United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 06-1568**
	)	**Issued: March 9, 2007**
U.S. POSTAL SERVICE, POST OFFICE, North Houston, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 30, 2006 appellant filed a timely appeal from a February 24, 2006 merit decision of the Office of Workers' Compensation Programs' hearing representative affirming the termination of her compensation. She also appealed from a June 2, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's medical and compensation benefits effective October 30, 2005, on the grounds that she had no further residuals due to her accepted November 17, 2002 employment injury; and (2) whether the refusal of the Office to reopen appellant's case for further reconsideration on the merits pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

FACTUAL HISTORY

On November 17, 2002 appellant, then a 39-year-old clerk, filed a traumatic injury claim alleging that on that date she sustained a left knee and leg injury when a coworker hit her with an all-purpose container. The Office accepted the claim for left knee strain/sprain, left thigh and left leg contusion. Subsequently, the Office accepted chondromalacia. Appellant stopped work on November 17, 2002. The Office placed her on the periodic rolls for temporary total disability effective March 23, 2004.[1]

A December 11, 2002 magnetic resonance imaging (MRI) scan of the left knee showed no medial or lateral collateral ligament tear, normal patellar ligament and quadriceps tendon and no tear of the anterior cruciate ligament.

On June 9, 2003 Dr. Bernard Z. Albina, a second opinion Board-certified orthopedic surgeon, diagnosed a resolved left knee contusion and sprain. He reported a negative December 11, 2002 MRI scan and x-ray interpretation. A physical examination of the left knee showed good alignment, no effusion, no crepitation, stable medial and lateral collateral ligaments, a negative McMurray's sign, negative pivot shift and negative Drawer sign. The left knee range of motion revealed 180 degrees extension and 60 degrees flexion. Dr. Albina found no objective evidence to support ongoing residuals or disability of the left knee. He determined that appellant was capable of returning to her date-of-injury position with no restrictions.

On October 15, 2003 the Office received reports by Dr. Lubor Jarolimek, a treating physician. On May 29, 2003 Dr. Jarolimek diagnosed chronic left knee pain and left knee medial meniscal tear. He diagnosed the meniscal tear based upon appellant's physical examination, history and complaints. Dr. Jarolimek noted that MRI scans were often both false positive and false negative. On September 10, 2003 he reported full left knee range of motion and a stable knee. Dr. Jarolimek attributed appellant's complaints of left knee pain to arthritic/osteochondral-type pain. He performed a left knee partial medial meniscectomy on June 23, 2003, which was not authorized by the Office.

On December 3, 2003 Dr. Douglas Stauch, a second opinion Board-certified orthopedic surgeon, concluded that appellant's accepted conditions were self-limiting and had resolved. A physical examination showed no effusion, atrophy or gait abnormality, left knee range of motion was 125 degrees and no instability. Dr. Stauch reviewed x-ray interpretations, which he found unremarkable. He stated that appellant "has no findings related to these conditions." Dr. Stauch opined that appellant's "complaint of severe and constant pain does not match her physical findings."

[1] Appellant returned to work on March 10, 2004 and stopped on March 11, 2004. By decision dated September 2, 2004, the Office terminated appellant's compensation benefits effective October 2, 2004 pursuant to 5 U.S.C. § 8106(c)(2). Subsequently, the Office reinstated her benefits as the employing establishment was unable to accommodate her restrictions.

On January 6, 2004 Dr. Jarolimek stated that he concurred "with Dr. Stauch's etiology of current condition description." He disagreed that appellant was capable of returning to work with no restrictions. Dr. Jarolimek noted that appellant "continues to have constant pain in her left knee. The pain is constant and burning in nature."

In a March 16, 2004 report, Dr. Jarolimek reported that appellant had a slight antalgic gait, a stable knee, "crepitus with motion," 0 degrees extension and 120 degrees flexion. He noted that appellant continued to have complaints of left knee pain.

On May 4, 2004 Dr. Jarolimek released appellant to return to work with restrictions. A physical examination revealed 120 degrees left knee range of motion, symmetrical laxity with the right knee and "mild laxity with varus and valgus stress."

