

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GUILLERMO F. ROCHA and DEPARTMENT OF THE AIR FORCE,  
AIR FORCE SPACE COMMAND,  
VANDENBURG AIR FORCE BASE, Calif.

*Docket No. 96-1198; Submitted on the Record;  
Issued June 22, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury to his left knee causally related to his December 14, 1981 employment-related right knee injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On December 14, 1981 appellant, then a 59-year-old crane foreman, sustained a laceration of the medial meniscus of the right knee and acceleration of degenerative changes of the right knee in the performance of duty. He underwent surgery on April 8, 1982 and again on October 6, 1992. Appellant subsequently received two schedule awards, for a 31 percent and 22 percent permanent impairment of the right leg.

In a report dated June 26, 1995, Dr. David D. Book, appellant's attending Board-certified orthopedic surgeon, provided findings on examination and the results of x-rays and diagnosed severe bilateral traumatic arthritis of both knees and recommended that appellant have bilateral total knee replacements.

By letter dated August 31, 1995, the Office advised Dr. Book that surgery was authorized for a right knee replacement but stated that surgery could not be authorized for the left knee absent an explanation showing a causal relationship between the left knee condition and the accepted 1982 right knee injury.

In a letter dated September 26, 1995, Dr. Book noted that the Office had asked him the nature of the relationship between appellant's left knee degenerative arthritis and his employment injury to the right knee and he stated, "Actually, I do not think there is any direct relationship. There is some degree of indirect relationship by the fact that he has had to favor his right knee through all these years." He stated that he had reviewed his chart notes from the right knee injury in 1982 and noted that appellant did not complain of any problems with the left knee

at that time. Dr. Book stated that at the time of the right knee injury the diagnosis was a right medial meniscal laceration.

By decision dated December 15, 1995, the Office denied appellant's request for authorization for left knee surgery on the grounds that the medical evidence failed to establish causal relationship between appellant's left knee condition and his December 14, 1981 employment injury.

By letter postmarked January 17, 1996, appellant requested an oral hearing before an Office hearing representative.

By decision dated February 8, 1996, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that his request was not timely made within the 30 days of the December 15, 1995 decision and that the issue of causal relationship could be equally well resolved through a reconsideration request and the submission of new evidence.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury to his left knee causally related to his December 14, 1981 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>1</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.<sup>2</sup> As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>3</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>4</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>5</sup>

In this case, appellant sustained a laceration of the medial meniscus of the right knee and acceleration of degenerative changes of the right knee on December 14, 1981 in the performance of duty. He subsequently claimed that he sustained a left knee condition which he attributed to the 1981 injury and he requested authorization for surgery.

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson-Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>2</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>4</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>5</sup> *Ern Reynolds*, 45 ECAB 690 (1994); *James Mack*, 43 ECAB 321 (1991).

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The Board further finds that the Office properly denied appellant's request for a hearing under section 8124.

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.<sup>6</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>7</sup> As appellant's request for a hearing was postmarked January 17, 1996, more than 30 days after the Office's December 15, 1995 decision, appellant was not entitled to a hearing as a matter of right. The Office noted that the issue in this case, causal relationship, could be equally well resolved through a reconsideration request and the submission of new evidence. Therefore, the Office properly denied appellant's untimely request for an oral hearing.

The decisions of the Office of Workers' Compensation Programs dated February 8, 1996 and December 15, 1995 are affirmed.

Dated, Washington, D.C.  
June 22, 1998

Michael J. Walsh  
Chairman

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<sup>6</sup> See 5 U.S.C. § 8124(a).

<sup>7</sup> See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990). See also 20 C.F.R. § 10.131.

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member