

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

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**B.M., Appellant**

**and**

**U.S. POSTAL SERVICE, CLIFFDALE  
STATION, Fayetteville, NC, Employer**

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**Docket No. 10-1266  
Issued: February 8, 2011**

*Appearances:*  
*Daniel F. Read, Esq., for the appellant*  
*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 April 5, 2010 appellant, through counsel, filed a timely appeal from a February 24, 2010 merit decision of the Office of Workers' Compensation Programs terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective December 18, 2008 on the grounds that she no longer had any residuals or disability causally related to his accepted employment-related injury; and (2) whether she had any continuing employment-related residuals or disability after December 18, 2008.

On appeal appellant's counsel contends the Office failed to consider whether her employment injury aggravated her preexisting left knee condition and that she became totally disabled following her injury.

## **FACTUAL HISTORY**

On August 27, 2005 appellant, then a 47-year-old casual carrier, sustained a left knee sprain while walking her route. The Office accepted the claim for left knee strain and authorized left knee arthroscopic surgery, which was performed on January 3, 2006. It subsequently accepted synovitis and tenosynovitis of the left knee. By letter dated July 26, 2006, the Office placed appellant on the periodic rolls for temporary total disability.

In a September 24, 2008 report, Dr. Stephen H. Kouba, a treating Board-certified orthopedic surgeon, noted that appellant sustained an August 20, 2005 employment-related left knee sprain and that she had a preexisting history of arthritis with prior surgery in 1991. He opined that she continued to have preexisting left knee osteoarthritis and that her employment-related left knee injury had resolved. Dr. Kouba found that appellant was capable of employment and released her from his care.<sup>1</sup>

On October 30, 2008 the Office issued a notice of proposed termination of compensation benefits.

On December 1, 2008 Dr. Kouba reviewed the October 30, 2008 notice proposing to terminate appellant's compensation benefits. He reported that appellant had a left knee problem consistent with chronic knee pain and osteoarthritis. Dr. Kouba agreed with appellant that it would be difficult for her to find employment due to her physical restrictions. He related that appellant wanted to continue with her compensation benefits as she believed she was unemployable.

By decision dated December 18, 2008, the Office terminated appellant's medical and wage-loss compensation effective that day.

Following the December 18, 2008 termination decision, the Office received a December 1, 2008 disability note from Dr. Kouba stating that appellant was unable to return to work until further notice.

On May 27, 2009 appellant requested reconsideration of the decision terminating her benefits.

By nonmerit decision dated June 11, 2009, the Office denied appellant's request for reconsideration.

In a letter dated December 8, 2009, appellant's counsel requested reconsideration. He contended that appellant's claim should be accepted for an aggravation of left knee degenerative joint disease and arthritis. In an October 9, 2009 form report, Dr. Kouba opined that appellant's progression and interval development of the anterior and lateral aspect of partial thickness cartilage loss of the medial femoral condyle was consistent with arthritis. In response to a question posed by appellant's attorney, he stated that appellant's progressive stiffness, inability

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<sup>1</sup> Dr. Kouba noted that appellant no longer worked as a casual carrier and was attending classes at a local community college.

to bend the knee or walk, and pain with weight bearing was a natural consequence of the left knee injury. Dr. Kouba noted that a joint sprain or strain involved an articular bone surface injury which when damaged resulted in accelerating wear of the articular cartilage. He opined that appellant would not have had this condition without the August 2005 employment injury.

By decision dated February 24, 2010, the Office denied modification of the December 18, 2008 termination decision. It noted that Dr. Kouba failed to provide sufficient explanation on causal relationship or for changing his September 24, 2008 opinion that appellant's employment-related condition had resolved.

### **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.<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 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 would require further medical treatment.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that on August 27, 2005 appellant sustained a left knee sprain, synovitis and tenosynovitis of the left knee and authorized arthroscopic surgery, which was performed on January 3, 2006. It paid medical and wage-loss compensation benefits.

