

On June 10, 2000 appellant, then a 49-year-old letter carrier, filed an occupational disease claim alleging a low back and right knee condition as a result of her federal duties, which included walking, driving, lifting, pulling and pushing. The Office accepted that she sustained an aggravation of her underlying spondylosis and osteoarthritis of the right knee. On June 24,

2000 appellant stopped work for a nonwork-related medical condition. On August 21, 2001 she returned to work as a letter carrier in a modified position with physical restrictions.

In a decision dated May 31, 2005, the Office denied appellant's claim for a recurrence of total disability from April 4 through 8, 2005. Appellant returned to her modified position on April 8, 2005. By decision dated December 21, 2005, an Office hearing representative affirmed the denial of the recurrence claims. However, the case was remanded for further development with regard to appellant's claim for medical treatment of the accepted conditions.

In a November 1, 2006 report, Dr. Robert A. Smith, a Board-certified orthopedic surgeon and Office referral physician, noted the history of injury, reviewed the medical record and presented findings on examination. He noted x-rays of the lumbar spine showed extensive degenerative disease and spondylosis in the spine, particularly at L4-5 with degenerative spondylolisthesis at that level. Dr. Smith also noted x-rays of the right knee showed severe triocompartmental arthritis which was consistent with her prior nonindustrial injuries, chronic instability of the knee and multiple surgeries. He noted that appellant's claim was accepted for aggravation of underlying spondylosis and arthrosis of the right knee, which he described as a limited and temporary aggravation related to her work activity. Dr. Smith stated that there was nothing on clinical examination or on diagnostic studies to establish that appellant sustained a permanent aggravation of her back or knee arthritis. He advised that appellant required no further treatment or diagnostic testing related to the temporary aggravation of her arthritis. Appellant's current symptoms were related to her preexisting spondylosis and arthritis. Dr. Smith recommended restricted duty on a permanent basis, but noted such restrictions were related to appellant's preexisting arthrosis and spondylosis and not due to her federal employment.

On November 8, 2006 the Office proposed terminating appellant's compensation benefits, finding that the weight of the medical evidence established that appellant no longer had any continuing disability or residuals of the accepted employment factors.

In a December 5, 2006 report, Dr. Douglas S. Tase, a Board-certified orthopedic surgeon and treating physician, opined that appellant continued to have work-related aggravation of her underlying degenerative disease of the spine and right knee. He had treated her since May 31, 2000 for degenerative spondylolisthesis, a common finding in women of middle age, but which was rendered symptomatic by lifting and standing at work. Dr. Tase stated that appellant had an anterior cruciate ligament (ACL) injury, which led to the development of degenerative arthritis in her knee. He advised that the walking and standing in her work caused her arthritis to become symptomatic. Dr. Tase explained that her normal work duties aggravated her underlying back and knee conditions and that her symptoms were more than likely permanent. Any return to normal duty would reaggravate her symptoms such that work would become intolerable. Dr. Tase noted that appellant was placed on a light-duty restriction and advised that it was only because of her restrictions that she was able to work. He found it unlikely that surgery would offer any relief or return her to regular duty.

By decision dated December 12, 2006, the Office terminated appellant's medical and wage-loss benefits effective December 12, 2006.

By letter dated December 27, 2006, appellant disagreed with the Office's December 12, 2006 decision and requested an oral hearing, which was held telephonically on April 13, 2007. By decision dated July 19, 2007, an Office hearing representative found that there was a conflict in medical opinion between Dr. Smith and Dr. Tase as to whether appellant's work duties caused a temporary or permanent aggravation of her preexisting low back and right knee conditions. The case was remanded for development of the factual and medical evidence. The hearing representative noted that the record did not list a permanent aggravation of preexisting conditions as being an accepted condition and instructed the Office to clarify the statement of accepted facts.

