

File Number:
HR10-D-H

RECEIVED OCT 04 2019

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 07/17/2019. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
7393 HODGSON MEMORIAL DR
SUITE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, September 30, 2019

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. Of
Employed by the Case No. Hearing was held
by telephone on in Washington, D.C.

The issue for determination is whether the claimant's right knee condition is causally related to the employment incident of

The claimant, born , was employed as a by the
The claimant filed a traumatic injury claim on , alleging he injured
his right knee, while in the performance of his job duties.

After performing such development as deemed necessary by decision dated .
the Office rejected the claim for the reason that the evidence of record failed to establish that
the right knee condition was causally related to the claimed employment incident of

The claimant disagreed with this decision and requested an oral hearing before an OWCP
representative.

Accordingly, said hearing was scheduled and held on , by telephone in
Washington, D.C.

The claimant represented himself at the hearing and testified regarding his injury. He explained he was operating a proto crane on the injury date and that requires him to climb a 100 feet to get into the crane. He explained he was directed to do a hard shutdown and the crane seat only moved backward or forward but did not allow swings to the right or left like the newer cranes. He noted the crane was full of people and that the seat could only be moved back slightly. He explained he attempted to lift his leg over the controls he felt something in his right knee and he was not able to bear weight on the right leg and his knee buckled. The claimant explained he was in severe pain and not able to climb down out of the crane. The claimant stated the fire department came with a bucket truck to take him out of the crane and he was taken by ambulance to the ER. He advised he was instructed not to walk on the right leg and was given a cane to ambulate after x-rays were taken. He stated he later had a MRI and right knee surgery.

The claimant disagreed with the denial and advised his doctor had opined the knee injury was a result of the work incident if there was no prior problems. The claimant testified he was not under medical care prior to the work incident and that while he had a prior right knee surgery

Washington DC, September 30, 2019

that had been 11 years ago and he fully recovered. He advised that at that time he tore his meniscus climbing onto a crane in about

The claimant testified he was not having any right knee symptoms prior to the injury. He stated he had not sustained any intervening injuries since the incident.

On direct examination the claimant testified that there are several sets of ladders that he has to climb up and down to get in and out of the crane. He advised he had recently undergone right knee surgery. He explained he climbed into the cranes two to three times a day with no problem. He testified he had worked light duty up until his surgery and was expecting to return to work from his surgery shortly.

The claimant was advised of the evidence necessary to establish causal relationship and that the record would be held open for 30 days to allow for the submission of supporting medical evidence. A full duty work release as of _____ was received and ongoing treatment notes.

A copy of the transcript was sent to the employing agency for review and comment. No comments were received.

Based upon the written evidence of record, I find that the decision of the District Office should be vacated and the case remanded for further medical development.

The medical evidence of record includes treatment notes including a narrative report dated _____, signed by orthopedic specialist _____ M.D. Dr. _____ provides a history of the claimant's prior meniscus surgery and opines he currently has a loose body in the right knee and recommends an arthroscopy. While the report is somewhat speculative on causation Dr. _____ does opine the condition is related to the work incident within a reasonable degree of certainty.

The claimant testified he was not having right knee problems prior to the work incident and had recovered from his prior meniscus surgery which was several years ago.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

¹ 5 U.S.C. 8101 et seq.

² *Elaine Pendleton*, 40 ECAB 1143 (1989)

³ *Victor J. Woodhams*, 41 ECAB 345 (1989)

I find the medical evidence provides prima facie opinion supporting causal relationship necessitating further development.

The Board in *William J. Cantrell*,⁴ opined:

“If the medical evidence supports the claimant’s claim, even though it is insufficient to discharge claimant’s burden of proving by the weight of reliable, substantial, and probative evidence that the condition was causally related to the work related injury, it does constitute sufficient evidence in support of claimant’s claim to require further development by the Office.”

As such, even though the medical evidence submitted does not have rationale to support an opinion of causal relationship, it is sufficient to require further development by the Office.

Proceedings under the Federal Employees' Compensation Act are not adversary 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 so that justice is done.⁵

Upon receipt of the case file, the Office should seek additional medical opinion and refer the claimant for a second opinion evaluation with an appropriate board-certified specialist for a determination and well-reasoned medical report on issue of causal relationship of the diagnosed right knee loose body and arthroscopic surgery to the claimed employment incident of

After performing this and any other development deemed necessary, the Office should issue a *de novo* decision.

Consistent with the above findings, the decision of the District Office dated _____ is hereby **remanded** for further development as noted above and a *de novo* decision.

Issued
Washington, D.C.

Hearing Representative
Branch of Hearings & Review
For
Director, Office of
Workers' Compensation Programs

⁴ *William J. Cantrell*, 34 ECAB 1233, (1983)

⁵ *William J. Cantrell*, 34 ECAB 1233, (1983)