

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 Julio S. Hernandez Claimant; Employed by the Department of Homeland Security, U.S. Customs and Border Protection, Laredo, Texas Case File No. 162101293.

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the district office dated December 9, 2005 is vacated for the reason set forth below.

The claimant, Julio S. Hernandez (date of birth – March 25, 1981), is employed as a CBP Officer by the Department of Homeland Security, U.S. Customs and Border Protection, in Laredo, Texas. He filed timely written notice of injury on October 9, 2005, stating that he was inspecting a vehicle at work that day when he slipped on oil and fell onto his knees.

The claimant was examined by Dr. Luis Villarreal at Laredo Urgent Care on October 10, 2005. On that date, Dr. Villarreal gave a diagnosis of contusions to both the claimant's knee. He also completed a form CA-16 medical report in which he did not describe the findings and diagnosis, but did opine that the claimant's condition was causally related to the reported history of slipping on oil and falling on his knees on October 9, 2005.

Dr. Villarreal referred the claimant for x-rays of both knees. The x-rays performed on October 10, 2005 were described in the radiology report as showing no abnormality. At the time of a repeat visit on October 11, 2005, Dr. Villarreal referred the claimant for an MRI of the right knee. The MRI of the claimant's right knee performed on October 11, 2005 was described by the radiologist as showing a possible tear of the lateral meniscus, soft tissue swelling, and minimal joint effusion.

An Office Claims Examiner wrote to the claimant on November 7, 2005 and described the additional medical evidence he should submit in support of his claim.

The Office subsequently received a copy of the chart notes for the claimant's examinations by Dr. Villarreal on October 10, 11, and 15, 2005. The chart note dated October 10, 2005 contained the history of the incident at work on October 9, 2005, a description of the examination findings, and the diagnosis of contusion to both knees.

The Office also received the records of the claimant's visits to Dr. Arie Salzman, a Board-certified orthopedic surgeon, on October 21, 2005, November 4, 2005, and November 11, 2005. In the report of the examination on October 21, 2005, Dr. Salzman

wrote that the claimant gave a history of slipping on oil at work on October 9, 2005 and falling on his knees. He wrote that the claimant reported that his left knee was no longer bothering him, but that he was continuing to have pain and swelling in his right knee. Dr. Salzman described the current examination findings. He wrote that the MRI report of October 11, 2005 "mentions a tear involving the body of the lateral meniscus", as well as soft tissue swelling and mild joint effusion. Dr. Salzman gave a diagnosis of right knee strain. At the time of follow-up visits on November 4, 2005 and November 11, 2005, Dr. Salzman described findings of ongoing right knee pain and swelling.

By decision dated December 9, 2005, the Office denied the claim on the basis that the medical evidence failed to establish that the claimed medical condition was causally related to the reported work event of October 9, 2005.

The claimant disagreed with the decision and requested a hearing.

Subsequent to the denial of the claim, the Office received the report of an examination the claimant underwent on December 2, 2005 with another Board-certified orthopedic surgeon, Dr. Ramon M G. Soriano. In his report, Dr. Soriano gave a history that the claimant sustained injury to his right knee on October 9, 2005 when he slipped on oil and landed on both knees. Dr. Soriano wrote that the claimant's MRI "showed a tear of the posterior horn of the medial meniscus and possibly the lateral meniscus." He described the current examination findings. Dr. Soriano wrote that he had presented treatment options to the claimant, and that the claimant wanted to proceed with arthroscopic knee surgery. Dr. Soriano subsequently requested that the Office authorize arthroscopic knee surgery.

I find that the case is not in posture for a hearing, as the medical evidence is sufficient to establish that the claimant sustained bilateral knee contusions as the result of the work incident of October 9, 2005.

An award of compensation may not be based on surmise, conjecture, speculation or an employee's belief that his condition was caused by his employment. The mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relation between the two. A claimant has the burden of establishing by reliable, probative and substantial evidence that his disability was causally related to a specific employment incident or to specified conditions of employment. To meet this burden, he must submit medical evidence of causal relation based upon a specific and accurate history of the employment incident or employment conditions which are alleged to have caused or exacerbated a disability.¹

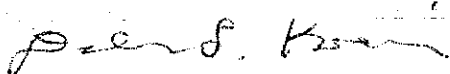
The evidence establishes that the claimant slipped and fell onto his knees in the course

¹ Patrick L. Dallaire, 35 ECAB 174.

of his employment on October 9, 2005. He reported the injury and sought medical treatment that same day. He was initially seen by Dr. Villarreal. No single report from Dr. Villarreal contains the history of injury, description of examination findings, diagnosis and physician's opinion that the diagnosed condition was causally related to the reported work incident. However, when reviewed all together, the chart notes and the form reports completed by Dr. Villarreal contain information and medical opinion sufficient to establish that the bilateral knee contusions diagnosed by Dr. Villarreal were causally related to the claimant's fall at work on October 9, 2005. The medical evidence is sufficient to accept the claim for bilateral knee contusions.

The decision of the Office dated December 9, 2005 is reversed, and the claim is accepted for bilateral knee contusions. On return of the case record, the District Office should take appropriate action, including any further development of the medical evidence deemed necessary, on the request for authorization for arthroscopic right knee surgery for a possible meniscal tear.

DATED: APR 20 2006
WASHINGTON, D.C.


DEBORAH L. KOENIG
Hearing Representative
for
Director, Office of
Workers' Compensation Programs