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WILLA M. FRAZIER, Appellant	)	
	)	
and	)	Docket No. 04-120
	)	Issued: March 11, 2004
DEPARTMENT OF VETERANS AFFAIRS,	)	
MEDICAL CENTER, Cleveland, OH, Employer	)	
	)	

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 15, 2003 appellant filed a timely appeal from the August 29, 2003 decision of the Office of Workers' Compensation Programs, which denied modification of its prior decision to terminate compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue of termination.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits on the grounds that residuals of her accepted employment injury had resolved.

FACTUAL HISTORY

On October 14, 1993 appellant, then a 46-year-old medical supply technician, sustained an injury in the performance of duty when she fell over an oxygen tank holder and landed on her knees. The Office accepted her claim for bilateral medial meniscus tears with arthroscopies, temporary aggravation of degenerative joint disease in the right knee, which ceased by May 6, 1994 and permanent aggravation of chronic degenerative arthritis in the left knee.

Appellant received compensation benefits. On September 13, 1994 she returned to modified duty with no loss of wage-earning capacity. She received schedule awards for a 30 percent permanent impairment of the right leg and a 15 percent permanent impairment of the left.

On May 4, 2001 appellant underwent a partial medial meniscectomy and chondroplasty on the right knee, which the Office authorized. On July 6, 2001 she underwent arthroscopic debridement on the left knee, which the Office also authorized. Appellant returned to work for four hours a day on September 6, 2001 and increased her hours to six by October 9, 2001. The Office paid compensation for continuous wage loss and maintained appellant on the daily rolls from May 7, 2001 to August 13, 2002.

On October 31, 2001 appellant's attending physician, Dr. Mark I. Froimson, a Board-certified orthopedic surgeon, reported that appellant continued to have pain in both knees. "Really not responding well with the arthroscopy," he noted. She still had significant arthritis, and medication was not helping enough. Findings on physical examination revealed bilateral varus knees, tender medially, range of motion from 0 to 120 degrees and good pulses. Appellant was noted to be overweight. X-rays showed osteoarthritis in both knees, primarily in the medial compartments. Dr. Froimson injected the knees and asked appellant to ice them: "[w]e will see her back in one month as necessary." He released her to work for six hours a day on a permanent basis with restrictions.

The Office referred appellant, together with a copy of the medical record and a statement of accepted facts, to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for an opinion on residuals of the work injury and any resulting disability. On March 14, 2002 Dr. Kaffen related appellant's history of injury, medical care and complaints. He described his findings on physical examination. Dr. Kaffen reviewed the statement of accepted facts, x-rays taken on March 8, 2002 and diagnostic studies dating back to November 19, 1993. Responding to questions posed by the Office, Dr. Kaffen reported that there were no objective findings on physical examination of the right knee to indicate the persistence of residuals of the accepted conditions. There were such findings on the left, however, including flexion contracture of five degrees, crepitation and marked narrowing of the medial joint space with other findings of osteoarthritis. On the right side he diagnosed a torn medial meniscus causally related to the October 14, 1993 employment injury, arthritis temporarily aggravated by the injury and varus deformity not causally related to the injury. On the left he diagnosed a torn medial meniscus causally related to the October 14, 1993 employment injury, a permanent aggravation of osteoarthritis causally related to the injury and genu verus not causally related to the injury. Dr. Kaffen continued as follows:

"Based on the history and physical examination and review of medical records, it is my opinion [that] [appellant] is unable to perform the date[-]of[-]injury job as described in the statement of accepted facts.

"The remaining injury-related findings cause [her] to be moderately disabled in that she is confined to sedentary work which would require mostly sitting.

“Based on the history and physical examination and review of medical records it is my opinion [appellant] is able to perform the sedentary modified job duties in a full-time capacity.”

The Office determined that a conflict in medical opinion existed between Dr. Froimson and Dr. Kaffen on the extent of appellant’s work-related disability. To resolve the conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Alan H. Wilde, a Board-certified orthopedic surgeon. On May 21, 2002 Dr. Wilde indicated that he examined appellant, obtained her medical history and reviewed the statement of accepted facts and all of the medical records submitted. Findings on physical examination included bilateral varus deformity, range of motion from 0 to 100 bilaterally, no instability, no effusion and healed arthroscopy incisional scars. Dr. Wilde diagnosed osteoarthritis of both knees and offered the following on the issue of causal relationship:

“On October 14[,] [19]93, [appellant] slipped and fell while at work at the [employing establishment] in Wade Park, Cleveland. She landed on both knees. [Appellant] subsequently had four arthroscopies: two arthroscopies on each knee. At that time, osteoarthritis was found in both knees. The osteoarthritis is a preexisting condition and was not caused by the injury of October 14[,] [19]93.”

