

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

_____)	
D.T., Appellant)	
)	
and)	Docket No. 19-0399
)	Issued: August 1, 2019
DEPARTMENT OF THE INTERIOR,)	
NATIONAL PARK SERVICE, Washington, DC,)	
Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 December 13, 2018 appellant, through counsel, filed a timely appeal from an October 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability on October 22, 2000, April 4, 2007, and January 7, 2008, causally related to his accepted August 25, 1989 employment injury.

FACTUAL HISTORY

On August 26, 1989 appellant, then a 41-year-old maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on August 25, 1989 when a trash truck rolled back and pinned him against a fence while in the performance of duty. He stopped work on that date. OWCP accepted the claim for right knee contusion, right hip strain, and left ankle contusion and abrasion. It paid medical benefits and wage-loss compensation benefits on the periodic rolls effective November 19, 1989.

On March 12, 1990 appellant returned to full-time, limited-duty work.

The evidence of record indicates that appellant stopped working for the employing establishment in 1993 and did not return to federal employment. Appellant continued to receive periodic medical treatment.

On November 5, 2015 appellant filed a recurrence claim (Form CA-2a) alleging that he sustained a recurrence of disability due to his accepted August 25, 1989 employment injury. He described his condition as right knee aches and fails, walks with a limp, lower back pain, left thigh numb, and subject to temperature changes. In an attached statement, appellant related that his first recurrence affected his knee on October 22, 2000 while he was incarcerated at the Maryland Division of Corrections (MDOC). He indicated that the second recurrence involved his back on April 4, 2007 while he was incarcerated at the Federal Bureau of Prisons (BOP). Appellant reported a third recurrence involving his back and knee on January 7, 2008 while incarcerated at the BOP.³

In a letter dated November 5, 2015, appellant related that while employed by the employing establishment his duties required operating large trucks and assisting in maintenance of park facilities. He noted that he left the employing establishment in 1993 and contended that he could no longer seek employment due to his August 25, 1989 employment injury. Appellant explained that when he returned to Maryland in 2011 he attempted to obtain a Commercial Driver's License, but was informed by his primary care provider that he would not pass the Department of Transportation (DOT) physical due to the deteriorating and unstable condition of his right leg.

Appellant submitted several medical reports from 1989, including: an August 29, 1989 right knee magnetic resonance imaging (MRI) scan; a November 29, 1989 operative report; examination reports dated October 27, 1989 to June 29, 1990 by Dr. George J. Schonholtz, a Board-certified orthopedic surgeon; a September 18, 1989 duty status report by an unknown

³ In Part C of the Form CA-2a, appellant listed his periods and places of employment as the MDOC from March 1994 to April 2002, Lambert Property Management from June to November 2002, and the Federal BOP from March 2003 to November 2011.

provider; an October 2, 1989 orthopedic report by Dr. Harvey Mininberg, an orthopedic surgeon; and handwritten examinations notes and sick request forms dated February 16 to March 12, 2000 from the health unit of the MDOC.

OWCP also received several diagnostic tests, including a July 11, 2012 right knee x-ray report, an April 23, 2013 lumbar spine x-ray report, and October 31, 2015 right knee radiology report.

In a November 30, 2015 development letter, OWCP advised appellant that additional evidence was needed to establish his recurrence claim, including an attending physician's opinion supported by medical rationale explaining how his claimed recurrence of disability was due to a worsening of his original injury, without an intervening cause or new exposure. It also requested that he complete an attached questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence.

On December 16, 2015 OWCP received appellant's completed questionnaire. Appellant indicated that the first recurrence occurred between 1999 and 2000 at MDOC when he changed direction too quickly while carrying a trash bag and his knee went out. He noted that he was out of work for three weeks. Appellant described that the second recurrence occurred in 2002 while he worked as a truck driver and his knee gave out when climbing in and out of his truck. He reported that he was out of work for two weeks. Appellant related that the third recurrence occurred in 2015 when he was carrying groceries up the stairs and his knee gave out. He indicated that he was in bed for three days. Appellant explained that he believed his current disability was related to his original injury because at the time of the August 25, 1989 employment injury he was informed by his primary physician that his condition would progressively worsen. He related that every primary caregiver since then had told him that his knee condition would deteriorate to the point that it would be a disability.