In an updated July 30, 2007 statement of accepted facts, the Office indicated that it accepted that appellant sustained a permanent aggravation of her underlying spondylosis and osteoarthritis of the right knee.<sup>1</sup> Thereafter, on October 24, 2007, it referred appellant to Dr. John F. Perry, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical evidence as to whether she sustained an aggravation of her underlying conditions of spondylosis and right knee osteoarthritis. In its questions to the impartial specialist, the Office requested that the referee physician: establish the diagnosis of the back and right knee; determine whether the diagnosed conditions were medically connected to the factors of employment as described in the statement of accepted facts either by direct cause, aggravation, precipitation or acceleration; if aggravation was indicated, to explain with medical rationale whether it was temporary or permanent; and, if appellant still had an aggravation of her underlying conditions, to describe the limitations resulting from the work-related disability as well as any restrictions attributable to preexisting conditions.

In a November 19, 2007 report, Dr. Perry reviewed appellant's history and medical records and noted the results of his examination. He diagnosed status post failed anterior cruciate ligament reconstruction of the right knee with posterior and anterior cruciate insufficiency and chronic instability, osteoarthritis of the right knee and osteoarthritis of the lumbar spine. Based on the history of no trauma and the physical examination, Dr. Perry found that appellant's problems were not caused by her work but rather due to progressive degeneration in the lumbar spine while the anterior cruciate deficiency of her right knee developed into severe osteoarthritis. He explained that an actual history of anterior cruciate deficient knees is to tear the menisci and develop degenerative arthritis. Dr. Perry stated that this happens to every anterior cruciate deficient knee eventually and appellant had gone through that process. There was no evidence that anything appellant did accelerated or changed the natural history of her problem. Dr. Perry opined that appellant's right knee condition was related to her previous anterior cruciate ligament surgery, which was a failure. He stated that a chronic posterior cruciate ligament could produce some arthritis but an anterior cruciate ligament insufficiency always did. Dr. Perry stated that appellant's lumbar spine condition was not caused by lifting, carrying or other occupational activities. He noted studies had been conducted to try to correlate radiologic changes of degeneration of the spine, which are indicators of arthritis, with work activities and no correlation had been identified. Dr. Perry stated that individuals with arthritis may have an increase in their symptoms while active; however, he advised this did not result in

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<sup>1</sup> The Office's August 14, 2006 statement of accepted facts listed the accepted conditions as an aggravation of underlying spondylosis and osteoarthritis of the right knee.

permanent impairment. It simply was a symptomatic response to increased activity in conjunction with progressive wearing of the joints. Dr. Perry concluded that there was no evidence of any permanent aggravation of the accepted conditions due to appellant's employment.

On December 26, 2007 the Office issued a notice of proposed termination of appellant's compensation benefits based on Dr. Perry's opinion. In a January 14, 2008 letter, appellant's attorney contested the medical evidence.

By decision dated January 25, 2008, the Office terminated appellant's compensation benefits effective January 25, 2008. On January 31, 2008 appellant requested a review of the written record.

By decision dated June 23, 2008, an Office hearing representative affirmed the Office's January 25, 2008 termination decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his 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.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>6</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee of the Secretary shall appoint a third physician who shall make an examination.<sup>7</sup> It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the

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<sup>2</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>6</sup> *T.P.*, 58 ECAB \_\_ (Docket No. 07-60, issued May 10, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *F.R.*, 58 ECAB \_\_ (Docket No. 05-15, issued July 10, 2007); *Regina T. Pellecchia*, 53 ECAB 155 (2001); 5 U.S.C. § 8123(a).

opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>8</sup>

### ANALYSIS

The Office accepted appellant's claim for an aggravation of her underlying spondylosis and osteoarthritis of the right knee causally related to her letter carrier duties. Appellant has worked in a modified position with restrictions since August 21, 2001. The Office referred her for a second opinion evaluation. Dr. Smith, in a November 1, 2006 report, opined that appellant had recovered from the effects of the aggravation of her underlying spondylosis and arthrosis of the right knee, which he advised was temporary. Dr. Tase, appellant's treating physician, opined that she continued to experience work-related aggravation of her underlying degenerative spine disease and right knee osteoarthritis. He opined that the aggravation was likely permanent in nature. The Office hearing representative, on July 19, 2007, properly found that there was a conflict between appellant's treating physician and the second opinion physician regarding whether the aggravation of appellant's accepted conditions was temporary or permanent. The Board finds the Office properly referred appellant's case to Dr. Perry, for an impartial medical examination.<sup>9</sup>

Dr. Perry was provided a list of questions as well an amended statement of accepted facts. The Board notes that the claims examiner inadvertently modified the statement of accepted facts on July 30, 2007 to reflect that appellant had sustained a permanent aggravation of the accepted conditions. Chapter 2.809.4(c) of the Office's procedure manual states:

*“[T]he [statement of accepted facts] is the means by which factual findings, which are the sole responsibility of the [claims examiner], are separated from medical findings and opinions, which are the province of the medical professional. This separation of functions will ensure that the [claims examiner] does not inadvertently make medical decisions.”<sup>10</sup>*

Since the question to be resolved by the impartial medical examiner was whether the work-related aggravation of the accepted conditions was temporary or permanent, it was an error for the claims examiner to make such a medical determination in the statement of accepted facts. However, the Board finds this error in the statement of accepted facts was harmless as Dr. Perry, the impartial medical specialist, was clearly apprised in the list of questions that the nature of the conflict to be resolved was whether the accepted aggravation of underlying spondylosis or osteoarthritis of the right knee was temporary or permanent. Specifically, the Office requested that the referee physician determine whether the diagnosed conditions were medically connected to the factors of employment either by direct cause, aggravation, precipitation or acceleration

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<sup>8</sup> Darlene R. Kennedy, 57 ECAB 414 (2006).

<sup>9</sup> *Id.*

<sup>10</sup> Federal (FECA) Procedural Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.4(c) (June 1995).

and, if aggravation was indicated, to explain with medical rationale whether the aggravation was temporary or permanent.

The Board finds that Dr. Perry, the impartial medical specialist and Board-certified orthopedic surgeon, based his opinion on a proper factual and medical background. The Office provided him with appellant's medical record, a statement of accepted facts and questions to be addressed in resolving the conflict of medical opinion between Dr. Smith and Dr. Tase. Dr. Perry reviewed appellant's history, noted her current complaints, set forth findings on examination of appellant and addressed the questions presented.

Dr. Perry opined that the progressive degenerative condition in appellant's lumbar spine and her right knee, which had gone on to severe osteoarthritis, were not caused or permanently aggravated by her federal employment. He explained that an anterior cruciate deficient knee was one in which the menisci was torn and where degenerative arthritis typically develops. Dr. Perry stated that appellant had gone through the degenerative arthritis process and there was no indication anything she did accelerated or changed the nature of her condition. He stated that appellant's right knee was related to her previous anterior cruciate ligament surgery, which he characterized as a failure. Dr. Perry found that appellant's lumbar spine problem was not caused by her occupational activities. He stated that there was no evidence that appellant sustained a permanent aggravation due to employment factors and the increase in symptoms while she was active was simply a symptomatic response to increased activity in conjunction with progressive wearing of the joints. Dr. Perry addressed medical studies that did not correlate arthritis of the spine to work activities. He found no basis on which to attribute any continuing condition or symptoms to appellant's work.

Dr. Perry offered a medical opinion that is sound, rational and logical. Because the opinion of the impartial medical specialist is based on a proper history and is sufficiently rationalized, the Board finds that it must be accorded special weight in resolving the conflict. As the weight of the medical opinion evidence supports that the employment-related aggravation of appellant's accepted conditions resolved, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective January 25, 2008.

### **CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective January 25, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decision dated June 23, 2008 is affirmed.

Issued: June 16, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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