

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

I.M., Appellant

and

**DEPARTMENT OF THE NAVY, NAVY
COMMISSARY STORE, Great Lakes, IL,
Employer**

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**Docket No. 12-1199
Issued: December 13, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 10, 2012 appellant filed a timely appeal from the February 23, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for a recurrence of a medical condition. 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of his accepted right knee condition.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 25, 1981 appellant, then a 28-year-old clerk, sustained a traumatic injury to his right knee while stocking potatoes at work.² OWCP accepted his claim for chondromalacia patella of the right knee.³ In a decision dated March 6, 1986, it terminated appellant's continuing compensation benefits on the grounds that he was capable of performing the duties of his date-of-injury job. There is no record of medical treatment for his right knee from March 27, 1987 until December 2008.⁴

On February 20, 2009 appellant requested that his claim be reopened for treatment of his right knee condition. In a letter dated March 12, 2010, OWCP informed him that the information submitted was insufficient to establish that his current condition was causally related to the accepted right knee injury. It advised appellant to submit a Form CA-2a if he believed that he had experienced a recurrence of disability, as well as medical evidence to support his claim. Appellant did not submit any additional evidence in support of his claim.

By decision dated April 23, 2012, OWCP denied appellant's request to reopen his claim, finding that he had submitted insufficient factual or medical evidence to support continuing residuals of his right knee condition.

On May 27, 2010 appellant requested a review of the written record. He did not submit any evidence or argument in support of his request.

By decision dated August 12, 2010, an OWCP hearing representative affirmed the April 23, 2010 decision on the grounds that there was no medical evidence of record to support that appellant suffered from a condition causally related to his accepted right knee injury.

On August 13, 2010 appellant requested reconsideration. He contended that OWCP had discriminated against him because of his name, thereby aggravating his mental illness. Appellant argued that he had been denied due process under the 14th Amendment. He submitted statements dated March 23 and June 9, 2010, in which he stated that he is mentally impaired due to a brain injury. Appellant also contended that the decision denying his claim was arbitrary and irrational.

Appellant submitted a December 24, 2008 report from Dr. Sepehr Khonsari, a Board-certified physiatrist, which was co-signed by appellant's treating physician, Dr. Ronald K. Takemoto, a Board-certified physiatrist. On examination of the right knee, there was tenderness

² This case was previously before the Board. In an order dated November 25, 2011, the Board set aside the October 28, 2010 decision on the grounds that the claims examiner had not reviewed all evidence of record prior to issuing his decision. The case was remanded for consideration of the evidence and a *de novo* decision. Docket No. 11-1138 (issued November 25, 2011).

³ Appellant's January 8, 1982 claim for a back injury in File No. xxxxxx429 was accepted for cervical and lumbar strain.

⁴ In a March 27, 1987 report, Dr. A.W. Bhatti, a treating physician, noted that appellant had arthroscopic surgery in 1982. At the time of his examination in 1987, x-rays showed a possible tear at the posterior horn of the medial meniscus.

over the medial joint line. Review of a magnetic resonance imaging (MRI) scan of the right knee reflected a medial meniscal tear; partial tear or sprain of the anterior cruciate ligament (ACL); grade 4 chondromalacia of the medial patella; and grade 3 chondromalacia of the lateral patella. The record contains a copy of a December 16, 2008 report of an MRI scan of the right knee and a December 24, 2008 report of an x-ray of the right knee.

In an April 27, 2009 progress notes, Dr. Sunny C.F. Cheung, a Board-certified orthopedic surgeon, diagnosed mild right knee degenerative joint disease. Appellant reported that he had injured his right knee in 1981, had undergone arthroscopic patella debridement and had been experiencing pain ever since.

In reports dated March 1, 2010, Dr. Takemoto diagnosed degenerative joint disease and knee arthritis. He noted tenderness over the medial joint line of the right knee. Dr. Takemoto indicated by placing a checkmark in the “yes” box his belief that appellant’s condition was caused or aggravated by his employment activities. In a section entitled “history of injury,” he stated, “knee injury.”

Appellant submitted notes dated April 16, 2010 from Karen Yamada, nurse practitioner, which were co-signed by Dr. James Strazzeri, a Board-certified orthopedic surgeon. The report reflected a diagnosis of mild right knee degenerative joint disease. Examination of the right knee revealed no effusion, tenderness over the joint line, crepitus and decreased sensation.

In May 4, 2010 progress notes, Dr. Takemoto diagnosed knee arthralgia, lower back pain and post-traumatic stress disorder. The record also contains psychotherapy notes from Freddie L. DeCastro dated July 7, 2010.

By decision dated October 28, 2010, OWCP denied modification of the August 12, 2010 decision, on the grounds that the medical evidence was insufficient to show that his current medical condition was due to the accepted work injury. It found that appellant’s mental condition had no relevance to his accepted knee condition.

