United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 12-845**
	)	**Issued: March 5, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Lexington, KY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 6, 2012 appellant timely appealed the February 1, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which found that his accepted condition had resolved.[1] Pursuant to the Federal Employees' Compensation Act[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

[1] The application for review was dated February 28, 2012 and postmarked February 29, 2012. The Board received the appeal on March 6, 2012. After appellant mailed his appeal, but prior to the Board's receipt, OWCP issued a March 5, 2012 decision denying a schedule award. He has not appealed OWCP's March 5, 2012 decision. *See* 20 C.F.R. § 501.3(c)(4).

[2] 5 U.S.C. §§ 8101-8193.

ISSUE

The issue is whether OWCP properly determined that appellant's accepted left knee condition resolved as of August 2, 2011.

FACTUAL HISTORY

This case was previously before the Board.[3] Appellant, a 67-year-old retired city carrier, has an accepted claim for aggravation of left medial meniscus tear which occurred on February 6, 2010 when he was stooping to pick up flat mail off the floor. His left knee reportedly clicked and popped and he felt a slight, sharp pain. Appellant noted prior clicking in his left knee for six months but mostly with stairs. Prior medical history included a left knee injury in December 1975, which required surgery.[4] Following the February 6, 2010 employment incident, appellant was diagnosed with a left knee strain along with a differential diagnosis of medial meniscus tear. A subsequent magnetic resonance imaging (MRI) scan of the left knee revealed advanced osteoarthritis and a macerated tear of the posterior horn and body of the medial meniscus. On July 9, 2010 appellant underwent a left partial medial meniscectomy and chondroplasty. He voluntarily retired effective January 28, 2011.

In a June 14, 2011 order, the Board remanded the case for further medical development. The Board found there was sufficient medical evidence to warrant further development of the claim. Accordingly, the Board directed OWCP to refer appellant to an appropriate orthopedic specialist to determine whether his left knee condition was due to his federal employment.[5]

Dr. Stanley W. Collis, a Board-certified orthopedic surgeon and OWCP referral physician, examined appellant on August 2, 2011. He noted that appellant had a very good result from the left knee arthroscopy and the current physical examination was entirely negative. The only clinical findings were the surgical incision and recent x-ray evidence of some narrowing of the left knee medial compartment. Dr. Collis described the joint space narrowing as a developmental-type condition due to age. He further explained that it was possible that the February 6, 2010 work incident might have aggravated appellant's surgically-repaired left knee, but such aggravation was only temporary. Dr. Collis found that appellant's left knee sprain and medial meniscus injury had resolved. Also, he noted that appellant had reached maximum medical improvement (MMI) about four months after the July 2010 arthroscopic surgery.

Appellant's surgeon, Dr. John E. Balthrop, conducted a follow-up examination on August 30, 2011.[6] Appellant reported some anterior knee pain and mild medial joint line symptoms primarily when descending stairs, but on level ground and while seated, he was reportedly pain free. Dr. Balthrop stated that appellant was doing fairly well. He recommended a nonsteroidal anti-inflammatory drug (NSAID) for treatment of mild crepitation and anterior

[3] Docket No. 10-1541 (issued June 14, 2011).

[4] Appellant was employed in the private sector at the time of his December 1975 left knee injury.

[5] The Board's June 14, 2011 order remanding case is incorporated herein by reference.

[6] Dr. Balthrop is a Board-certified orthopedic surgeon.

knee pain. Dr. Balthrop advised appellant to return as needed. He also noted that appellant would continue rehabilitating the knee with physical therapy. On September 20, 2011 appellant resumed physical therapy for his left knee, which OWCP authorized.

On January 18, 2012 appellant filed a claim for a schedule award. He submitted a January 5, 2012 impairment rating from Dr. Frank A. Burke, a Board-certified orthopedic surgeon, who found left lower extremity impairment due to residuals of the July 2010 meniscectomy, which included left knee joint space narrowing. Dr. Burke opined that the February 6, 2010 employment incident caused the meniscal tear and aggravated appellant's preexisting osteoarthritis. He noted that appellant required further medical treatment, which included analgesic and anti-inflammatory medications and possible future total knee arthroplasty.

