

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
, Claimant; Employed by the
Case File No.

Merit consideration of the case file was completed in Washington, D.C. Based on this
review, the decision of the district office dated is vacated for the
reason set forth below.

The claimant, (date of birth --), was employed as a
Federal Air Marshal by the in . He
sustained a work-related injury to his left knee on while running during a
physical training test. His claim for that injury, under case number was
accepted by the Office for medial meniscus tear of the left knee, left knee loose body,
and left knee chondromalacia. The claimant underwent left knee surgery on
consisting of partial medial meniscectomy, chondroplasty of the medial femoral
condyle, and loose body removal. He underwent a second left knee surgery on
consisting of loose body excision, chondroplasty patellofemoral joint, lysis of
adhesions, and excision of spurs.

The claimant's attending orthopedist, Dr. completed a work
restriction evaluation form on that released the claimant to eight hours
per day of light duty work. Dr. gave the claimant restrictions on the following
activities: walking - 2 hours; standing - 2 hours; bending/stooping - 2 hours; lifting -
2 hours, with no lifting of weight in excess of 20 pounds; kneeling - 1 hour; and no
squatting or climbing.

The claimant returned to work on light duty on . He stopped work on
and did not return. He filed a claim for a recurrence of injury-related
total disability beginning . On the employing agency's portion of the
notice of recurrence form, the claimant's supervisor wrote that the claimant had been
assigned to answer phones when he returned to light duty on .

In response to a development letter he was sent by an Office Claims Examiner on
under case the claimant submitted a statement dated
in which he wrote:

On I was assigned to wash 5 of the company vehicles. While I was

washing one of the SUV's I was using a vacuum to detail the inside. While I was carrying the vacuum I felt a sharp pain in my left knee. As the day went on my knee began to swell and my movement became restricted making it impossible to bend my knee completely. I made a Doctors appointment for

The claimant wrote that Dr. _____ pulled him from his duty assignment on _____ and stated that he should be retrained for another position.

The claimant subsequently filed a new form CA-1, stating that he had re-injured his left knee at work on _____. On the notice of injury form, the claimant wrote: "I was detailing the office vehicles with a vacuum cleaner (shop vac). While carrying the vacuum to one of the SUV's I felt a sharp pain in my left knee."

The Office created new case number _____, for the claim for a work injury of _____. Case _____ was subsequently made a subsidiary case under the master file number _____.

The employing agency raised questions about the claimant's claim that he had re-injured his left knee on _____. The agency maintained that during the period he was on light duty in August and September of _____ the claimant had not advised management of any worsening of his knee condition or re-injury to his knee, but had actually claimed that his knee was getting better. The claimant's supervisor wrote that the first time he learned of the claimant's claim of re-injury was when he saw the claimant's statement to the Office dated _____. The agency also submitted a statement from a manager _____ who had seen the claimant on _____ at an Ohio State University football game in Columbus, Ohio. Mr. _____ wrote that the claimant had sat about 6 rows from the top of the upper deck of the OSU stadium. He wrote that he saw the claimant walking down the stairs to exit the stadium after the game, and that he did not notice the claimant limping.

In a chart note dated _____ Dr. _____ wrote that the claimant remained off work and continued to have some difficulty ascending and descending steps. Dr. _____ wrote that even on light duty, the claimant was continuing to have pain, swelling and catching of the knee, and difficulty walking. He opined that the claimant would not be able to resume the job of Air Marshal due to the chronic nature of the arthritic condition of his knee. Dr. _____ described the current examination findings.

Under case number _____, an Office Claims Examiner wrote to the claimant on _____ and described the additional factual and medical evidence he should submit in support of his claim for a work injury of _____.

In his response dated _____ the claimant wrote that he had experienced constant knee pain since his surgery, and that his condition had deteriorated over time. He wrote that he had initially filed a form CA-2a because he considered his condition to

be an aggravation of his ongoing problems from the work injury of [redacted]. The claimant wrote that he filed a CA-1 for the incident of [redacted] after talking with his claims examiner. With respect to that incident, the claimant wrote that the vacuum he lifted and carried weighed about 15 pounds. He wrote that he had to twist and climb in and out of the vehicles, which he maintained was beyond his physical capacity at that time.

Dr. [redacted] in an undated letter received by the Office on [redacted], wrote that the claimant's two knee arthroscopies had shown progressive destructive arthritis with loose bodies and swelling and synovitis in the knee. He wrote that subsequent evaluations had demonstrated "persistent pain and swelling in the knee that is aggravated with job and physical therapy." Dr. [redacted] opined that the claimant was disabled from performing his job as an air marshal due to the progressive arthritic condition in his knee. He recommended that the claimant "stay on total disability until he is able to undergo job training for a job that would be more suited for his physical capacity."

