

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

G.T., Appellant)
and) Docket No. 15-1661
DEPARTMENT OF VETERANS AFFAIRS,) Issued: November 3, 2015
VETERANS ADMINISTRATION MEDICAL)
CENTER, Reno, NV, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 3, 2015 appellant filed a timely appeal from a March 19, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability from May 1 to 12, 2014 causally related to the accepted February 21, 2010 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the March 19, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

FACTUAL HISTORY

On March 1, 2010 appellant, then a 51-year-old carpenter, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2010 he strained his left knee when he was removing snow from the premises of the employing establishment. He did not stop work.

Appellant was initially examined in the hospital by Dr. Frederick S. Drach, Board-certified in emergency medicine. In a February 22, 2010 report, Dr. Drach related that appellant injured his left knee the previous day when on a snow removal crew. Appellant noted that he continued to experience pain and difficulty ambulating. Upon examination of his left knee, Dr. Drach observed no redness, effusion, or swelling. Range of motion was full with occasional pain in the lateral joint space. Dr. Drach noted no pain in the joint space on palpation and no calf swelling or Baker's cyst. He reported that appellant had a left knee injury and advised minimal weight bearing.

OWCP accepted appellant's claim for left knee sprain and left knee chondromalacia patellae. Appellant continued to receive medical treatment from Dr. Anthony E. Twite, a Board-certified orthopedic surgeon, and Dr. William R. Ford, a Board-certified orthopedic surgeon. No medical evidence was received by OWCP from 2010 to 2014.

On May 31, 2014 appellant filed a recurrence claim alleging that on May 1, 2014 he sustained a recurrence of the February 21, 2010 employment injury. He stopped work and returned on May 12, 2014. Appellant indicated that since the original injury he had worked light duty. Appellant's supervisor noted on the claim form that appellant was given modified duty although no medical documents were provided which indicated that modified duty was necessary. The employing establishment also asserted that there was no evidence to demonstrate that his current condition was related to the February 21, 2010 employment injury.

By letter dated June 12, 2014, OWCP advised appellant that no evidence was submitted to establish his recurrence claim. It requested that he submit additional evidence to substantiate the factual elements of his claim and additional medical evidence to establish that he was unable to work as a result of his February 21, 2010 employment injury.

On March 2, 2014 appellant underwent a magnetic resonance imaging (MRI) scan by Dr. Mitchell N. Terrill, a Board-certified diagnostic radiologist. He reported that appellant had a tear of the medial meniscus with displacement from midline and small associated contusion, intrameniscal degeneration of lateral meniscus, and low grade chondromalacia patella.

In a March 14, 2014 report, Dr. William J. Gray, a Board-certified orthopedic surgeon, related that appellant worked as a maintenance man and injured his left knee three or four years ago. He noted that appellant now complained of a three-month long history of knee clicking and feeling very unstable. Appellant denied any injury or new pain but explained that he had lost confidence in his knee. Upon examination of the left knee, Dr. Gray observed tenderness along both the medial and lateral joint line. Range of motion was to 130 degrees. Dr. Gray indicated that there was no significant edema or effusion. Medial McMurray's test was positive. Dr. Gray reviewed appellant's history and noted that a March 2, 2014 MRI scan of the left knee revealed evidence of chondrocalcinosis and a tear of the posterior horn of the medial meniscus. He

diagnosed symptomatic medial meniscus tear and left knee chondrocalcinosis. Dr. Gray indicated that appellant was not experiencing much pain but was concerned about the sensation of instability. He reported that appellant decided to proceed with surgery.

On May 2, 2014 appellant underwent left knee arthroscopy and partial medial meniscectomy.

In an August 7, 2014 decision, OWCP denied appellant's recurrence of disability claim. It found that the medical evidence was insufficient to establish that he had disability due to a change or worsening of his accepted February 21, 2010 work-related conditions.

On August 19, 2014 OWCP received appellant's request for a review of the written record by an OWCP hearing representative. Appellant stated that from the time of his February 21, 2010 employment-related knee injury until his most recent surgery in May 2014 he was not informed by any of his supervisors or given any information regarding his rights and procedures for workers' compensation. He indicated that he was enclosing a CD of his records regarding his February 21, 2010 knee injury.