Based on Dr. Collis' opinion, OWCP accepted the claim for aggravation of left medial meniscus tear -- resolved. It retroactively authorized appellant's July 9, 2010 left knee arthroscopy. OWCP paid wage-loss compensation for the period April 10, 2010 through January 28, 2011, the date appellant voluntarily retired from federal civilian service. In its February 1, 2012 acceptance of the claim, OWCP advised appellant that, based on Dr. Collis' opinion, the employment-related aggravation of his left knee condition had resolved; therefore, he was not entitled to medical benefits after August 1, 2011.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[7] Having determined that an employee has a disability causally related to his federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[8] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[9] To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.[10]

ANALYSIS

OWCP accepted aggravation of left knee medial meniscus tear based on Dr. Collis' August 2, 2011 examination. Dr. Collis advised that the results of appellant's July 9, 2010 OWCP-approved left knee arthroscopy were very good. He also indicated that appellant's current physical examination was entirely negative. The only clinical findings were appellant's left knee surgical incision and x-ray evidence of some narrowing of the medial compartment, which Dr. Collis characterized as a developmental-type condition due to age. He surmised that it

[7] *Curtis Hall*, 45 ECAB 316 (1994).

[8] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[9] *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[10] *Calvin S. Mays*, 39 ECAB 993 (1988).

was possible that the February 6, 2010 work incident might have aggravated appellant's surgically-repaired left knee, but such aggravation was only temporary. Dr. Collis concluded that the left knee sprain and medial meniscus injury had resolved, and appellant reached MMI within four months of his July 2010 surgery. Based on his opinion, OWCP terminated medical benefits effective August 1, 2011.

Dr. Balthrop saw appellant on August 30, 2011 and reported continuing left knee symptoms. Although appellant was noted to be doing fairly well, Dr. Balthrop prescribed medication, NSAID, and indicated that appellant would continue rehabilitating his left knee with physical therapy.

When Dr. Burke evaluated appellant on January 5, 2012, he similarly noted that the left knee remained symptomatic. He stated that appellant was unable to return to work as a full-time, regular letter carrier. Dr. Burke stated that appellant could not squat, walk distances, use stairs unrestricted or carry weight. He further noted that appellant's x-rays revealed joint space narrowing to one millimeter. Dr. Burke found that the February 6, 2010 employment incident was not only responsible for the meniscal tear, but it also aggravated appellant's preexisting left knee osteoarthritis. According to him, appellant's current left knee symptoms were not age related, but instead were the result of his February 6, 2010 employment injury.

FECA provides that, if there is disagreement between an OWCP-designated physician and an employee's physician, OWCP shall appoint a third physician who shall make an examination.[11] For a conflict to arise, the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[12]

The Board finds an unresolved conflict and medical opinion regarding whether appellant has continuing residuals of his February 6, 2010 employment injury. Dr. Collis, an OWCP referral physician, stated that appellant's left medial meniscus injury had resolved and that the noted joint space narrowing was age related. Both of appellant's physicians reported ongoing left knee symptoms subsequent to Dr. Collis' August 2, 2011 examination. Dr. Burke disagreed that the left knee joint space narrowing was age related. He attributed this condition to the February 6, 2010 meniscal injury and subsequent surgery. Dr. Burke also explained that, while appellant had preexisting osteoarthritis, it had been dormant prior to the February 6, 2010 employment injury. Because of this unresolved conflict in medical opinion, OWCP failed to meet its burden of proof to terminate appellant's entitlement to medical benefits. Accordingly, its termination of medical benefits effective August 1, 2011 shall be reversed. OWCP's February 1, 2012 acceptance of the claim is otherwise affirmed.

CONCLUSION

The Board finds that OWCP improperly terminated medical benefits as of August 1, 2011.

[11] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[12] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: March 5, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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