

¹ 5 U.S.C. § 8101 *et seq.*

Occupational Titles No. 205.362-018) represented appellant's wage-earning capacity.² OWCP had accepted that appellant sustained a left knee contusion, and derangement of the anterior horn of the left medial meniscus, as a result of a January 11, 1988 employment incident when appellant slipped on ice.

On January 31, 1995 appellant underwent left knee arthroscopic surgery by Dr. Marc Zimmerman, a Board-certified orthopedic surgeon, who noted in an April 26, 1995 note that appellant could perform the hospital admitting clerk position. By decision dated June 9, 1997, OWCP determined that the selected position of hospital admitting clerk represented appellant's wage-earning capacity. Appellant's compensation for wage loss was reduced to reflect a wage-earning capacity of \$235.06 per week. By decision dated May 22, 1998, an OWCP hearing representative affirmed the June 9, 1997 decision. In its October 19, 2000 decision, the Board affirmed the May 22, 2008 hearing representative's decision. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

In a letter dated August 25, 2010, appellant's attorney stated that appellant's compensation had been reduced because OWCP found he could work as a parking lot attendant. Appellant submitted an August 6, 2010 report from Dr. Zimmerman, who stated that he had treated appellant since January 11, 1988 and his left knee condition had worsened to the point that he required total knee replacement surgery on November 9, 2005. Because of the left knee symptoms and abnormal gait, the degenerative arthritis in appellant's right knee had worsened. Dr. Zimmerman advised that appellant had intermittent severe pain in his left knee and recurrent effusions in his right knee. He opined that appellant could not work as a parking lot attendant, even if he could in 1997. Appellant also submitted current treatment notes from Dr. Zimmerman commencing September 13, 2010.

In a decision dated January 12, 2011, OWCP denied the request for modification of the wage-earning capacity determination. It found the medical evidence was insufficient to warrant modification.

In a letter dated February 23, 2011, appellant's attorney stated that he was submitting a January 18, 2011 report from Dr. Zimmerman, as well as a set of his treatment notes. In the January 18, 2011 report, Dr. Zimmerman stated that appellant's right knee symptoms would not have been as severe without the left knee injury. He noted that appellant was on pain medication and it was recommended that appellant did not drive. Dr. Zimmerman stated that appellant was unable to work at this time because of severe knee pain.

By decision dated May 12, 2011, OWCP denied modification of the January 12, 2011 decision.

LEGAL PRECEDENT

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally

² Docket No. 98-2446 (issued October 19, 2000).

rehabilitated, or the original determination was, in fact, erroneous.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the medical opinion. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS

In the present case, appellant has argued that a modification of the June 9, 1997 wage-earning capacity determination is appropriate based on medical evidence showing a change in appellant's condition. The medical evidence of record, however, is not sufficient to show a material change in the nature and extent of an employment-related condition.

In an August 30, 2010 report, Dr. Zimmerman opined that appellant could not work as a parking lot attendant. The wage-earning capacity determination was based on the position of hospital admitting clerk, not parking lot attendant. Moreover, Dr. Zimmerman did not provide a rationalized medical opinion regarding a material change in an employment-related condition. The accepted conditions are left knee contusion and derangement of the anterior horn of the left medial meniscus. It appeared that Dr. Zimmerman was referring to a right knee condition as a consequence of the left knee injury. A consequential right knee injury has not been accepted as employment related. Dr. Zimmerman did not provide a rationalized medical opinion on the issue, discussing the medical history and explaining how the employment-related left knee injury contributed to a diagnosed right knee condition. If there was an aggravation of a right knee condition, Dr. Zimmerman needed to explain the nature and extent of any aggravation caused by an employment-related left knee condition.

In a January 18, 2011 report, Dr. Zimmerman again referred to right knee symptoms without providing a rationalized medical opinion to establish a material change in an employment-related condition. He did not discuss the hospital admitting clerk position. Dr. Zimmerman referred to appellant's pain medication, but to the extent that this contributed to any disability there must be an opinion on causal relationship between medication and an employment-related condition. The accompanying treatment notes do not provide an opinion on the issues presented.

As noted, appellant's burden of proof to establish a modification of the June 9, 1997 wage-earning capacity is warranted. The medical evidence must establish a material change in an employment-related condition. For the reasons noted, appellant did not meet his burden of proof in this case.

³ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁴ *Id.*

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

On appeal, appellant's attorney stated that his records showed appellant was found to be able to work as a parking lot attendant and he had no record of a decision regarding a hospital admitting clerk. There is no indication that the June 9, 1997 decision was mailed to the attorney; but the record indicates that the attorney was not authorized until OWCP received a June 24, 1997 authorization letter. In addition, appellant's attorney attended a January 29, 1998 oral hearing before an OWCP hearing representative and presented arguments with respect to the June 9, 1997 wage-earning capacity determination.

Appellant may request modification of the wage-earning capacity determination, supported by new evidence or argument, at any time before OWCP.

CONCLUSION

The Board finds that appellant did not establish a modification of the June 9, 1997 wage-earning capacity determination was warranted.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 12, 2011 is affirmed.

Issued: May 14, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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