that appellant sustained a right knee strain as a result of the April 19, 1978 employment injury. Appellant retired from the employing establishment in 2002. He claimed a recurrence of his right knee condition commencing March 19, 2008. The Board finds that appellant failed to submit sufficient medical evidence to establish that his need for medical treatment is due to his accepted condition.

The contemporaneous treatment notes from the Department of the Navy medical dispensary found that appellant sustained a right knee strain and effusion with joint instability on April 19, 1978. This evidence predates the alleged recurrence of disability commencing March 19, 2008, some 30 years later and is not relevant to the issue of whether his present need for treatment is due to the accepted employment injury or prior menisectomy in 1980.

Dr. DeLee found that appellant had degenerative changes in the medial compartment, a torn meniscus rim and chondromalacia under the patella of the right knee. He did not provide any opinion explaining how appellant's current right knee condition or need for medical treatment related to the April 19, 1978 injury. The Board has held that 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.[11]

Dr. Burk obtained diagnostic testing that noted a possible prior partial medial menisectomy with degenerative tears in the posterior horn and postoperative fibrotic changes in the anterior medial joint capsule. He also diagnosed Grade 3 chondromalacia in the medial patellar facet and medial joint compartment. The report of the physician did not address the relationship between any of the listed right knee conditions and the April 19, 1978 injury.[12] The Board finds that his report is of limited probative value.

In an October 10, 2008 treatment note, Dr. Fox advised that appellant sustained degenerative joint disease of the right knee and addressed the treatment provided. He did not provide any opinion on how appellant's current right knee condition or disability commencing March 19, 2008 were causally related to the April 19, 1978 injury. The Board finds that Dr. Fox's report is of limited probative value.

The October 10, 2008 note from Ms. Kelly is of no probative medical value. An office assistant is not a physician as defined under the Federal Employees' Compensation Act.[13] Appellant has failed to submit sufficient medical evidence to establish a recurrence of his right knee condition or need for treatment due to the April 19, 1978 accepted injury.

[11] *A.F.*, 59 ECAB ___ (Docket No. 08-977, issued September 12, 2008).

[12] *Id.*

[13] 5 U.S.C. § 8101(2).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of his medical condition.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2010
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