On June 17, 2004 Dr. John J. DeBender, a second opinion Board-certified orthopedic surgeon, diagnosed left knee sprain, medial femoral condyle chondromalacia, postoperative partial medial meniscectomy and arthroscopy and left thigh and leg contusions. A physical examination showed no rotatory instability and full range of motion. He opined that appellant's accepted conditions had resolved as there was no supporting objective evidence. Appellant had subjective pain complaints and Dr. DeBender was unable to "explain why the patient would still have pain in the leg and thigh from contusions that occurred over a year and a half ago."

On July 26, 2004 Dr. Jarolimek noted that appellant had complaints of left knee pain radiating down her leg. A physical examination revealed a reciprocal gait on ambulation, 0 degrees extension, 100 degrees flexion, a stable knee, left quadriceps atrophy and "she is able to perform a straight leg raise."

In a report dated October 7, 2004, Dr. Jarolimek noted appellant's complaints of swelling and continued left knee pain. A physical examination revealed a stable knee and negative McMurray's test. Dr. Jarolimek stated that he was "unable to elicit tenderness." He stated that he was unable to find objective evidence for appellant's chronic left knee pain. Dr. Jarolimek also stated that he was taking himself "out of the loop as far as who [appellant] will see."

On December 3, 2004 Dr. Vasilios Mathews, a treating Board-certified orthopedic surgeon, diagnosed left knee chondromalacia defect of the medial femoral condyle. A review of x-ray interpretations showed no evidence of osteoarthritis, fracture or other bony anomaly. An MRI scan was reviewed which demonstrated a meniscus tear. Physical examination revealed diffused tenderness of the medial and lateral joint lines and full range of motion.

A December 13, 2004 MRI scan revealed normal medial and lateral menisci and "[t]he anterior and posterior cruciate, medial and lateral collateral ligamentous complexes appear intact."

On December 30, 2004 Dr. Mathews noted that the MRI scan showed no obvious knee defect. He recommended that appellant return to work and recommended an ergonomic chair.

On January 10, 2005 Dr. Rafael D. Guerrero, a treating Board-certified psychiatrist, performed a chronic pain assessment at Dr. Mathews' request. He diagnosed pain disorder and left knee chondromalacia defect of the medial femoral condyle.

In a March 17, 2005 treatment note, Dr. Mathews stated that he could no longer help appellant as he could not "find anything wrong with her knee that I can address with surgery and she seems to have maximized all conservative treatments."

On June 7, 2005 Dr. David G. Vanderweide, a second opinion Board-certified orthopedic surgeon, noted that physical examination revealed full extension, 90 degrees flexion, no effusion and no evidence of instability. He found no objective evidence to support any disability or residuals due to her accepted employment injury. A December 11, 2002 MRI scan revealed no meniscal injuries, no cruciate ligament injuries and no collateral ligament injuries. Dr. Vanderweide opined that appellant "sustained a self-limiting soft tissue injury to the left knee which required no operative intervention." He reviewed a work performance evaluation summary performed on June 7, 2005, which he found was "of questionable validity." Dr. Vanderweide noted appellant "self-limited on 100 percent of the 21 tasks complaining of left knee pain." He found no direct correlation between her reported pain level, suggesting inconsistencies and symptom magnification.

In a June 22, 2005 disability slip, Dr. Allen R. Criswell, an attending Board-certified orthopedic surgeon, diagnosed patella chondromalacia and indicated that appellant could return to work on June 23, 2005 with restrictions. Subsequently, the Office received treatment notes dated May 25 to June 21, 2005. Dr. Criswell noted that appellant continued to complain of severe pain in the left knee patellofemoral region. A physical examination revealed significant knee pain on flexion. Dr. Criswell stated: "[c]linically, the patient at most has only chondromalacia symptoms in her knee." He noted that she complained of persistent left knee pain. Dr. Criswell noted that he did not feel he had "anything orthopedically to offer the patient that would change her present symptomatology." On June 21, 2005 he released appellant from his care on the basis that he "would not be able to offer any other type of treatment for your knee that you have not had to this point."