Appellant also submitted several additional medical lab reports, handwritten chart notes, sick request forms, health forms, and work status notes dated from 1994 through 2002 from the MDOC health department. The notes and forms indicate that while he was incarcerated he continued to experience right knee symptoms and received medical treatment for his right knee.

In a September 28, 2015 examination note, Dr. Annette Hall-Finney, an internist, reviewed appellant's history and noted that a right knee x-ray showed degenerative changes and chondromalacia. Upon examination of his right lower extremity, she observed positive crepitus and pain with flexion of the right knee and mild pain with range of motion of the ankle. Dr. Hall-Finney diagnosed right knee degenerative joint disease, status post-trauma. She related that appellant reported that he was unable to work as a truck driver because he could not pass the DOT physical. Appellant noted that he was unable to climb and unable to lift over 50 pounds.

In a December 24, 2015 report, Dr. Hall-Finney indicated that appellant was seen for complaints of chronic right knee pain that had been worsening over the years, right hip pain with climbing stairs, and right ankle pain with prolonged walking. Appellant indicated that, after the 1989 employment injury, he underwent arthroscopic surgery and had damaged cartilage removed. He related that he had developed arthritis in the knee over the years. Dr. Hall-Finney noted her examination findings from September 28, 2015. She diagnosed right knee degenerative joint

disease. Dr. Hall-Finney noted: “patient reports this stemmed from an injury in 1989 for which [appellant] underwent arthroscopic surgery and removal of damaged cartilage.”

By decision dated February 8, 2016, OWCP denied appellant’s recurrence of disability claim finding that the medical evidence of record was insufficient to establish a recurrence of disability due to his accepted August 25, 1989 employment injury. It determined that the medical reports submitted in support of his claim indicated that he had degenerative changes and arthritis, but did not establish an objective worsening of his August 25, 1989 employment injury.

On March 3, 2016 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.⁴

OWCP received a March 14, 2016 right knee radiology report which showed moderate degenerative changes and chondrocalcinosis.

By decision dated September 20, 2016, an OWCP hearing representative affirmed the February 8, 2016 decision denying appellant’s recurrence claim. She determined that the medical evidence of record did not support a spontaneous material worsening of his accepted August 25, 1989 employment injury without an intervening cause or exposure to a new work environment.

On August 11, 2017 appellant, through counsel, requested reconsideration. Counsel alleged that OWCP failed to fully develop and adjudicate the issue of whether appellant’s right knee injury and subsequent disability, if any, was causally related to the accepted August 25, 1989 employment injury.

By decision dated November 15, 2017, OWCP affirmed the September 20, 2016 decision in part and modified the decision in part. It found that the medical evidence of record was sufficient to establish that appellant’s right knee medial meniscus tear was causally related to the accepted August 25, 1989 employment injury. However, OWCP also found that he had not met his burden of proof to establish a recurrence of disability as the medical evidence did not demonstrate a spontaneous worsening/change of his August 25, 1989 employment injury.

By separate decision of even date, OWCP expanded acceptance of appellant’s claim to include right knee medial meniscus tear.

On July 18, 2018 appellant, through counsel, requested reconsideration.

In a July 1, 2018 report, Dr. Robert W. Macht, a general surgeon, described the August 25, 1989 employment injury and the medical treatment that appellant had received. He provided examination findings and diagnosed right ankle contusion and postoperative state of right knee with medial meniscus tear. Dr. Macht provided a rating of permanent impairment pursuant to the

⁴ Appellant indicated that he was requesting both an oral hearing and a review of the written record. A representative of the Branch of Hearings and Review conducted a review of the written record.

American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵

By decision dated October 16, 2018, OWCP denied modification of the November 15, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁸ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁹

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.¹⁰ This term also means an inability to work 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force) or when the physical requirements of such an assignment are altered such that they exceed the employee's physical limitations.¹¹

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹²

⁵ A.M.A., *Guides* (6th ed. 2009).

⁶ *Supra* note 2.

⁷ See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁸ See *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *id.*

⁹ See *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ 20 C.F.R. § 10.5(x).

¹¹ *Id.*

¹² See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, *supra* note 9; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability on October 22, 2000, April 4, 2007, and January 7, 2008, causally related to his accepted August 25, 1989 employment injury.

