

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

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G.D., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Duluth, GA, Employer )

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**Docket No. 07-1625  
Issued: December 3, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 30, 2007 appellant filed a timely appeal from a May 7, 2007 merit decision of a hearing representative of the Office of Workers' Compensation Programs that affirmed the termination of his entitlement to compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the termination issue.

**ISSUE**

The issues are: (1) whether the Office met its burden of proof in terminating appellant's entitlement to compensation benefits effective November 13, 2006; and (2) whether appellant met his burden of proof in establishing that his condition or disability was causally related to his employment after November 13, 2006.

**FACTUAL HISTORY**

On October 11, 2005 appellant, then a 48-year-old tractor trailer operator, filed an occupational disease claim stating that he developed lower back and bilateral knee conditions in

the performance of duty. Appellant stopped work on August 10, 2005 and did not return. He officially retired in March 2006.

In support of his claim, appellant provided an August 25, 2005 report from Dr. Timothy Watts, a Board-certified internist, who diagnosed “a variety of arthritis issues, mostly of a degenerative variety and mostly related to his line of work.” Dr. Watts stated that appellant’s mobility was limited due to his condition. In a July 24, 2002 magnetic resonance imaging (MRI) scan of appellant’s right knee, Dr. John Reeder<sup>1</sup> diagnosed mild patellofemoral chondromalacia and mild lateral meniscal degeneration. In an August 22, 2005 MRI scan of appellant’s left knee, Dr. Gilbert H. Maulsby, a Board-certified radiologist, diagnosed subtle patellofemoral chondromalacia without high-grade chondral defect or internal derangement. In an MRI scan of his lumbar spine, dated the same day, he diagnosed left paracentral protrusion at L4-5, central protrusion at L5-S1 and mild degenerative changes from L4 to S1. In a May 1, 1997 report from Dr. W. Shadburn,<sup>2</sup> who noted that appellant’s history was significant for bilateral knee pain beginning about 10 to 15 years earlier. He recorded appellant’s complaints of consistent pain and swelling for the previous two years and diagnosed “probable bilateral patellofemoral syndrome.” Dr. Shadburn also noted that appellant underwent physical therapy during his time in military service but this treatment was ineffective.

In a December 9, 2005 report, Dr. Paul F. Richin, a Board-certified orthopedic surgeon and treating physician, indicated that appellant’s “heavy work” had exacerbated a ruptured disc in his back and chondromalacia in his knees. He concluded: “I really do [not] think that [appellant] is going to be able to do this kind of heavy work without always injuring these areas.” Appellant also provided treatment notes and physical therapy forms.

On December 9, 2005 appellant filed a claim for compensation for leave without pay beginning on August 10, 2005 and continuing.

On August 11, 2006 the Office referred appellant to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, for a second opinion. In an August 30, 2006 report, Dr. Alexander recorded appellant’s stated history of aggravation when performing heavy lifting activities. He indicated that appellant reported experiencing pain when he lifted a 500- to 600-pound door into a truck. On examination, Dr. Alexander found that appellant had 80 degrees range of motion of both knees and complained of pain with light touch and minimal compression on the patellofemoral joint. He also indicated that his mobility was “markedly limited.” Dr. Alexander diagnosed mild chondromalacia patella and lumbar degenerative disc disease. He opined that appellant’s work caused him to experience a temporary exacerbation of preexisting bilateral chondromalacia patella and lumbar degenerative disc disease. Dr. Alexander explained that appellant’s work caused temporary aggravation of his symptoms, “but no actual physical worsening.” Rather, he concluded that appellant’s condition returned to its baseline level after appellant stopped work. Dr. Alexander also noted that both chondromalacia patella and lumbar degenerative disc disease were common conditions among individuals in appellant’s age group and were “not necessarily clinically significant.” In a work capacity evaluation prepared the

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<sup>1</sup> The Board is unable to ascertain Dr. Reeder’s specialty from the record.

<sup>2</sup> The Board is unable to ascertain Dr. Shadburn’s specialty from the record.

same day, he indicated that appellant had reached maximum medical improvement and had permanent restrictions.

On September 15, 2006 the Office requested that Dr. Alexander clarify whether his recommended work restrictions were based on appellant's injury of May 8, 2002.