On the issue of disability for work, Dr. Wilde responded as follows:

“Yes, [appellant] is unable to perform her duties as a medical supply aide and technician. The basis of her disability is the osteoarthritis of both knees. That basis is not related to the work incident of October 14[,] [19]93. She is unable to perform her regular duties as a medical supply aide and technician. [Appellant] is currently working in a modified work situation where she works in a sedentary job six hours a day, five days a week.”

In a supplemental report dated June 19, 2002, Dr. Wilde stated that the varus deformity of both knees was a sequela of appellant’s osteoarthritis, which, as he reported earlier, was not caused by the October 14, 1993 work injury:

“The precedent osteoarthritis was not impacted in any way by the fall at work on October 14[,] [19]93 with either the right knee or the left knee. The process of osteoarthritis was independent of the work incident. A relationship did not exist.”

Dr. Wilde stated that appellant was suffering from the sequelae of osteoarthritis of both knees and not from the sequelae of her four knee surgeries. He explained that his opinion on disability took into consideration any residuals of the approved surgical procedures: “Her disability was not related to the work incident of October 14[,] [19]93 and her disability is because of the osteoarthritis of both knees and is not the result of the four approved surgical procedures.”

On July 8, 2002 the Office issued a notice of proposed termination of compensation and medical benefits. The Office found that the weight of the medical evidence, as represented by the opinion of the impartial medical specialist, established that the accepted conditions had resolved and were not the source of appellant’s current disability. In a decision dated

August 13, 2002, the Office terminated appellant's compensation and medical benefits on the grounds set forth in the notice of proposed termination.

Appellant requested reconsideration and submitted an April 17, 2003 report from Dr. Froimson, who stated as follows:

"As you know I have been treating [appellant] for bilateral knee pain secondary to post-traumatic arthritis. I have reviewed the records and continue to believe that the post-traumatic arthritis is related to the work injury [that] she sustained in 1993. It is not uncommon to have sequelae such as post-traumatic arthritis as a result of an injury. This should not be confused with idiopathic osteoarthritis that is a natural occurrence in the absence of an injury. [Appellant] had a documented injury which increased her risk of developing post-traumatic arthritis and she is exhibiting signs and symptoms of arthritis in both knees which is most likely post traumatic in nature. We plan to continue to treat her actively. Should you have any questions or concerns please do not hesitate to contact me."

In a decision dated August 29, 2003, the Office reviewed the merits of appellant's claim and denied modification of its prior decision to terminate benefits. The Office found that Dr. Froimson provided neither an opinion expressed in a positive manner nor medical rationale based on a complete and accurate medical and factual history. Noting that Dr. Wilde had provided a complete report based on a reported and accurate history and thorough examination with extensive rationale to support his opinion, the Office found that Dr. Froimson provided but one paragraph in which he expressed his opinion in tentative terms.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify a termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

ANALYSIS

The Office accepted appellant's claim for bilateral medial meniscus tears and a permanent aggravation of chronic degenerative arthritis in the left knee. It authorized four

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

surgeries and paid schedule awards for permanent impairment to both legs. On August 13, 2002 the Office terminated appellant's compensation and medical benefits on the grounds that the accepted conditions had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.³

A conflict in medical opinion arose between appellant's attending physician, Dr. Froimson, and the Office referral physician, Dr. Kaffen, on the extent of appellant's injury-related disability. To resolve the conflict, the Office referred appellant to Dr. Wilde, a Board-certified orthopedic surgeon.⁴ He diagnosed osteoarthritis of both knees but reported that this condition preexisted appellant's fall at work on October 14, 1993; the incident of October 14, 1993 did not cause her osteoarthritis. Dr. Wilde explained that appellant was unable to perform her duties as a medical supply technician, but the basis of that disability was the osteoarthritis in both knees, which he repeated was not related to the work incident of October 14, 1993. In his June 19, 2002 supplemental report, Dr. Wilde stated that appellant's precedent osteoarthritis was not impacted in any way by the fall at work. Her disability, therefore, was not related to the work incident of October 14, 1993. Further, it was not the result of the four approved surgical procedures.