By notice dated September 7, 2005, the Office advised appellant of its proposal to terminate her compensation. It found that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Vanderweide.

In response, appellant submitted an August 29, 2005 note from Dr. Guerrero, who opined that appellant was totally disabled since July 23, 2005 due to severe constant pain.

By decision dated October 14, 2005, the Office terminated appellant's compensation effective October 30, 2005 finding that she had no residuals of her employment injury after that date.

On October 19, 2005 the Office received an August 31, 2005 report from Dr. Kenneth D. Mathis, an examining Board-certified orthopedic surgeon, who reported on a normal left knee examination. Dr. Mathis noted that appellant was seen for complaints of severe pain.

On October 21, 2005 appellant requested an oral hearing, which was subsequently changed to a request for a review of the written record. In reports dated April 5 to December 19, 2005, Dr. Guerrero noted that appellant continued to have complaints of constant left knee pain "associated with swelling and intermittent burning and tingling below her knee."

Dr. Thaddeus W. Hume reported on October 18, 2005 that x-rays showed "moderate narrowing of the medial compartment consistent with early degenerative joint disease." A physical examination revealed no left knee swelling, 0 to 100 degrees range of motion "with some mild subpatellar crepitus," a negative Apley test and negative straight leg raising. Dr. Hume diagnosed probable post-traumatic left knee arthritis and left knee chondromalacia. He recommended a repeat MRI scan based upon appellant's persistent symptoms.

In a decision dated February 24, 2006, an Office hearing representative affirmed the October 14, 2005 decision.

On March 8, 2006 appellant requested reconsideration and submitted chart notes for the period September 6, 2002 to March 2, 2006, a December 29, 2005 MRI scan, an October 24, 2005 report by Dr. Guerrero, a December 29, 2005 MRI scan, a May 25, 2006 disability note from Dr. James E. Cary, a chiropractor, and an October 18, 2005 report by Dr. Hume.

By decision dated June 2, 2006, the Office denied further merit review on the grounds that the evidence was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[2] After it has determined that, an employee has disability causally related to 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.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[5]

ANALYSIS -- ISSUE 1

The Office accepted the conditions of left knee strain/sprain, left thigh and left leg contusion. The Office based its decision to terminate appellant's compensation on the opinion of Dr. Vanderweide, who performed a second opinion examination. In a June 7, 2005 report, Dr. Vanderweide opined that appellant's accepted left knee strain/sprain, left thigh and left leg contusion had fully resolved and that she was able to return to work with restrictions. A physical examination revealed full extension, 90 degrees flexion, no effusion and no evidence of

[2] *Paul L. Stewart*, 54 ECAB 824 (2003).

[3] *Elsie L. Price*, 54 ECAB 734 (2003).

[4] *See Del K. Rykert*, 40 ECAB 284 (1988).

[5] *James F. Weikel*, 54 ECAB 660 (2003).

instability. A review of a December 11, 2002 MRI scan showed no meniscal injuries, no cruciate ligament injuries and no collateral ligament injuries. Dr. Vanderweide opined that appellant "sustained a self-limiting soft tissue injury to the left knee, which required no operative intervention." He reviewed a work performance evaluation summary performed on June 7, 2005, which he found was "of questionable validity." Dr. Vanderweide noted appellant self-limited on 100 percent of the 21 tasks complaining of left knee pain. He found "no direct correlation between her reported pain level and heart rate, suggesting inconsistencies and symptom magnification." There were no objective findings to support appellant's pain complaints. Dr. Vanderweide's report is thorough, well rationalized and based on an accurate factual history. The Board finds that Dr. Vanderweide's opinion constitutes the weight of the medical evidence and is sufficiently rationalized to support the Office's decision to terminate appellant's compensation benefits. The Board notes that Dr. Albina, Dr. Stauch and Dr. DeBender, prior second opinion physicians, all concluded that appellant's accepted condition had resolved and her complaints of pain were unsupported by objective evidence.

