U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE E. SOLOFRA and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Gasquet, CA

Docket No. 01-1832; Submitted on the Record;
Issued May 17, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability to her right knee causally related to her accepted work injuries.

Appellant's traumatic injury claim filed on November 26, 1991 was accepted for a left knee strain after she fell and twisted her knee on brushy terrain in a forest. On June 4, 1993 the Office of Workers' Compensation Programs accepted a second claim for right hand and right knee contusions following an automobile accident at work. The Office later accepted cervical, thoracic and lumbar subluxations.

On February 7, 1994 appellant, a forestry technician, fell while conducting a spawning survey, hitting both knees on rocks and twisting her back. This claim was accepted for a lumbar strain and bilateral knee contusions. On September 14, 1998 appellant twisted her right knee while fighting a fire.[1] On June 21, 1999 appellant filed a recurrence of disability claim, stating that her right knee remained painful during the off season and that a magnetic resonance imaging (MRI) scan had revealed major cartilage damage.

On August 23, 1999 the Office asked appellant to submit additional information and medical evidence showing that her disability for work resulted from the accepted injury. The Office pointed out that appellant had the burden of proving that her current knee condition was causally related to the 1991 work injury.

By decision dated November 10, 1999, the Office denied appellant's claim on the grounds that she had submitted no evidence in support of her recurrence of disability.

On November 30, 1999 appellant requested an oral hearing seeking a review of the 1991 case and "subsequent injuries to the right knee." She stated that her 1999 claim was related to

[1] There is no evidence in the record stating whether or not this claim was accepted by the Office.

the recurring injuries to her right knee in 1993, 1994 and 1998. An Office status query revealed three claims, No. 130971422 on November 26, 1991, No. 131013857 on March 26, 1993 and No. 131038771 on February 7, 1994.

On February 23, 2000 the Office denied appellant's request for an oral hearing as untimely filed, noting that her request was postmarked December 15, 1999, more than 30 days from the Office's November 10, 1999 decision.[2]

On November 2, 2000 appellant requested reconsideration of the Office's November 10, 1999 decision and submitted reports from Drs. James R. Van Horne and Dr. Charles N. Versteeg, Jr., both Board-certified orthopedic surgeons.

On May 3, 2001 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its previous decision. The Office concluded that appellant had failed to establish that she had a residual work-related right knee condition.

The Board finds that this case is not in posture for decision and must therefore be remanded for further evidentiary development.

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted employment injury.[3] To meet this burden of proof, a claimant must furnish 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]

However, proceedings under the Federal Employees' Compensation Act[5] are not adversarial; while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[6] The Office has an obligation to see that justice is done.[7]

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[2] The Board has no jurisdiction over the Office's denial of appellant's hearing request because more than one year has elapsed between its decision dated February 23, 2000 and the filing of this appeal on July 10, 2001. 20 C.F.R. §§ 501.2(c); 501.3(d)(2). *See John Reese*, 49 ECAB 397, 399 (1998). The Board notes that appellant's request was dated November 10, 1999 and her letter was punch-holed as received by the Office on December 15, 1999. The record contains no envelope postmarked December 15, 1999.

[3] *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[4] *Helen K. Holt*, 50 ECAB 279, 282 (1999).

[5] 5 U.S.C. §§ 8101-8193.

[6] *Mary A. Wright*, 48 ECAB 240, 242 (1996).

[7] *Claudia A. Dixon*, 47 ECAB 168, 170 (1995).

The Office accepted work-related knee injuries in 1991, 1993 and 1994. In addition the record contains a traumatic injury claim form dated September 16, 1998 which stated that appellant twisted her right knee when she fell while escaping a forest fire on September 14, 1998.

In his February 22, 2001 report, Dr. Van Horne stated that he examined appellant on May 11, 1999 when an MRI scan showed a medial meniscus tear of the right knee. He performed arthroscopic surgery and debridement and treated appellant through November 17, 2000. Dr. Van Horne related that appellant had multiple twisting injuries to her knee starting in the early 1990s while working as a firefighter and forestry technician. He noted that she had injured her right knee in 1998 while fighting a brush fire and that led to increased instability. Dr. Van Horne concluded that appellant was permanently disabled and would need total knee replacement because of her injuries. He recommended a physical capacity evaluation and stated that appellant should not walk over uneven ground or lift and carry more than 20 pounds.

The Board finds that these reports lack detailed medical rationale sufficient to meet appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that her current disability is due to the accepted work injuries. However, the deficiencies in these reports merely means that their probative value is diminished.[8]

Under the circumstances of this case, these medical reports establish an uncontroverted inference of causal relationship between appellant's current knee and back conditions and the multiple injuries accepted by the Office as work related beginning in 1991, especially given the absence of any opposing medical evidence.[9]

On remand, the Office should develop the factual and medical record more fully, particularly the sequence and treatment of appellant's knee injuries. The Office should then refer appellant, a statement of accepted facts and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and rationalized opinion on the causal relationship between appellant's knee conditions and the accepted work injuries. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

[8] *Shirley A. Temple*, 48 ECAB 404, 409 (1997).

[9] *John J. Carlone*, 41 ECAB 354, 358 (1989).

The May 3, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
May 17, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member