In a September 22, 2006 report, Dr. Alexander replied that appellant's work restrictions were not based on his "actual injury," but rather on his preexisting condition. He explained that the restrictions were "not preventative in nature" but were recommended because appellant would experience pain due to his preexisting lumbar degenerative disc disease should he exceed the recommended activity level. However, Dr. Alexander indicated that additional activity would not permanently aggravate appellant's preexisting condition so appellant could exceed his restrictions if he had an "adequate pain threshold."

On October 5, 2006 the Office accepted appellant's claim for temporary aggravation of degeneration of lumbar intervertebral disc and temporary aggravation of chondromalacia patellae. On the same day the Office issued a notice of proposed termination of appellant's entitlement to compensation benefits.

Following the Office's notice of proposed termination, appellant provided an October 11, 2006 report from Dr. Paul F. Richin, a physician, who stated that he had treated appellant for back and knee conditions which had been "going on for quite some time," since 2002. Dr. Richin explained that appellant's lumbar degenerative disc disease was a permanent, progressive condition which had been exacerbated by his work. He noted that appellant's condition was a "developmental" change which was aggravated by "the kind of lifting work that he does." With regard to appellant's knee conditions, Dr. Richin noted that appellant's chondromalacia patella had been "going on as well for many years" but had been exacerbated by his work. Dr. Richin concluded that both appellant's back condition and knee condition had been aggravated by his employment factors and could be "expected to progress as time goes on depending on what kind of activities he does."

By decision dated November 13, 2006, the Office finalized its termination of appellant's entitlement to medical benefits and wage-loss compensation effective the same day.

On November 20, 2006 appellant requested an oral hearing that was held on March 16, 2007. After the hearing, he submitted a March 23, 2007 report from Dr. Ned B. Armstrong, a Board-certified orthopedic surgeon, who diagnosed lumbar degenerative disc disease, lumbar herniated nucleus pulposus without myelopathy and bilateral chondromalacia patella/arthrosis. Dr. Armstrong related appellant's condition to his military service as a paratrooper, noting that "the degenerative changes are not associated with acute soft tissue swelling that would be presented as peri-facetral or disc edema or definitive joint effusions. This indicates that his [employing establishment] activity related pain is an aggravation of what appears to be a preexisting problem." In April 3, 2007 Dr. Armstrong diagnosed lumbar degenerative disc disease, bilateral chondromalacia with degenerative changes and bilateral degenerative arthrosis. With regard to appellant's knee condition, he stated that appellant was still symptomatic. Dr. Armstrong attributed appellant's condition to a number of factors, including both his military service and federal civilian employment. He noted that appellant's

repetitive activities on the job contributed to his condition as did his age, genetic predisposition and other activities. Dr. Armstrong concluded: “[Appellant] remains on medical disability because of multiplicity of problems, chronicity of complaints and clinical picture and MRI scan findings.”

Appellant also submitted several new diagnostic testing reports. In a March 30, 2007 right knee MRI scan report, Dr. Val M. Phillips, a radiologist, diagnosed some possible patchy marrow edema throughout the patella but no fracture line and no significant chondromalacia. In a left knee MRI scan report dated the same day, he diagnosed degenerative changes of the medial meniscus, mild irregular chondromalacia and minimal patellar tendinitis. In a March 30, 2007 lumbar MRI scan, Dr. Robert A. Eisenberg, a neuroradiologist, diagnosed small bulging discs at the L4-5 and L5-S1 levels, small disc herniation versus annular tear at L4-5 and mild bulging from L2 to L4.

In a May 7, 2007 decision, the hearing representative affirmed the Office’s termination of appellant’s entitlement to compensation benefits.

### **LEGAL PRECEDENT -- ISSUE 1**

When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect which the employment factors might have on the underlying condition. Under such circumstances, his disqualification for continued employment is due to the underlying condition, without any contribution by the employment.<sup>3</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup>

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

The Board finds that the Office met its burden of proof in terminating appellant’s entitlement to compensation benefits. The record reflects that appellant developed lumbar degenerative disc disease and bilateral chondromalacia patella during his military service before entering federal civilian employment. In his May 1, 1997 report, Dr. Shadburn indicated that appellant had received some treatment for these conditions in the military and had been experiencing symptoms for 10 to 15 years.