OWCP accepted appellant's traumatic injury claim for right knee contusion, right knee medial meniscus tear, right hip strain, and left ankle contusion and abrasion. As appellant has not alleged a change in the nature and extent of his light-duty job requirements, he must, therefore, provide medical evidence establishing that he was disabled due to a worsening of his accepted August 25, 1989 employment injury.¹³

The evidence of record reveals that appellant stopped working for the employing establishment in 1993. He was incarcerated in MDOC from March 1994 to April 2002 and worked in private employment from June to November 2002. Appellant claimed that he sustained a recurrence of disability due to his right knee between 1999 and 2000 while incarcerated in the MDOC, in 2002 while he worked as a truck driver, and again in 2015 when he was carrying groceries up the stairs.

Much of the evidence relevant to the claimed dates of disability include handwritten examination notes, medical lab reports, health forms and sick request forms dated from 1999 to 2002 from the MDOC health department. These various documents, however, have illegible signatures or, otherwise, do not contain any other evidence identifying the medical provider. Reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.¹⁴ These reports, therefore, fail to establish appellant's recurrence claim.

Appellant received medical treatment from Dr. Hall-Finney. In a September 28, 2015 examination note, Dr. Hall-Finney conducted an examination and diagnosed right knee degenerative joint disease, status post-trauma. She related that appellant reported that he was unable to work as a truck driver. In a December 24, 2015 report, Dr. Hall-Finney further indicated that he believed his current right knee symptoms and inability to work resulted from his 1989 employment injury. The Board finds that she did not specifically explain whether appellant sustained a recurrence of disability on the claimed dates causally related to his accepted August 25, 1989 employment injury.¹⁵ On the contrary, Dr. Hall-Finney merely repeated his belief that his current degenerative knee condition and inability to work was due to his accepted August 25, 1989 employment injury.¹⁶ Her reports, therefore, are also insufficient to establish appellant's claim.

¹³ *Supra* note 10.

¹⁴ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

¹⁵ *See L.S.*, Docket No. 18-1494 (issued April 12, 2019); *D.H.*, Docket No. 18-0129 (issued July 23, 2018).

¹⁶ *See P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

In a July 1, 2018 report, Dr. Macht noted the August 25, 1989 employment injury and diagnosed right ankle contusion and postoperative state of right knee with medial meniscus tear. He did not, however, provide an opinion on disability or otherwise provide medical rationale relating appellant's accepted employment injury to any periods of disability.¹⁷

Similarly, the additional diagnostic reports such as a July 11, 2012 right knee x-ray report, an April 23, 2013 lumbar spine x-ray report, and the October 31, 2015 right knee radiology report are insufficient to establish a recurrence of disability as they do not specifically address the extent of any disability or how any of appellant's current conditions were causally related to the original employment injury.¹⁸

On appeal, counsel argued that OWCP failed to adjudicate the claim in accordance with the proper standard of causation and failed to give due deference to the findings of the attending physician. He has not, however, provided any evidence to support his arguments. The Board further notes that to the extent that appellant has described that the claimed dates of recurrence occurred between 1999 and 2000 while he was at MDOC carrying a trash bag, in 2002 while working as a truck driver, and in 2015 while he was carrying groceries up the stairs, his inability to work appears to have resulted from an intervening cause or injury. As explained above, a recurrence of disability is caused by a spontaneous change in a medical condition without an intervening injury or new exposure to the work environment.¹⁹

As noted, appellant must submit rationalized medical evidence supporting causal relationship between the disabling conditions and the accepted injuries. None of the medical evidence of record provided a discussion of how his accepted employment conditions caused total disability during the claimed periods of disability.²⁰ Appellant, therefore, did not meet his burden of proof to establish his claim.³⁴

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 not met his burden of proof to establish a recurrence of total disability on October 22, 2000, April 4, 2007, and January 7, 2008, causally related to his accepted August 25, 1989 employment injury.

¹⁷ See *F.U.*, Docket No. 18-0078 (issued June 6, 2018); *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

¹⁸ *D.L.*, Docket No. 18-1640 (issued May 3, 2019). The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions. See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁹ *Supra* note 10; see also *N.M.*, Docket No. 18-1584 (issued March 15, 2019).

²⁰ See *W.H.*, Docket No. 17-1390 (issued April 23, 2018).

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2019
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