

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MERRELL R. ALLEN and DEPARTMENT OF THE ARMY,
NATIONAL GUARD BUREAU, Stockton, CA

*Docket No. 99-450; Submitted on the Record;
Issued February 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained a consequential injury of arthritis in the right knee due to his accepted employment-related right ankle injury.

The Board finds that this case is not in posture for a decision.

This is the second time this claim is on appeal before the Board. By decision dated December 4, 1997, the Board set aside the August 29, 1995 decision of the Office of Workers' Compensation Programs denying compensation, and remanded the claim for further development of the medical record.¹

On remand the Office referred appellant for examination by Dr. Michael Righetti, a Board-certified orthopedic surgeon. In a report dated February 24, 1998, Dr. Righetti found that there was no relationship between appellant's April 1972 employment-related right ankle injury and subsequent degenerative arthritis of his right knee. He explained that his opinion was based in part on the absence of medical evidence indicating any knee pain from the time of appellant's 1972 employment injury until 1977, when appellant was diagnosed with degenerative arthritis.

Based on Dr. Righetti's February 24, 1998 report, the Office found that appellant failed to establish a causal relationship between his current right knee condition and his April 20, 1972 employment injury. Accordingly, the Office denied appellant's claim for compensation by decision dated April 15, 1998.

On June 1, 1998 appellant requested reconsideration. Appellant, however, did not submit any additional medical evidence with his request for reconsideration. In a decision dated July 9, 1998, the Office denied appellant's request for reconsideration without reviewing the merits of his claim.

¹ Docket No. 96-388. The Board's December 4, 1997 decision is incorporated herein by reference.

Appellant filed a second request for reconsideration on August 3, 1998. His request was accompanied by a June 5, 1998 supplemental report from Dr. Righetti who explained that, based upon a review of information provided by appellant, he would amend his prior report as follows: “[I]t is more probable than not likely that [appellant’s] injury of 1972 contributed significantly to the degeneration of his right knee.”²

In a merit decision dated August 11, 1998, the Office denied modification of its prior decision. The Office explained that Dr. Righetti’s supplemental report was not probative because it was unclear what additional medical information appellant provided the doctor. The Office further noted that Dr. Righetti failed to provide any rationale for his recent change of opinion.³ Additionally, the Office admonished Dr. Righetti for agreeing to review evidence provided directly by appellant.

By letter dated October 5, 1998, appellant again requested reconsideration. Appellant explained that the information he provided Dr. Righetti under cover letter dated June 1, 1998 was already part of the record. Additionally, appellant provided a copy of his June 1, 1998 correspondence to Dr. Righetti, which outlined the various documents he forwarded to the doctor.⁴

The Office again reviewed appellant’s claim on the merits, and in a decision dated October 16, 1998, the Office denied modification of the prior decision. The Office stated that it was unclear why Dr. Righetti recently offered a different opinion based upon a review of evidence that was previously available to him when he rendered his initial opinion on February 24, 1998. The Office concluded that Dr. Righetti’s supplemental report was of diminished probative value because he “failed to provide sufficient, if any rationale” as to why he now believed that appellant’s knee condition may be related to his 1972 employment injury.

The Board finds that Dr. Righetti’s supplemental report lacks a clear explanation for his change of opinion regarding causal relationship. The Board finds that the Office improperly chose to view Dr. Righetti’s two reports in isolation. Although it is not entirely clear why Dr. Righetti changed his opinion, it is apparent that he no longer adheres to his prior opinion, which the Office relied upon to deny compensation. Dr. Righetti’s supplemental report clearly negates his February 24, 1998 report, thus calling into question the propriety of the Office’s continued reliance on the earlier report. The Board finds that Dr. Righetti’s opinion is not sufficiently rationalized given the fact that he effectively negated his earlier opinion. The case is, therefore, remanded to the Office for further development of the medical record.

² Dr. Righetti specifically referenced a 1994 report from appellant’s orthopedic surgeon, Dr. Orest Wesely, who indicated that appellant’s prior ankle injury either caused or significantly contributed to the development of his osteoarthritis.

³ The Office also indicated that Dr. Righetti’s supplemental report lacked probative value because it was “dictated but unsigned.” The Board notes that Dr. Righetti’s prior report dated February 24, 1998 and his June 5, 1998 supplemental report are both unsigned and similarly bear a stamp indicating the reports were “DICTATED BUT NOT READ.”

⁴ Appellant previously provided the Office a copy of this same letter when he initially sought reconsideration on June 1, 1998.

The October 16, 1998 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further consideration consistent with this opinion.

Dated, Washington, DC
February 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member