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵ The Board finds that Dr. Wilde's opinion cannot be accorded such weight. He made statements that were clear and unequivocal, but he offered little if any medical reasoning to support his conclusion. After observing that the osteoarthritis in appellant's knees was a preexisting condition, he asserted that this condition was not impacted in any way by her fall at work on October 14, 1993. Dr. Wilde cited no clinical findings to substantiate his assertion. He provided no comparative analysis of appellant's pre- and post-injury status to show that the traumatic incident had no impact on the underlying osteoarthritic process. He made no references at all to the case record to demonstrate that he was drawing his conclusion from established medical facts.

The Board has held that medical conclusions unsupported by rationale are of little probative value.⁶ A physician's opinion on causal relationship must be one of reasonable medical certainty, but it must also be supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background.⁷ In this case,

³ Cf. *Lan Thi Do*, 46 ECAB 366 (1994) (finding that the claimant was entitled to a pretermination notice where the Office abused its discretion in retaining the claim on the daily roll for over a year).

⁴ Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁶ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

⁷ *Connie Johns*, 44 ECAB 560 (1993). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

the certainty with which Dr. Wilde expressed his opinion cannot overcome the lack of medical rationale.

Also, Dr. Wilde's opinion is not in keeping with the statement of accepted facts. The Office provided Dr. Wilde with a statement of accepted facts to use as a frame of reference in forming his opinion. The statement of accepted facts made clear that the Office had accepted appellant's claim for a permanent aggravation of left knee arthritis. As a medical professional, Dr. Wilde is entitled to reject such an aggravation, but if he does so without convincing medical rationale, his opinion has little probative or evidentiary value. The Office's procedure manual states that, when the impartial physician does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁸

The Office found that the opinion of Dr. Wilde represented the weight of the medical evidence, but it did not terminate appellant's compensation benefits for the reasons given by Dr. Wilde. He was of the opinion that appellant's fall on October 14, 1993 had no impact on her preexisting osteoarthritis and, therefore, her current disability from osteoarthritis was unrelated to her employment. The Office did not use this opinion to rescind its acceptance of a permanent aggravation of chronic degenerative arthritis in the left knee. Instead, the Office terminated compensation benefits on the grounds that residuals of the accepted employment injury had ceased by a certain date. This is not what Dr. Wilde reported. The Board has held that it is a denial of administrative due process requiring reversal for the Office to terminate compensation benefits on the ostensible grounds that a claimant no longer suffers residuals of an accepted condition, where the record supports that the real reason for the Office's action was that it had determined that the condition was not causally related to the claimant's employment and should not have been accepted as such.⁹ The Office must inform claimants correctly and accurately of the grounds on which a decision rests, so as to afford them an opportunity to meet, if they can, any defect appearing therein.¹⁰

CONCLUSION

The Board finds that the Office has not met its burden of proof. The impartial medical specialist selected to resolve the extent of appellant's injury-related disability offered little if any medical rationale to support his conclusion and his opinion deviated from the statement of accepted facts. His opinion has little probative value, does not represent the weight of the medical evidence and is insufficient to resolve the conflict at issue. Further, the Office

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3(10) (October 1990); see *Jurelle M. Vanderhoff*, 37 ECAB 152, 157 (1985) (finding that the report of the impartial medical specialist could not be used to resolve the conflict at issue because it deviated from the statement of accepted facts and went beyond the field of his medical expertise).

⁹ *John M. Pittman*, 7 ECAB 514 (1955) (where the Bureau, now known as the Office, terminated benefits on the ostensible grounds that a claimant was not disabled for work beyond a specific date, when it appeared from the record that the real reason for denial was that the Bureau had determined that the injuries alleged had not in fact occurred and that the claimant had never been disabled but had been guilty of malingering).

¹⁰ *Id.*; *James D. Boller, Jr.*, 12 ECAB 44 (1960).

improperly terminated benefits on grounds that are inconsistent with the opinion offered by the impartial specialist.

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2003 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 11, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member