In an order dated November 25, 2011, the Board set aside the October 28, 2010 decision on the grounds that the claims examiner had not reviewed all evidence of record prior to issuing his decision. The case was remanded for consideration of the evidence and a *de novo* decision.⁵

By decision dated February 23, 2012, OWCP denied modification of the August 12, 2010 decision, finding that the evidence was insufficient to establish that appellant’s current condition was causally related to his accepted knee injury.

⁵ See *supra* note 2.

LEGAL PRECEDENT

Appellant has the burden of establishing that he sustained a recurrence of a medical condition⁶ that is causally related to his accepted employment injury. To meet his burden, appellant must furnish 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 medical rationale.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.⁹

OWCP'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) PRN 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.¹⁰

ANALYSIS

Appellant has not met his burden of proof to establish that he sustained a recurrence of a medical condition. OWCP accepted appellant's 1981 traumatic injury claim for chondromalacia patella of the right knee. Appellant has asked that his claim be reopened for treatment. However, he has failed to produce any rationalized medical opinion evidence establishing that he required further medical treatment for a continuing employment-related condition.

On March 6, 1986 OWCP terminated appellant's continuing compensation benefits on the grounds that he was capable of performing the duties of his date-of-injury job. There is no

⁶ "Recurrence of 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. 20 C.F.R. § 10.5(y) (2002).

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁸ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

⁹ 20 C.F.R. § 10.5(y).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id.*, Chapter 2.1500.5(a).

record of medical treatment for his right knee from March 27, 1987 until December 24, 2008. As computed from the date of the last physical examination on March 27, 1987, the treatment on December 24, 2008 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant was responsible for submitting an attending physician's report containing a description of the objective findings and supporting causal relationship between his current condition and the previously accepted knee injury.¹¹ He had the burden of submitting sufficient medical evidence to document the need for further medical treatment.¹² Appellant did not submit the evidence required and thus failed to establish a need for continuing medical treatment.¹³

Dr. Takemoto's reports do not establish that appellant's current knee condition was causally related to the accepted employment injury. A December 24, 2008 report co-signed by Dr. Takemoto provided examination findings and results of a recent MRI scan of the right knee, which reflected a medial meniscal tear; partial tear or sprain of the ACL; grade 4 chondromalacia of the medial patella; and grade 3 chondromalacia of the lateral patella. The report, however, did not contain an opinion that appellant's current condition was causally related to the original, accepted right knee injury. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴

On March 1, 2010 Dr. Takemoto diagnosed degenerative joint disease and knee arthritis. He indicated by placing a checkmark in the "yes" box his belief that appellant's condition was caused or aggravated by his employment activities. In a section entitled "history of injury," Dr. Takemoto stated, "knee injury." Medical conclusions unsupported by rationale are of little probative value.¹⁵ The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.¹⁶ Additionally, Dr. Takemoto did not provide findings on examination or indicate that his opinion was based on a review of a complete factual and medical background of the claimant. For all of these reasons, his reports are of diminished probative value. Dr. Takemoto's progress notes, which do not provide an opinion on the cause of appellant's current condition, are also insufficient to establish appellant's claim.

On April 27, 2009 Dr. Cheung diagnosed mild right knee degenerative joint disease and related appellant's report that he had injured his right knee in 1981, had undergone arthroscopic patella debridement and had been experiencing pain ever since. Although she refers to the 1981 injury, as noted by appellant, Dr. Cheung did not express his own opinion that the current knee

¹¹ Federal (FECA) Procedure Manual, *id.*

¹² 20 C.F.R. § 10.5(y).

¹³ *See J.F.*, 58 ECAB 124 (2006).

¹⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁵ *Willa M. Frazier*, 55 ECAB 379 (2004).

¹⁶ *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

condition was causally related to the original injury. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between her claimed condition and her employment.¹⁷

April 16, 2010 notes from Ms. Yamada, nurse practitioner, which were co-signed by Dr. Strazzeri, provided examination findings and reflected a diagnosis of mild right knee degenerative joint disease. They did not contain a history of injury and treatment or an opinion as to the cause of appellant's diagnosed condition. Therefore, they are of limited probative value. Reports of MRI scans and x-rays, which do not contain an opinion as to the cause of appellant's condition, are also of diminished probative value and are insufficient to establish appellant's claim.¹⁸

The Board finds that appellant has failed to provide any rationalized medical opinion evidence establishing that he required further medical treatment for a 20-year-old employment-related injury.

On appeal, appellant asserts that OWCP failed to "meet its statutory mandate" "failed to make findings of facts or conclusions of law" and did not request an independent medical examination. He chiefly contends that OWCP failed to meet its burden of proof. The burden in this case, however, is appellant's. For reasons stated, the Board finds that he has failed to meet his burden of proof to establish that he sustained a recurrence of his accepted right knee condition.

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 did not meet his burden of proof to establish that he sustained a recurrence of a medical condition that was causally related to his accepted right knee injury.

¹⁷ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁸ *See Mary E. Marshall*, 56 ECAB 420 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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