

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY R. THOMPSON and DEPARTMENT OF THE NAVY,
COMMANDER PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI

*Docket No. 98-630; Submitted on the Record;
Issued December 29, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability, due to his September 14, 1990 employment injury, commencing March 27, 1996.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability due to his September 14, 1990 employment injury, commencing March 27, 1996.

The Office accepted appellant's claim for bilateral knee strains, meniscus tear and bilateral arthroscopy. The Office awarded appellant a schedule award for a permanent impairment of 30 percent of the left leg and 31 percent of the right leg. After the September 14, 1990 employment injury, appellant held various jobs performing light duty although, on October 4, 1992 and on November 16, 1994, he was temporarily promoted and during the time of these promotions he did not have restrictions.

On April 2, 1996 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that he sustained a recurrence of disability on March 27, 1996 due to the September 14, 1990 employment injury. Appellant missed work from March 27 through April 2, 1996.

Medical evidence appellant submitted to support his claim included a medical report from his treating physician, Dr. W. Douglas B. Hiller, an orthopedic surgeon, dated March 27, 1996 and a work slip from Kaiser Permanente dated March 28, 1996 stating that appellant was unable to work from March 28 to April 3, 1996 and could return to limited duty on April 3, 1996. In his March 27, 1996 report, Dr. Hiller described appellant's symptoms of "a burning pain over the left knee, which has been progressing," performed a physical examination showing mild tenderness over the lateral plica fold of a mild degree, changed appellant's medication and recommended that appellant seek further treatment from Kaiser.

In a report dated August 26, 1996, Dr. Mark Santi, an orthopedic surgeon, performed a physical examination, diagnosed patellofemoral syndrome and stated that appellant could not return to his usual work as an electrician.

By letter dated May 7, 1996, the Office requested additional information from appellant including a detailed medical report from his treating physician containing a medically rationalized opinion as to the causal relationship between the current condition and the September 14, 1990 employment injury.

In reports dated August 15, September 30 and October 14, 1996, Dr. Chuen-Po Lau, a Board-certified family practitioner and physiatrist, considered appellant's history of injury, performed a physical examination and diagnosed status post arthroscopic surgery in both knees. He prescribed medication and took appellant off work on October 10, 1996 but otherwise prescribed continued light duty.

By decision dated March 18, 1997, the Office denied the claim, stating that the evidence of record failed to establish that the claimed recurrence of disability on March 27, 1996 was causally related to the approved injury.

By letter dated May 15, 1997, appellant requested reconsideration of the Office's decision and submitted additional medical evidence. In a report dated April 28, 1997, Dr. Drew A. Kovach, a Board-certified family practitioner, stated that appellant's complaint of pain in his knees of increasing intensity with grinding and popping was the result of the September 14, 1990 employment injury. He stated that appellant stated that he had not recovered from his original disability and that appellant stated that he did not return to his usual employment. Dr. Kovach stated that there were no factors by appellant's history that produced a recurrence of disability and his diagnosis for the recurrent condition was the same as for the September 14, 1990 employment injury. He did not know if there were precipitating factors causing the condition itself. Other evidence appellant submitted had either previously been submitted or documented that he received acupuncture or other medical treatment for his knees and required light-duty work.

By decision dated November 25, 1997, the Office denied appellant's request for modification.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty.² As part of this burden, the

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

² *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³ 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 the employment injury and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.⁵

In the present case, appellant has presented insufficient evidence to establish that he sustained a recurrence of disability commencing March 27, 1996 due to the September 14, 1990 employment injury. Dr. Hiller's March 27, 1996 report in which he noted appellant's symptoms, performed a physical examination and prescribed treatment does not address causation and therefore is not probative. The March 28, 1996 disability slip from Kaiser Permanente stating that appellant was unable to work from March 28 to April 3, 1996 also does not address causation and is not probative. The medical reports appellant submitted from Dr. Santi dated August 26, 1996 and from Dr. Lau dated August 15, September 30 and October 14, 1996 and the other medical records documenting treatment of appellant's knees in 1996 do not address causation and are not probative.

Further, Dr. Kovach's April 28, 1997 report in which he stated that appellant stated that he did not recover from his September 14, 1990 employment injury, that it "was his feeling" that appellant's symptoms of knee pain resulted from the September 14, 1990 employment injury and his diagnosis for the recurrence of disability was the same as for the September 1990 employment injury, is not sufficiently rationalized to establish that appellant's current disability is causally related to the September 14, 1990 employment injury. Dr. Kovach's statements are very general and he did not provide evidence showing that appellant's physical condition changed or that appellant's light-duty work requirements changed. The Office advised appellant of the evidence that was necessary to establish his claim, but appellant did not respond. Appellant has therefore failed to meet his burden that he established a recurrence of disability commencing March 27, 1996, due to the September 14, 1990 employment injury.

³ *Id.*

⁴ *See Nicolea Brusco*, 33 ECAB 1138 (1982).

⁵ *See William S. Wright*, 45 ECAB 498, 503 (1994).

The decisions of the Office of Workers' Compensation Programs dated November 25 and March 18, 1997 are hereby affirmed.

Dated, Washington, D.C.
December 29, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member