Medical evidence submitted by appellant does not support that she has any continuing disability or residuals. The record contains reports from Dr Jarolimek, Dr. Criswell, Dr. Mathews, Dr. Hume and Dr. Guerrero. The physicians reported on appellant's complaint of constant left knee pain. Appellant was discharged from the care of Dr. Criswell and Dr. Jarolimek due to the lack of objective evidence to support her complaints. They concluded that there was no objective evidence to support her depiction of chronic pain. A December 29, 2005 MRI scan demonstrated a normal left knee. Dr. Guerrero concluded that appellant was totally disabled due to severe pain. The Board has held that a diagnosis of "pain," without more in the way of medical rationale, does not constitute the basis for the payment of compensation.[6] Dr. Mathis noted appellant's complaints of severe left knee pain and reported a normal knee examination. Dr. Hume diagnosed probable post-traumatic left knee arthritis and left knee chondromalacia. Dr. Guerrero's reports are insufficient to create a conflict with the opinion of Dr. Vanderweide. Neither Dr. Mathis nor Dr. Hume provided an adequate exploration of how appellant's disability was causally related to her accepted employment injury. Dr. Mathis reported a normal knee examination while Dr. Hume diagnosed probable post-traumatic left knee arthritis and left knee chondromalacia. In addition, he reported that the recent objective evidence demonstrated a normal left knee. The Board finds that the reports by Drs. Mathis and Hume are of diminished probative value as they failed to address explaining how her continuing residuals or disability was caused or contributed to by the November 17, 2002 employment injury. Accordingly, the Board finds that the Office met its burden of proof to terminate appellant's medical benefits as of October 30, 2005.

[6] *Robert Broome*, 55 ECAB 339 (2004).

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act[7] provides that, pursuant to section 8128(a), the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[8] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[9]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[10]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[11] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

The Board finds that the Office properly refused to reopen appellant's case for further merit review. Appellant has not alleged or shown that the Office erroneously applied or interpreted a specific point of law, nor has she advanced a relevant legal argument not previously considered by the Office.

Appellant also failed to satisfy the third regulatory requirement listed in section 10.606(b). She submitted chart notes for the period September 6, 2002 to March 2, 2006, an October 24, 2005 report by Dr. Guerrero, a December 29, 2005 MRI scan, a May 25, 2006 disability note by Dr. Cary, a chiropractor, and an October 18, 2005 report by Dr. Hume. The Board finds that the reports by Dr. Guerrero and Dr. Hume are duplicative and previously considered by the Office. The Board has held that material which is cumulative or duplicative of

[7] 5 U.S.C. §§ 8101 *et seq.*

[8] 5 U.S.C. § 8128(a). *See Tina M. Parrelli-Ball*, 57 ECAB ___ (Docket No. 06-121, issued June 6, 2006).

[9] 20 C.F.R. § 10.605.

[10] *Id*. at § 10.606. *See Susan A. Filkins*, 57 ECAB ___ (Docket No. 06-868, issued June 16, 2006).

[11] *Id*. at § 10.607(a). *See Joseph R. Santos*, 57 ECAB ___ (Docket No. 06-452, issued May 3, 2006).

[12] *Id*. at § 10.608(b). *See Candace A. Karkoff*, 56 ECAB ___ (Docket No. 05-677, issued July 13, 2005).

that already in the record has no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.[13] While Dr. Cary's disability note is new, it does not constitute relevant medical evidence pertaining to appellant's accepted left knee condition. The underlying issue is whether appellant continue to have residuals and disability after October 30, 2005. Dr. Cary is not considered "a physician" as defined under the Act. There is no evidence of a spinal subluxation as demonstrated by x-ray.[14] His treatment of her knee is beyond the scope of manual manipulation of the spine.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's medical and wage-loss compensation benefits. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 2 and February 24, 2006 are affirmed.

Issued: March 9, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[13] *Betty A. Butler*, 56 ECAB ___ (Docket No. 04-2044, issued May 16, 2005); *Daniel M. Dupor*, 51 ECAB 482 (2000).

[14] *Mary A. Ceglia*, 55 ECAB 626 (2004).