

On December 6, 2006 appellant submitted a claim for recurrence of disability alleging that, as of November 28, 2006, he was able to work only four hours per day due to the degrading condition of his right knee. In support of his claim, he submitted a November 28, 2006 report from Dr. Michael J. Cunningham, a Board-certified orthopedic surgeon, who noted the history of appellant's right knee condition, for which he underwent arthroscopic surgery in 1996, and stated that the current severe pain in the right patella and posterior aspect of the right knee had developed steadily over a three-month period and was recurrent. On examination, Dr. Cunningham found a mild antalgic gait; mild tenderness in the superior patella; moderate tenderness in the lateral and medial joint lines; mild effusion of the knee joint; and full range of motion without pain. He diagnosed osteoarthritis and internal derangement of the right knee. In an accompanying duty status report, Dr. Cunningham stated that appellant was able to work only four hours per day with restrictions, which included lifting no more than 10 pounds continuously, or 15 pounds intermittently; standing for no more than one hour; and sitting for no more than four hours.

In a letter dated January 12, 2007, the Office informed appellant that the information submitted was insufficient to establish his recurrence claim. It advised him to provide evidence of either a change in the nature and extent of his injury-related condition, or of a change in his limited-duty position. In a letter dated January 29, 2007, appellant stated that the pain in his right knee had been increasing for several years. He indicated that, on November 27, 2006, while he was performing his usual employment duties, the pain became so severe that he was forced to stop working.

By decision dated March 1, 2007, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence did not establish a change in the nature or extent of the injury-related condition or in the light-duty position.

Appellant requested reconsideration of the March 1, 2007 decision. He submitted a February 13, 2007 report from Dr. Cunningham, who reiterated his diagnosis of osteoarthritis and internal derangement of the right knee. In a March 9, 2007 report, Dr. Cunningham recommended that the present restrictions, including a four-hour per day work schedule, should be continued. In an accompanying letter of medical necessity, he recommended light duty due to osteoarthritis of the right knee, which he opined was a direct result of appellant's December, 1995 work injury.

By decision dated April 18, 2007, the Office denied modification of the March 1, 2007 decision, finding that appellant had not established a change in job duties or a worsening of a condition causally related to his accepted condition. On June 25, 2007 appellant again requested reconsideration.

Appellant submitted a narrative report from Dr. Cunningham dated June 15, 2007. Dr. Cunningham provided a medical and factual history of injury, noting that he had first examined appellant on January 4, 1996 following his December 4, 1995 employment injury resulting in a torn medial meniscus, with osteochondritis dissecans in the medial femoral condyle. He stated that appellant underwent a right knee arthroscopy with partial medial meniscectomy and chondroplasty. Indicating that he examined appellant numerous times between May 6, 1996 and March 9, 1997, Dr. Cunningham noted continued complaints of

residual knee pain, which required restricted duty. He stated that, on November 28, 2006, appellant complained of persistent knee pain. At that time, Dr. Cunningham's examination revealed tenderness around the anterior, medial and lateral aspects of the knee, with mild effusion. Radiographs revealed degenerative changes with near bone-on-bone deformity of the medial compartment. As a result of these findings, appellant was placed on a four-hour workday with restrictions, including standing for no more than one hour and sitting for no more than four hours. Dr. Cunningham diagnosed right knee osteoarthritis, with previous medial meniscal tear and osteochondral defect. He opined that the diagnosed condition was a direct result of the December 4, 1995 injury. Appellant also submitted follow-up reports from Dr. Cunningham, dated June 19 and 21, 2007, reflecting that his right knee pain had increased in severity.

By decision dated November 8, 2007, the Office denied modification of its April 18, 2007 decision. It found that the evidence failed to establish that appellant sustained a change in the nature and extent of the original injury-related condition, or a change in the nature and extent of the light-duty job requirements. Noting that Dr. Cunningham had provided findings on examination at the time of the alleged recurrence, the Office stated that he did not explain why appellant's hours should be reduced as a result of his condition; did not provide x-ray reports or films to support bone-on-bone deformity; and did not explain how appellant's condition was due to the original injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.²

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.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 employment factors and supports that conclusion with sound medical reasoning.⁴

¹ 20 C.F.R. § 10.5(x).

² *Id.*

³ *Carmen Gould*, 50 ECAB 504 (1999).

⁴ *Mary A. Ceglia*, 55 ECAB 626 (2004).

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. Once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause, and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.⁵

ANALYSIS

The Board finds that the case is not in posture for a decision as to whether appellant sustained a recurrence of disability. The case must be remanded to the Office for further development.

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 disability, and to show that he cannot perform such light duty. As part of this burden, the 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 requirements.⁶

Appellant returned to a full-time, modified carrier position in 1996. In 2006 he claimed that his condition had worsened and that he was no longer able to work eight hours per day. Appellant submitted numerous reports from Dr. Cunningham, who noted positive physical findings, and who found that, on November 28, 2006, his injury-related condition had deteriorated to the point that he was unable to work in his eight-hour per day limited-duty position. In his November 28, 2006 reports, Dr. Cunningham stated that the current severe pain in the right patella and posterior aspect of the right knee had developed steadily over a three-month period and was recurrent. After providing findings on examination, he diagnosed osteoarthritis and internal derangement of the right knee, and stated that appellant was able to work only four hours per day with restrictions. On June 17, 2007 Dr. Cunningham opined that appellant's diagnosed right knee osteoarthritis condition was a direct result of the December 4, 1995 injury. He stated that, on November 28, 2006, appellant complained of persistent knee pain, and that his examination revealed tenderness around the anterior, medial and lateral aspects of the knee, with mild effusion. Radiographs revealed degenerative changes with near bone-on-bone deformity of the medial compartment. As a result of these findings, appellant was placed on a four-hour workday with restrictions, including standing for no more than one hour and sitting for no more than four hours. These reports support appellant's recurrence claim.

⁵ See *Robert J. Wescoe*, 54 ECAB 162 (2002).

⁶ *Joseph D. Duncan*, 54 ECAB 471 (2003); *Jackie D. West*, 54 ECAB 158 (2002); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

Proceedings under the Federal Employees' Compensation Act 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.⁷ This holds true in recurrence claims as well as in initial traumatic and occupational claims. In the instant case, although the reports of Dr. Cunningham contain rationale insufficient to discharge appellant's burden of proof that he sustained a recurrence of disability on November 28, 2006 causally related to his December 4, 1995 injury, the Board finds that they constitute substantial evidence in support of his claim, and raise an unrefuted inference of a worsening of appellant's accepted condition and a causal relationship between the arthritic condition of his right knee and the original traumatic injury. The evidence is sufficient to require further development of the case record by the Office.⁸

On remand, the Office should develop the medical evidence as appropriate to obtain a rationalized opinion regarding whether appellant sustained a recurrence of disability on or about November 28, 2006 causally related to the December 4, 1995 injury and, if so, the period and extent of disability. Following such further development of the case record as it deems necessary, the Office should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for a decision as to whether appellant has established that he sustained a recurrence of disability on November 28, 2006 causally related to his December 4, 1995 employment injury.

⁷ See *Phillip L. Barnes*, 55 ECAB 426 (2004). *William J. Cantrell*, 34 ECAB 1223 (1983).

⁸ See *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 8 and April 18, 2007 are set aside, and the case is remanded for further development consistent with this decision.

Issued: October 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board