By decision dated March 19, 2015, an OWCP hearing representative affirmed the August 7, 2014 decision. He noted that appellant had submitted a CD which contained the March 2, 2014 MRI scan study. The hearing representative concluded that appellant had not met his burden of proof to establish that his current left knee conditions were causally related to the accepted employment injury.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between his recurrence of disability and the accepted employment injury. This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

OWCP accepted that on February 21, 2010 appellant sustained a left knee sprain and chondromalacia patellae as a result of removing snow from the employing establishment's

³ 20 C.F.R. § 10.5(x).

⁴ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

premises.⁵ On May 1, 2014 appellant filed a recurrence of disability claim alleging that he did not work from May 1 to 12, 2014 as a result of his February 21, 2010 employment injury. OWCP denied his claim finding insufficient medical evidence to establish that his current left knee condition and inability to work from May 1 to 12, 2014 was a result of the February 21, 2010 employment injury.

The Board finds that appellant has not established that he sustained a recurrence of disability from May 1 to 12, 2014 causally related to his accepted employment injury.

Appellant received medical treatment from Dr. Gray who noted in a March 14, 2014 report that appellant worked as a maintenance man and injured his left knee three or four years ago. Dr. Gray indicated that appellant was not claiming a new injury. Upon examination of the left knee, he observed tenderness along both the medial and lateral joint line and range of motion to 130 degrees. Dr. Gray reported that there was no significant edema or effusion. A McMurray's test was positive. Dr. Gray diagnosed symptomatic medial meniscus tear and left knee chondrocalcinosis.

The Board notes that Dr. Gray provided examination findings and medical diagnoses which were different than the accepted left knee conditions. Dr. Gray did not discuss whether appellant's current diagnoses and his inability to work were causally related to the February 21, 2010 employment injury. He also did not provide an opinion as to whether appellant's accepted left knee condition had worsened to cause the newly diagnosed conditions and inability to work. As such, Dr. Gray has not substantiated that appellant sustained a spontaneous change in the accepted medical conditions, causing disability from work.

Similarly, Dr. Terrill, in the March 2, 2014 MRI scan report, did not provide any opinion on the cause of the diagnosed tear of appellant's left knee medical meniscus, intrameniscal degeneration of the lateral meniscus, and low grade chondromalacia. He also did not provide any opinion regarding appellant's inability to work. As previously noted, when establishing a recurrence of disability an employee has the burden of proof to demonstrate that he or she has a disabling condition which was caused by the accepted injury.⁶ Appellant has not provided any such evidence in this case. Therefore, the Board finds that appellant did not meet his burden of proof to establish that he was unable to work from May 1 to 12, 2014 due to his February 21, 2010 employment injury.

On appeal appellant described the February 21, 2010 employment injury. He asserted that the VA medical records demonstrated that he continued to have problems with his knees and

⁵ While appellant performed modified work duties following the accepted injury, the employing establishment has explained that medical evidence had never been submitted which substantiated a need for light work. The term "recurrence" also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed appellant's established physical limitations. The record does not substantiate that appellant's light-duty assignment was made specifically to accommodate appellant's work-related physical restrictions. See *L.F.*, Docket No. 15-1069 (issued August 12, 2015).

⁶ *Supra* note 4.

required shots and anti-inflammatory drugs in order to work. Appellant alleged that his left knee worsened so he sought treatment from Dr. Gray who concluded that there was sufficient damage done to his knee from the February 21, 2010 employment injury to require surgery. He also noted that he was unaware that he had to make sure his employing establishment knew that his claim was not settled. Although appellant has asserted that Dr. Gray determined that his current knee condition was related to the February 2010 left knee injury, he does not provide any medical evidence to establish this assertion. As previously noted above, Dr. Gray's March 14, 2014 report is insufficient to establish that appellant was unable to work from May 1 to 12, 2014 causally related to the February 21, 2010 employment injury. Appellant also received treatments from Drs. Drach, Twite, and Ford. None of their reports address the issue of causation relating his symptoms to his original injury on March 1, 2010.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability from May 1 to 12, 2014 causally related to the February 21, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board