The Office based its decision to terminate appellant's compensation benefits on the opinion of Dr. Kouba, her attending Board-certified orthopedic surgeon. On September 24, 2008 Dr. Kouba determined that appellant's employment-related injury had resolved. He noted appellant currently had left knee osteoarthritis which was a preexisting condition related to prior knee surgery in 1991 and not employment related. Dr. Kouba reported that appellant was capable of returning to work and discharged her from further medical care.

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<sup>2</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>4</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>6</sup> *Kathryn E. Demarsh*, *supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003).

The Board finds that Dr. Kouba's September 24, 2008 opinion constitutes the weight of medical opinion on appellant's residual disability. Dr. Kouba was appellant's treating physician and his opinion that her employment-related injury had resolved is unrefuted by any probative medical evidence. His report is rationalized and based upon a proper factual background. The Board finds that the weight of the medical evidence establishes that appellant no longer had any residuals of her accepted employment-related left knee strain, synovitis or tenosynovitis. Dr. Kouba concluded that appellant was capable of resuming her employment and released her from his care, finding that no further treatment was necessitated. He addressed her preexisting left knee arthritis, but noted it would continue to cause problems. No other medical evidence contemporaneous with the Office's termination found disability or residuals due to the accepted left knee strain, synovitis and tenosynovitis. On December 1, 2008 Dr. Kouba noted appellant's belief that she remained unemployable and diagnosed chronic degenerative joint disease of the patellofemoral compartment. However, he did not attribute this condition to appellant's accepted injury. The reports of Dr. Kouba support the Office's decision to terminate benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to his accepted injury.<sup>7</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's counsel requested reconsideration on December 8, 2009 and submitted an October 9, 2009 report from Dr. Kouba who advised that appellant's symptoms were consistent with arthritis of her left knee and that her employment injury had aggravated her preexisting left knee osteoarthritis. Dr. Kouba provided no explanation for the change in his opinion from concluding that appellant's employment-related left knee condition had resolved to an opinion that her preexisting left knee osteoarthritis had been aggravated by the August 27, 2005 employment injury. As he failed to provide any reason for the change in his opinion or present any medical rationale explaining how or why appellant's employment injury had aggravated her preexisting left knee osteoarthritis, his opinion is of diminished probative value as it contains insufficient medical rationale explaining the change in his opinion.<sup>8</sup> Thus, appellant has failed to establish that she has any continuing residuals or disability due to her accepted employment injury.

On appeal appellant's counsel contends that the Office failed to consider that the August 27, 2005 injury aggravated her preexisting left knee osteoarthritis which rendered her totally disabled and that her claim should be expanded to include this condition. The Board notes that appellant has the burden of proof to establish that conditions not accepted by the Office are causally related to the employment injury through the submission of rationalized medical

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<sup>7</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>8</sup> *Robert Broome*, 55 ECAB 339 (2004).

evidence.<sup>9</sup> The Board finds that the medical evidence of record is presently insufficient to establish that she sustained an aggravation of her preexisting left knee osteoarthritis condition due to her work injury. Dr. Kouba did not address any aggravation of appellant's preexisting osteoarthritis until his October 9, 2009 report; rather his September 24, 2008 report noted only that her employment-related condition had resolved. As noted, he did not fully explain appellant's prior medical history or how the employment injury had aggravated her preexisting left knee osteoarthritis.<sup>10</sup> Such explanation was especially needed since the Office had not accepted an aggravation of a preexisting condition as employment related. The Board finds that his opinion is of diminished probative value as it contains insufficient medical rationale explaining the change in his opinion other than noting that a joint sprain accelerates articular cartilage change.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 18, 2008. The Board further finds that appellant did not meet her burden of proof to establish that she had any continuing disability or residuals after December 18, 2008 causally related to her accepted employment injury.

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<sup>9</sup> *G.A.*, 61 ECAB \_\_\_\_ (Docket No. 09-2153, issued June 10, 2010); *T.M.*, 60 ECAB \_\_\_\_ (Docket No. 08-975, issued February 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>10</sup> *Robert Broome*, *supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 24, 2010 is affirmed.

Issued: February 8, 2011  
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