The Office referred appellant to Dr. Alexander for a second opinion. In a well rationalized August 30, 2006 report, Dr. Alexander explained that appellant had preexisting lumbar degenerative disc disease and bilateral chondromalacia patella, which were temporarily aggravated by his employment duties or specifically, by his heavy lifting activities. However, although he determined that appellant’s work temporarily exacerbated his condition,

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<sup>3</sup> *John Watkins*, 47 ECAB 597 (1996); *James L. Hearn*, 29 ECAB 278 (1978).

<sup>4</sup> *Watkins*, *id.*

Dr. Alexander concluded that appellant's preexisting conditions returned to their baseline level when he stopped work. He presented examination findings to support his opinion and explained that any symptoms appellant continued to experience were due to the preexisting conditions and not to the temporary work-related aggravation. In a work capacity evaluation, he advised that appellant had permanent work restrictions. The Office requested that he clarify his opinion on whether appellant's permanent work restrictions were due to the work-related exacerbation. In a September 22, 2006 reply, Dr. Alexander explained that appellant's restrictions, while permanent, related to his preexisting conditions and not to the temporary aggravation that he had experienced while working.

Following the Office's notice of proposed termination, appellant submitted an October 11, 2006 report from his treating physician, Dr. Richin, who agreed that appellant's work exacerbated his preexisting lumbar degenerative disc disease and chondromalacia patella but indicated that appellant's condition was progressive and developmental in nature. However, Dr. Richin did not respond to Dr. Alexander's assessment of appellant's work-related condition as a "temporary" aggravation which returned to its baseline condition after appellant stopped work. He did not specifically explain whether appellant's "permanent" aggravation caused residuals that were directly related to his employment factors rather than to his preexisting conditions. Dr. Richin also did not present sufficient rationale in support of his conclusion that appellant had continuing work-related residuals; instead, he simply stated that appellant's condition was permanent and progressive but did not distinguish between the baseline preexisting conditions and appellant's conditions after the accepted "temporary" aggravation of lumbar degenerative disc disease and bilateral chondromalacia patella.

The Board finds that Dr. Alexander's reports establish that appellant's employment-related exacerbation of his preexisting conditions was temporary and his condition returned to the baseline, without employment-related residuals, after appellant stopped work on August 10, 2005. The Board finds that the Office considered the medical evidence and met its burden of proof in terminating appellant's entitlement to compensation benefits, effective November 13, 2006.

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

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.<sup>5</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one

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<sup>5</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>6</sup>

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

The Board finds that appellant did not meet his burden of proof in establishing that he had continuing employment-related residuals after November 13, 2006. Following the Office's final termination of his entitlement to medical benefits and wage-loss compensation, appellant submitted two reports from Dr. Armstrong. In both his March 23 and April 3, 2007 reports, Dr. Armstrong supported that appellant had preexisting back and bilateral knee conditions which were aggravated by his employment factors. However, he did not address Dr. Alexander's conclusion that the work-related exacerbation of appellant's condition returned to its preinjury baseline after appellant stopped working and that consequently appellant had no employment-related residuals after November 13, 2006. Dr. Armstrong opined that appellant's continuing symptoms were due to a multiplicity of factors, including age, genetic predisposition, his military activities and his work activities as a federal civilian employee. But he did not distinguish between appellant's preexisting or baseline conditions, his conditions during his time as a federal civilian employee and his symptoms after stopping work. Therefore, the Board finds that Dr. Armstrong did not present sufficient rationale to support that appellant continued to experience residuals specifically related to his employment on and after November 13, 2006.

Appellant also provided several diagnostic testing reports. However, these reports did not address whether appellant had continuing employment-related residuals after November 13, 2006. Therefore, the Board finds that they are insufficient to meet appellant's burden of proof.

### **CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's entitlement to medical benefits and wage-loss compensation effective November 13, 2006 and that appellant did not meet his burden of proof in establishing that he had continuing employment-related residuals on and after November 13, 2006.

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<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2007 and November 13, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 3, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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