

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

D.B., Appellant)

and)

DEPARTMENT OF THE AIR FORCE, AIR)
LOGISTICS CENTER, TINKER AIR FORCE)
BASE, OK, Employer)

**Docket No. 10-1683
Issued: March 16, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 9, 2010 appellant filed a timely appeal from a May 11, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden to establish that he sustained a recurrence of disability beginning April 21, 2009 causally related to his accepted January 16, 2004 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 16, 2004 appellant, then a 59-year-old electronics mechanic, injured his right knee while exiting an aircraft at the employing establishment. He was placed on restricted duty the following day. The Office accepted appellant's claim for right knee lateral and medial meniscal tears.

Appellant underwent an authorized right knee arthroscopy with partial medial and lateral meniscectomy and laser chondroplasty of the lateral tibial plateau on May 18, 2004. He attended physical therapy starting June 15, 2004 and exhibited improvement in leg strength, ambulation and range of motion through July 6, 2004.

In an August 23, 2004 report, Dr. Anthony L. Cruse, a Board-certified orthopedic surgeon, examined appellant's right knee and observed mild quadriceps atrophy, retropatellar crepitus, medial joint line pain and positive Spring, McMurray and Apley tests. He noted previous diagnoses and released appellant from treatment and advised that he could return to regular-duty work that day.

Appellant retired from federal service effective March 3, 2008.

On October 19, 2009 appellant submitted an authorization request to the Office for medical treatment, stating that his right knee was "burning," making "a gadding sound" and occasionally unstable. In an October 20, 2009 letter, the Office notified him that his case was closed since 2004. It advised appellant to file a recurrence of disability claim if he believed that he sustained a recurrence and to submit documentation of ongoing medical treatment since 2004.

Appellant filed a recurrence of disability on November 3, 2009 alleging that he sustained pain in his right knee on September 1, 2008. He attributed his knee pain to walking, climbing, kneeling and driving a manual transmission vehicle as an alarm technician for a private sector employer. Appellant stopped work on April 21, 2009.²

In a November 5, 2009 letter, the Office informed appellant that additional evidence was needed to establish his claim. It gave him 30 days to submit a medical report from a physician that included a complete and accurate history of injury, examination findings, diagnosis, clinical course of treatment followed, the period and extent of disability and the physician's opinion explaining the connection between his present condition and the accepted January 16, 2004 work injury. Appellant did not respond.

By decision dated December 7, 2009, the Office denied appellant's claim, finding the evidence insufficient to establish causal relationship.

In a December 16, 2009 statement, appellant noted that he worked for a private company after his federal retirement between August 25, 2008 and April 21, 2009. He asserted that job

² Appellant indicated that he filed a compensation claim for a back injury on July 14, 2005. The back claim is not before the Board on the present appeal.

duties with his new employer, namely driving a stick shift truck, aggravated his 2004 right knee injury. Appellant added that he also sustained neck and back pain and sleep apnea.

Medical records from Dr. Arif A. Shakir, a Board-certified internist, dated November 21, 28 and December 21, 2006 diagnosed various health conditions such as hypertension, coronary artery disease, angina, arrhythmia, sick sinus syndrome, gastroesophageal reflux disease and gallstones.

Appellant timely requested an oral telephonic hearing, which was held on March 2, 2010. At the hearing, he testified that he was unemployed since April 21, 2009. When counsel pointed out that no physician's report opined "a spontaneous reoccurrence of [appellant's] knee injury" and described the September 1, 2008 injury as an aggravation due to private employment, appellant responded, "That's a fair statement." Appellant indicated that he stopped work with his private employer when he was laid off.

By decision dated May 11, 2010, an Office hearing representative affirmed the December 7, 2009 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."³

An employee 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 conclusion with sound medical reasoning.⁴ Where no rationale is present, the medical evidence is of diminished probative value.⁵ 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.⁶

³ 20 C.F.R. § 10.5(x).

⁴ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁵ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001).

ANALYSIS

On April 8, 2004 the Office accepted that appellant tore his right knee lateral and medial menisci on January 16, 2004 while in the performance of duty. After undergoing a May 18, 2004 arthroscopic surgery, Dr. Cruse released him to his regular full-time work on August 23, 2004. Appellant remained at the employing establishment until his retirement on March 3, 2008. On November 3, 2009 he filed a claim for a recurrence of disability.

The Board finds that appellant has not submitted sufficient medical evidence to establish a spontaneous change in his right knee condition that resulted from his accepted injury. Although appellant alleged that he sustained right knee pain on September 1, 2008, for which he stopped work on April 21, 2009 related to the accepted January 16, 2004 injury, he did not submit any medical evidence of bridging symptoms supporting causal relationship.⁷ The Office advised him in October 20 and November 5, 2009 letters that medical evidence was needed to establish his claim. Appellant did not submit any responsive medical evidence and the Office properly denied his claim on December 7, 2009. After requesting an oral hearing, he submitted reports from Dr. Shakir dated November 21, 28 and December 21, 2006; but none of the reports address the claimed recurrence involving the right knee condition. At the March 2, 2010 hearing, appellant acknowledged that he did not provide any medical evidence demonstrating a spontaneous recurrence of disability. After the hearing, he submitted no medical evidence addressing the claimed recurrence of disability.⁸ Since appellant presented no medical evidence to support his claim of a recurrence of disability beginning April 21, 2009 causally related to the accepted January 16, 2004 work injury, he failed to establish his claim for compensation.

Appellant argues on appeal that an Office hearing representative's May 11, 2010 decision was contrary to fact and law. As stated above, he failed to submit any medical evidence of bridging symptoms supporting his recurrence of disability claim.

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of disability causally related to his accepted January 16, 2004 employment injury.

⁷ *Id.* The Board has consistently affirmed denial of recurrence of disability in the absence of documented evidence of bridging symptoms for a lengthy duration. See, e.g., *Leslie S. Pope*, 37 ECAB 798 (1986) (nine months); *Leon Harris Ford*, 31 ECAB 514 (1980) (10 years).

⁸ The factual evidence also suggests that appellant attributed his symptoms to duties in his nonfederal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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