

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES WALTERS and U.S. POSTAL SERVICE,  
POST OFFICE, Parsippany, N.J.

*Docket No. 96-2679; Submitted on the Record;  
Issued December 21, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective October 15, 1995.

In the present case, appellant filed a claim alleging that he sustained a right knee injury in the performance of duty on December 4, 1990. The Office accepted the claim for a knee ligament sprain. Appellant underwent knee surgery in January 1991 and September 1992, and he continued to receive compensation for temporary total disability.

In a letter dated July 20, 1995, the Office advised appellant that it proposed to terminate his compensation on the grounds that the evidence established that he did not have a continuing employment-related disability. By decision dated October 6, 1995, the Office terminated appellant's compensation effective October 15, 1995. The Office also terminated authorization for medical benefits.

On April 4, 1996 a hearing was held before an Office hearing representative. By decision dated June 11, 1996, the hearing representative affirmed the termination decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation for wage-loss effective October 15, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>1</sup>

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<sup>1</sup> Patricia A. Keller, 45 ECAB 278 (1993).

In the present case, the Office referred appellant, along with medical records, a statement of accepted facts, and a videotape made by postal inspectors,<sup>2</sup> to Dr. Chester R. Kosarek, a Board-certified orthopedic surgeon. In a report dated May 15, 1995, Dr. Kosarek provided a history and results on examination. He noted that appellant continued to complain of pain, and on examination he noted some crepitation at the patellofemoral junction, minimal limitation of motion, and a one inch atrophy over the quadriceps. Dr. Kosarek stated that it was undetermined whether the atrophy was related to the employment injury. With respect to a continuing disability, Dr. Kosarek concluded, "In view of the above examination and the video, which I reviewed, this individual is capable of returning to his regular job as a postal worker."

In response to the notice of proposed termination, appellant submitted an August 31, 1995 report from Dr. Marc A. Cohen, an orthopedic surgeon. His report, however, is of little probative value to the issues presented. Dr. Cohen stated in pertinent part, "The patient has a healed procedure to his knee for chondromalacia, and at this time, appears to be quite functional and clearly he can return back to some form of working status. I do not believe that the patient requires any further acute orthopedic care and any other treatment would be purely palliative in nature." He does not provide work restrictions or otherwise explain his reference to "some form of working status." Dr. Cohen does not provide a clear opinion as to whether appellant continued to be disabled for his date-of-injury job due to the employment injury.

Appellant also submitted an August 30, 1995 report from Dr. John Hurley, an orthopedic surgeon, who noted that appellant had intermittent knee pain, but overall was "doing well." Dr. Hurley does not provide an opinion as to disability for work.

It is noted that Dr. Kosarek submitted a supplemental report dated September 28, 1995, in which he stated that the quadriceps atrophy would make his knee slightly unstable, although based on the videotape appellant did not appear to be having any problems with the knee giving way. Dr. Kosarek again conclude that there was no reason why appellant could not return to his regular job, and there were no other disabling conditions related to the work injury.

The Board finds that Dr. Kosarek provided the only reasoned opinion as to appellant's continuing disability. He concluded that based on his examination and review of the evidence that appellant could return to work as a letter carrier. None of the other physicians offered a reasoned opinion that appellant continued to have an employment-related disability. Accordingly, the Board finds that the weight of the evidence rested with Dr. Kosarek and the Office met its burden of proof in terminating compensation for wage loss effective October 15, 1995.

Once the Office has met its burden to terminate compensation, the burden shifts to appellant to establish that he had disabling residuals causally related to federal employment.<sup>3</sup> Following the October 6, 1995 termination decision, appellant submitted an April 16, 1996 report from Dr. Lawrence Floriani, an orthopedic surgeon. Dr. Floriani opined that appellant's ability to perform fairly vigorous activities for short periods of time does not establish that he can perform continuous work for an eight-hour day. He stated that he did not believe that

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<sup>2</sup> The videotape was made in April 1994 and records appellant performing such activities as chopping and lifting wood.

<sup>3</sup> *George Servetas*, 43 ECAB 424, 430 (1992).

appellant could work an eight-hour day because of his knee problem. The Board finds that this report is of diminished probative value since Dr. Floriani does not provide a complete history or discuss the relevant medical evidence, and he does not offer medical rationale to support an opinion that appellant continued to be disabled due to the employment injury. The evidence submitted is not sufficient to establish entitlement to compensation for wage loss after October 15, 1995.

The Board further notes that the October 6, 1995 decision also terminated continuing authorization for medical treatment. This raises a separate issue from the termination of wage-loss compensation. The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

In this case, the Board cannot find probative medical evidence establishing that residuals of the employment injury had ceased. Dr. Kosarek does not provide an opinion on the issue. His opinions are directed toward disability for work, without providing an opinion that residuals of the employment injury had ceased and did not require further medical treatment. Dr. Cohen noted that appellant did not require acute care, but he did discuss continuing “palliative” treatment. The Board is unable to find any physician that provided an opinion that the effects of the employment injury had ceased, and since it is the Office’s burden, the Board finds they did not meet their burden to terminate medical benefits.

The decisions of the Office of Workers’ Compensation Programs dated June 11, 1996 and October 6, 1995 are affirmed with respect to compensation for wage loss, and reversed with respect to termination of medical benefits.

Dated, Washington, D.C.  
December 21, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>4</sup> *Furman G. Peake*, 41 ECAB 361 (1990).