U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENNA LEE DULSKY and DEPARTMENT OF THE AIR FORCE, WRIGHT PATTERSON AIR FORCE BASE, Ohio

Docket No. 96-973; Submitted on the Record;
Issued January 26, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that her left medial meniscus condition is causally related to factors of her employment.

In the instant case, on February 22, 1993, appellant, then a 36-year-old quality assurance representative, filed a claim for occupational disease alleging that she sustained left knee tendinitis as a result of sitting cross-legged in her desk chair. On April 13, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for left leg tendinitis of the hamstring and back of knee. Appellant did not stop work.

Subsequently, the Office received an unsigned April 12, 1993 treatment note from Dr. Mark A. Couch, a Board-certified family practitioner and one of appellant's attending physicians, in which the physician noted that appellant reported knee pain for the past two to three months after feeling her knee pop when she got up from a chair at work. Dr. Couch diagnosed a torn medial meniscus.

Appellant additionally submitted a May 26, 1993 medical report from attending physician Dr. Dennis M. Brown, a Board-certified orthopedic surgeon, who noted appellant's history of injury as having occurred when she twisted her knee at work. Dr. Brown stated that recent a magnetic resonance imaging (MRI) scan confirmed the presence of a torn meniscus and discussed the need for arthroscopic surgery.

In a letter dated May 27, 1993, Dr. Brown asked the Office to update appellant's compensation claim to include, as an industrial injury, internal derangement of the left knee with torn lateral meniscus.

On June 11, 1993 appellant underwent surgical repair of her torn meniscus.

In a letter dated June 22, 1993, the Office notified appellant that the medical evidence of record was insufficient to accept an additional condition of torn meniscus because there was no

evidence demonstrating a causal relationship between the diagnosed condition and factors of her employment. The Office requested that appellant submit additional factual and medical information in support of her claim.

By letter dated July 12, 1993, appellant responded to the Office's request for information and submitted additional factual and medical evidence on the issue of causal relationship.

In a report dated July 20, 1993, Dr. Brown stated that approximately four months prior, appellant twisted her knee getting up out of a chair and felt something catch in her knee, accompanied by a sharp pain. A subsequent MRI scan revealed a torn medial meniscus and anterior synovitis in the medial compartment of her left knee. He further stated:

> "It is difficult to make a determination if there is a causal relationship between the diagnosis and the reporting of her pain. Meniscal tears occur either from repetitive loading with full weight bearing in a squatting position or with sudden rotating or decelerating type force and torque about the knee. I do not see evidence of either of these type injuries occurring. Simply arising out of a chair usually does not cause a meniscus to tear; rather, it can take a torn meniscal fragment and pinch it in the joint, causing the initial symptoms of pain. I would agree that not having any causal episode prior to her reporting of pain, the initial locking episode and pinching of a torn meniscal piece did occur when she got up out of her chair. Whether this is due to an occupational injury or the fact that the first meniscal tear signs occurred at work, I am not able to say."

In a decision dated August 12, 1994, the Office denied appellant's claim on the grounds that the medical evidence submitted was insufficient to support her claim.

By letter dated August 10, 1995, appellant requested reconsideration and submitted additional medical evidence.

In a letter dated August 1, 1995, Dr. Brown stated that he did not consider appellant's work activities to be the direct cause of the meniscal tear, but stated:

> "In reviewing three possible scenarios for causal connection of left knee pain and eventual diagnosis of torn meniscus and repair of the meniscus, I find that her most likely scenario is an aggravation of a preexisting condition such as a torn posterior horn of her left lateral meniscus aggravated by her work sitting position and activities. This had to be a substantial aggravation as she had no pain or complaints in her knees prior to this episode and the change in sitting position for one month prior to this time…. I am surprised, however, that her Workers' Compensation claim was denied without considering this as a substantial aggravation of a preexisting condition which may have been completely asymptomatic until she changed job positions and activities."

In a letter dated August 9, 1995, Dr. Couch stated, in pertinent part:

> "As per Dr. Dennis Brown's opinion, we cannot determine an exact time of injury which could be associated with [appellant's] torn meniscus. It is very likely, however, that continued walking and changing from a sitting to standing position would substantially aggravate an already existing tear in the meniscu.… It is my opinion that [appellant] did indeed have the tendinitis problem of her left knee which was secondary to her seat at the workplace. I also believe that it will be impossible to determine the exact time of origin of her meniscal tear. However, I believe that the tear was substantially aggravated by her work duties through the spring of 1993, and finally did worsen enough to require surgical repair."

By decision dated November 3, 1995, the Office denied appellant's claim on the grounds that the evidence submitted was insufficiently persuasive to establish that appellant's sedentary position of sitting at a computer caused her torn meniscus and, therefore was insufficient to warrant modification of the prior decision.

The Board finds that this case is not in posture for a determination of whether appellant sustained an injury in the performance of duty. Further development of the medical evidence is required.

An employee seeking benefits under the Federal Employees' Compensation Act [1] has the burden of proof to establish the essential elements of her claim.[2] When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[3]

Causal relationship is a medical issue,[4] and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty,[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incidents or factors of employment.[7]

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[1] 5 U.S.C. § 8101 *et seq.*

[2] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

[3] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

Proceedings under the Act, however, are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[8]

In support of her claim, appellant submitted several medical reports diagnosing her condition as a torn medial meniscus and stating that while it is impossible to determine whether her employment duties caused the initial injury, the employment duties "most likely" caused, or "very likely" substantially aggravated a preexisting meniscal tear, causing it to worsen to the point where it required surgical repair.

Although none of the medical reports of record, including those of Drs. Brown and Couch, contain sufficiently definite opinions to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that appellant's need for surgical repair of a torn left medial meniscus was causally related to factors of her employment, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[9] Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for an examination and a rationalized medical opinion regarding whether appellant's need for left knee surgery was causally related to her federal employment duties. After such development as it deems necessary, the Office shall issue a *de novo* decision.

[8] *William J. Cantrell*, 34 ECAB 1223 (1983).

[9] *Horace Langhorne*, 29 ECAB 820 (1978).

The decision of the Office of Workers' Compensation Programs dated November 3, 1995 is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.
January 26, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member