By decision dated [redacted] the Office denied the claim for a work injury of [redacted] on the basis that the medical evidence failed to establish that the [redacted] described work activity of [redacted] caused or contributed to a diagnosed condition of the claimant's left knee.

The claimant disagreed with the decision and requested a hearing.

The Office subsequently received a letter from Dr. [redacted] dated [redacted]. Dr. [redacted] described the claimant's left knee problems and surgeries following the injury on [redacted]. He wrote that following the surgery of [redacted] during the period the claimant's employing agency provided him with light duty work, the claimant began to have recurrence of some swelling in his knees. Dr. [redacted] wrote:

On [redacted] while completing the duties of his new job, he had an episode where he had a significant increasing pain in his knee. The patient followed up a week later for evaluation in the office and diagnosis at that time was aggravation of pre-existing condition of the underlying arthritis and also the new condition of knee strain. The patient at that point was taken off of work due to difficulty with daily activities such as ascending and descending steps and also getting up from a seated position.

At this point the patient's diagnosis, after the August 8th [sic] injury was re-aggravation of previous injury with early onset of post-traumatic arthritis and also a new injury of knee strain/sprain which I believe will be a temporary diagnosis. The long term diagnosis of the aggravation of the original injury will be considered chronic with little chance of complete resolution.

I find that the case is not in posture for a hearing, as the factual and medical evidence requires further development by the Office.

With respect to his work stoppage beginning _____ he claimant is claiming: (1) that his knee condition resulting from the work injury of _____ had deteriorated to the point that he was no longer able to continue to work; (2) that the employing agency gave him a light duty assignment that exceeded his work restrictions; and (3) that the work activity he performed on _____ (carrying a vacuum and climbing in and out of vehicles to clean them) had aggravated his left knee condition.

The first two contentions described in the preceding paragraph constitute a claim for a recurrence. Where an employee, following an accepted injury, returns to a light-duty position or the medical evidence of record establishes that the employee can perform the light-duty position, the employee has the burden of establishing, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability causally related to the accepted injury and the inability to perform the light-duty work. 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 job requirement.¹

The third contention represents a claim for a new injury or re-injury. Where a claim is predicated upon a specific injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place and circumstances, and of an impairment causally related to such injury.² This includes the need to submit medical opinion evidence, based on a specific and accurate history, establishing that the employment incident caused or contributed to a medical condition.³ The mere occurrence of pain during the work day is not proof that injury occurred at work or that an injury is causally related to the employment.⁴

Additional evidence is needed regarding the light duty assignment(s) that the claimant was given when he returned to work on _____ and that he performed up until he stopped work on _____. It is unclear whether the assignment on _____ to clean out agency vehicles was a one-time occurrence or a regular part of the claimant's light duty assignment, and how many hours per day the claimant was required to spend on that assignment. On remand, the Office should request that a knowledgeable official at the employing agency provided a description of the duties and physical demands of the claimant's light duty assignment over the period _____.

¹ See Terry R. Hedman, 38 ECAB 222.

² Loretta M. Phillips, 33 ECAB 1168.

³ See William Nimitz, Jr., 30 ECAB 567.

⁴ Alice A. Lumpkin, 31 ECAB 892.

..., and clarify the number of days and hours per day that cleaning out the vehicles was part of that assignment. The Office should then make a finding as to whether the light duty was within the claimant's work restrictions, and whether the claimant was being given light duty work within his restrictions when he stopped work on

Dr. reports, including the letter of ..., lend some support to the claimant's claim of a worsening of his left knee condition, due to the natural progression of the residuals of the work injury of ... and/or as the result of the light duty activity the claimant performed on ... However, Dr. reports do not contain a specific description of what the claimant was doing at work on ,

or sufficient explication of what objective findings demonstrated that there had been a worsening of the claimant's knee condition between ... when Dr. released the claimant to light duty and ... when the claimant returned to see him and was taken off work. Nor did Dr. indicate an awareness that the claimant had climbed up and down a long flight of stadium steps at an OSU football game on ... Nevertheless, in the absence of medical

opinion to the contrary, I find that Dr. report of ... lends sufficient support to the claim to require the Office to undertake further development of the medical evidence. The Office should obtain a copy of the chart note for Dr.

examination of the claimant on ...,⁵ and then undertake any appropriate further development of the medical evidence on the claimed recurrence and claimed re-injury.

The decision of the Office dated ... is set aside. The case is remanded for further development of the factual and medical evidence, as described above, to be followed by a de novo decision on the claim for compensation benefits.

DATED: MAY 5 2006
WASHINGTON, D.C.

Hearing Representative
for
Director, Office of
Workers' Compensation Programs

⁵ The chart note for the examination of records of case

does not appear in the