

Office authorized left knee arthroscopic surgery, which was performed on December 21, 2004. It placed him on the periodic rolls for temporary total disability.¹ Appellant returned to a temporary alternate duty assignment on May 9, 2005 working 4 hours a day and 20 hours a week.² By letter dated August 23, 2007, the Office placed him on the periodic rolls for temporary total disability effective July 22, 2007.³

On August 30, 2007 the Office referred appellant for vocational rehabilitation. It suspended placement services on December 29, 2008 pending clarification of appellant's work restrictions.

A March 6, 2009 functional capacity evaluation (FCE) was performed at the request of Dr. Todd Schmidt, a treating Board-certified orthopedic surgeon. The report determined that appellant was capable of performing heavy physical demand work.

On March 17, 2009 Dr. Alexander Doman, a second opinion Board-certified orthopedic surgeon, diagnosed successful postarthroscopic partial medial left knee meniscectomy. On physical examination there was no effusion, minimal medial joint line tenderness, normal anterior cruciate ligament testing and left knee range of motion to 125 degrees. Dr. Doman noted that x-rays showed no ongoing problems or any significant post-traumatic degenerative arthritis. He found that appellant's left knee strain had resolved. Dr. Doman reported there was no objective evidence of any disability due to the knee strain. He determined that appellant was capable of performing his date-of-injury job as there were no residuals or disability due to the accepted August 23, 2004 employment injury. In an attached work capacity evaluation form, Dr. Doman advised that appellant had no physical limitations.

On April 23, 2009 the Office issued a notice proposing to terminate appellant's compensation benefits on the grounds that he no longer had any residuals or disability due to his accepted knee condition. It found the weight of the medical evidence rested with Dr. Doman's opinion.

In a letter dated May 14, 2009, appellant disagreed with the proposal to terminate his compensation benefits and requested vocational rehabilitation services be reinstated. He submitted a September 12, 2008 visit status report from Dr. Schmidt, who provided work restrictions including a 40-pound limit, no squatting and decreased walking, kneeling and climbing stairs.

¹ By decision dated February 23, 2007, the Office granted appellant a schedule award for two percent left lower extremity permanent impairment.

² On June 29, 2005 the Office issued a loss of wage-earning capacity decision reducing his wage-loss compensation. It found that his actual wages as a modified special investigative technician represented his wage-earning capacity.

³ Appellant retired on disability from the employing establishment effective July 21, 2007 as the employing establishment could not accommodate his work restrictions.

By decision dated June 5, 2009, the Office terminated appellant's compensation effective June 7, 2009. It found the evidence of record established that he no longer had any disability or residuals due to his accepted left knee strain and left meniscus tear.

In a letter dated June 17, 2009, appellant's counsel requested a telephonic hearing before an Office hearing representative, which was held on October 13, 2009.

In a July 3, 2009 report, Dr. Schmidt diagnosed left knee pain due as a result of the left knee medial meniscus tear and partial medial meniscectomy. He related that appellant's residual symptoms were due to both aging degeneration and the partial meniscectomy. According to Dr. Schmidt, appellant was capable of working with restrictions based on the FCE. Restrictions include occasional walking, constant sitting, frequent standing, occasional kneeling and occasional stair climbing.

On October 23, 2009 Dr. Schmidt noted that chronic pain could be a problem for some patients who had a torn meniscus and partial meniscectomy. Appellant did have bilateral mild medial knee joint space narrowing and possibly early bilateral knee degenerative arthritis. Dr. Schmidt related that appellant's bilateral early degenerative arthritis could be the source of his subjective pain complaints.

By decision dated December 18, 2009, the Office hearing representative affirmed the termination of appellant's compensation benefits.

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.⁴ 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.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See I.R.*, 61 ECAB ____ (Docket No. 09-1229, issued February 24, 2010); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *A.P.*, 60 ECAB ____ (Docket No. 08-1822, issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *B.K.*, 60 ECAB ____ (Docket No. 08-2002, issued June 16, 2009); *Kathryn E. Demarsh*, *supra* note 7; *James F. Weikel*, 54 ECAB 660 (2003).

ANALYSIS

The Office accepted appellant's claim for left knee strain and meniscus tear and authorized left knee arthroscopic. Appellant retired from the employing establishment effective July 21, 2007 and was placed on the periodic rolls for temporary total disability on July 22, 2007. The question to be resolved is whether the Office met its burden in terminating his compensation benefits on the grounds that he no longer had any residuals or disability due to his accepted employment injury.

Appellant was referred to Dr. Doman, a second opinion Board-certified orthopedic surgeon, who provided findings on examination of the left knee. Dr. Doman concluded that he no longer had any residuals or disability due to his accepted left knee strain and meniscus tear. He reported appellant's left knee surgery was successful and there were no abnormal physical findings on examination. Dr. Doman related that x-ray interpretations showed no significant post-traumatic degenerative arthritis or any ongoing left knee problems. He advised that appellant was capable of performing his date-of-injury job with no restrictions as there were no residuals or disability due to the accepted August 23, 2004 employment injury.

The record also contains reports from Dr. Schmidt, appellant's treating Board-certified orthopedic surgeon. On September 12, 2008 he reported work restrictions but on March 6, 2009 concluded that appellant could perform heavy physical work. In a July 3, 2009 report, Dr. Schmidt attributed appellant's residual symptoms to both aging degeneration and the partial meniscectomy. In an October 23, 2009 report, he related that chronic pain can be a problem for some patients who have had a torn meniscus and partial meniscectomy. Dr. Doman stated that the diagnosis of possible early bilateral knee degenerative arthritis could be the source of appellant's subjective pain complaints. However, the Board notes that pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation.⁹ Dr. Doman provided no explanation or rationale in his July 3 and October 23, 2009 reports explaining how appellant's current symptoms and condition were employment related. This lack of rationale reduces the probative value of his opinion.¹⁰ Moreover, the Office did not accept appellant's claim for bilateral knee degenerative arthritis and Dr. Doman did not explain how this condition resulted from the accepted employment knee injury. As Dr. Schmidt's opinion is of diminished probative value due to the lack of physical findings and supporting rationale in his reports, his opinion is insufficient to create a conflict with Dr. Doman's opinion.

Thus, the Board finds that the Office properly terminated appellant's wage-loss and medical compensation benefits effective June 7, 2009, as the weight of the competent medical evidence established that the accepted August 23, 2004 left knee strain and meniscus tear had ceased without residuals.

⁹ See *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

¹⁰ *F.T.*, 61 ECAB ___ (Docket No. 09-919, issued December 7, 2009); *Mary A. Ceglia*, 55 ECAB 626 (2004).

CONCLUSION

The Board finds that the Office met its burden of proof when it terminated appellant's compensation benefits effective June 7, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2009 is affirmed.

Issued: December 21, 2010
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