

**United States Department of Labor
Employees' Compensation Appeals Board**

B.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buffalo, NY, Employer**

)
)
)
)
)
)
)
)

**Docket No. 07-2402
Issued: May 16, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 24, 2007 appellant filed a timely appeal from a July 3, 2007 decision of the Office of Workers' Compensation Programs, terminating her wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

FACTUAL HISTORY

On February 14, 2006 appellant, then a 55-year-old expeditor, bumped her left knee on a table leg and sustained a contusion. She sustained a recurrence of disability on April 21, 2006. On October 23, 2006 appellant underwent arthroscopic surgery consisting of a left knee partial

medial meniscectomy and medial femoral condyle chondroplasty performed by Dr. Robert J. Smolinski, an attending orthopedic surgeon.¹

In a report dated January 15, 2007, Dr. John H. Ring, an orthopedic surgeon and an Office referral physician, reviewed appellant's medical history and described her job requirements. He provided findings on physical examination and diagnosed a tear of the medial meniscus of the left knee, status post surgery. Dr. Ring stated:

"Diagnosis: A tear of the medial meniscus of the left knee. [Appellant] ... has the scars from her surgery. She has no other objective findings. [Appellant] has tenderness, which is a subjective finding, of the medial joint line and medial to the patella and superior to the patella. Residuals: She has residual pain, but why this has not resolved I do not know. [Appellant] did have a tear of the medial meniscus, and this was found at the time of surgery ... and on MRI.

"I would feel that [appellant's] work-related condition is not yet resolved. I would continue her in therapy twice a week for another six weeks. It is still early in her convalescence, again about a little less than three months since the surgery, and I would anticipate she will continue to improve."

* * *

"I would not feel [that] [appellant] can work as an expeditor at the time I examined her on January 15, 2007, as a result of the work injury on February 14, 2006."

* * *

"[Appellant] is capable of working; however, I would recommend avoiding all kneeling and squatting and I would restrict her lifting to less than 40 pounds. I feel she would need a job where she could sit and stand as necessary to be comfortable. I would feel these restrictions are temporary and would reassess them in another six weeks. [Appellant] is able to work eight hours a day."

In notes dated February 19 to May 17, 2007, two physicians provided findings on physical examination and opined that appellant was totally disabled due to knee pain and effusion following her meniscal repair.

The Office requested that Dr. Ring conduct a second examination of appellant and provide a supplemental report in order to clarify some issues related to her medical condition and

¹ A magnetic resonance imaging (MRI) scan dated July 21, 2006 revealed a horizontal degenerative tear involving the posterior horn of the medial meniscus of the left knee.

ability to work. In a March 15, 2007 report, Dr. Ring reviewed appellant's medical history and provided findings on physical examination. He stated:

"[Appellant] had no fluid in either knee. Range of motion is 3 degrees of hyperextension to 120 degrees in the left knee, 3 degrees of hyperextension to 120 degrees on the right knee.... [She] has numbness in the front of the left knee between the two scars which are the portals from the arthroscopic surgery. [Appellant] still has tenderness in the medial and also in the lateral joint line. The knee is perfectly stable."

* * *

"[Appellant] can return to her regular duties as far as her knee is concerned. She has other problems in the neck, the cervical spine and the lumbosacral spine, which I did not assess, which are not related to [the employment injury] of February 14, 2006."

* * *

"[Appellant] is no longer going to physical therapy. This was stopped in January. I would not feel that she needs any additional medical care for her knee. I would not feel she needs further diagnostic testing."

* * *

"I would feel she has achieved maximum medical improvement."

* * *

"[Appellant] does have a mild disability as a result of the injury to her left knee, which is by direct cause. At this point, I would feel that it is too early to assess permanency, but would anticipate that she will have some permanency."

* * *

"[Appellant], I would feel, greatly exaggerates the complaints about her knee."

The Office requested further clarification from Dr. Ring. In an April 26, 2007 report, Dr. Ring stated:

"At the present time [appellant] have complaints of pain anteromedially and buckling in her knee. [She] has a full range of motion in the knee. [Appellant] has some numbness in front of the knee between [the] two scars. She has some tenderness medially. On the basis of the complaint and the pain and on the basis of having some numbness of the knee, I fe[el] [appellant] did have a mild disability. I did review her position description and would feel[,] as far as her knee is concerned, she could return to work. [Appellant] has a full range of motion of her knee, her knee is stable, no fluid."

On May 29, 2007 the Office advised appellant of its proposed termination of her compensation benefits on the grounds that the weight of the medical evidence established that she had no residuals from her accepted left knee condition.

On July 3, 2007 the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no residual medical condition or disability causally related to her accepted left knee contusion sustained on February 14, 2006.²

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Furthermore, 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 a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁶

ANALYSIS

The Office terminated appellant's wage-loss compensation and medical benefits based on the reports of Dr. Ring, an Office second opinion physician. The Board finds, however, that his reports are not sufficient to warrant the termination of her compensation benefits. Dr. Ring stated that appellant's left knee was "perfectly stable" and she could return to her regular duties for eight hours a day. He also opined that she did not require further medical care for her knee. However, there are other statements in his reports that are not consistent with his opinion that appellant's accepted left knee condition had resolved and that she had the ability to perform her regular work. Dr. Ring noted that she had residual tenderness and pain in her knee. Appellant also experienced buckling of her knee, a finding which contradicts his description of a stable knee. Dr. Ring stated that she had a mild disability due to pain and numbness as a direct result of the work-related injury to her left knee. He anticipated that this mild disability would "have some permanency." These statements regarding pain, tenderness, knee buckling and a mild disability, possibly permanent, conflict with his stated opinion that she had no further need for medical treatment for her accepted left knee condition and, that her knee was stable and that

² Subsequent to the July 3, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

³ *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

⁴ *Id.*

⁵ See *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

appellant could perform her regular work. For these reasons, the reports of Dr. Ring are not sufficient to establish that appellant's accepted left knee condition has resolved and she is no longer disabled from work due to her February 14, 2006 left knee contusion and associated knee surgery for a meniscal tear.

CONCLUSION

The Board finds that the Office has not met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 3, 2007 is reversed.

Issued: May 16, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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