

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN W. FRITZ and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 02-2250; Submitted on the Record;
Issued May 12, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation; and (2) whether appellant had any residuals of his work-related knee condition after October 18, 2000.

Appellant's claim, filed on May 18, 1999 after he twisted his right knee while working on a stepladder, was accepted for a sprain and appellant, an electrician, was referred for vocational rehabilitation. Appellant underwent surgery for a partial tear of the anterior cruciate ligament (ACL) on December 6, 1999

Appellant returned to light duty on February 22, 2000 with restrictions imposed by his treating physician, Dr. John A. Prodoehl, a Board-certified orthopedic surgeon. On April 11, 2000 Dr. Prodoehl stated that appellant had significant arthritis and degenerative changes in the medial and patellofemoral compartments of his right knee, which could be causing his continued pain.

A magnetic resonance imaging (MRI) scan on June 19, 2000 found that the ACL reconstruction was intact, with normal collateral ligaments and no evidence of a meniscus tear. Dr. Prodoehl stated on August 4, 2000 that appellant's problems were now related to the degenerative changes in his knee. The Office referred appellant back to Dr. Steven J. Valentino, an osteopathic practitioner, for reevaluation. Dr. Valentino had initially agreed with Dr. Prodoehl that the ACL surgery was necessary.

Appellant's representative objected to Dr. Valentino being selected as the second opinion physician on the grounds that he had previously done fitness-for-duty examinations for the employing establishment. In an August 16, 2000 report, Dr. Valentino concluded that appellant had recovered from his work injury without residuals. He added that ongoing symptoms were related to appellant's degenerative changes, which were not causally connected to his employment or work injury.

On September 7, 2000 the Office proposed to terminate appellant's compensation based on Dr. Valentino's report. The Office terminated compensation on October 18, 2000 and appellant requested a hearing. He later requested a review of the written record and submitted additional medical evidence from Dr. Prodoehl, Dr. Howard N. Brooks, an osteopathic practitioner and appellant's family physician and Dr. M. Anthony Alborno, Board-certified in internal medicine and rheumatology.

On March 7, 2001 the hearing representative found that the Office met its burden of proof in terminating appellant's compensation, based on the opinion of Dr. Valentino and the August 4, 2000 report from Dr. Prodoehl, who stated that appellant's ongoing knee problems were now related to degenerative changes. However, the hearing representative also found a conflict in the medical opinion evidence between Dr. Valentino as second opinion physician and Drs. Prodoehl and Brooks, who indicated in later reports that appellant's degenerative changes were work related but provided no rationale. Accordingly, the hearing representative remanded the case for the Office to resolve the conflict.¹

On remand the Office referred appellant to Dr. Eugene A. Elia, but had to cancel that appointment because Dr. Elia was in practice with Dr. Prodoehl. On July 13, 2001 the Office referred appellant to Dr. Richard G. Schmidt, a Board-certified orthopedic surgeon.

On October 5, 2001 the Office denied appellant's claim, based on Dr. Schmidt's conclusion that appellant had no residuals resulting from this accepted work injury. Appellant again requested a hearing, which was held on March 6, 2002.

On June 6, 2002 the hearing representative found that appellant's work-related injuries had resolved, based on Dr. Schmidt's August 15, 2001 report.

The Board finds that the Office met its burden of proof in terminating appellant's compensation on the grounds that his work-related injuries had resolved.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

In this case, appellant's treating physician, Dr. Prodoehl, stated in his August 4, 2000 report that physical examination revealed no swelling of appellant's right knee and no instability. Appellant had 5/5 motor strength and was neurovascularly intact. Dr. Prodoehl opined that appellant's knee problems were "now relegated to his degenerative changes," which included

¹ 5 U.S.C. § 8123(a) states in pertinent part: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

² *Betty Regan*, 49 ECAB 496, 501 (1998).

³ *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

grade four cartilage defects of the femoral condyle as well as less severe cartilage damage throughout the knee.

On July 31, 2000 the Office referred appellant back to Dr. Valentino for reevaluation because he had initially seen appellant and agreed with Dr. Prodoehl that the ACL surgery was necessary and work related. In an August 16, 2000 report, Dr. Valentino noted that the December 6, 1999 operative report confirmed degenerative osteoarthritis and mild chronic synovitis. He reported a normal physical examination of appellant's right knee with no evidence of significant synovitis or effusion.

Dr. Valentino concluded that appellant had fully recovered from his work-related knee injury without residuals, as shown by physical examination and the latest MRI scan on June 19, 2000. The age-related degenerative changes could not be attributed to appellant's employment or work injury because there was no evidence to suggest that the work-related condition on May 11, 1999 was still active or causing objective findings.

The Board finds that the reports of Drs. Prodoehl and Valentino are well rationalized and sufficient to establish that appellant's accepted work injury and subsequent ACL reconstruction had resolved, therefore, meeting the Office's burden of proof in terminating his compensation, effective October 18, 2000.⁴

The Board also finds that the Office properly denied appellant's claim on the grounds that he had no residuals of his accepted knee injury.

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.⁵ The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.⁶

In this case, the Office's hearing representative properly determined that a conflict of medical opinion existed over whether appellant's degenerative arthritis in his right knee was causally related to the May 1999 work injury. Following the Office's October 18, 2000 termination of compensation, Dr. Prodoehl reviewed the history of his treatment of appellant's right knee in a December 28, 2000 report. He concluded that the multiple sites of degenerative changes in appellant's right knee, which were found during the ACL operation, were causally related to the May 1999 work injury, at least in part, because appellant had no symptoms or complaints of pain prior to that incident. Dr. Prodoehl added that appellant's post-traumatic

⁴ See *Jimmie H. Duckett*, 52 ECAB ____ (Docket No. 99-1858, issued April 6, 2001) (the opinion that appellant's back condition was due to the natural progression of his spondylitis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office's burden of proof in terminating compensation).

⁵ *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

⁶ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

arthritis was related to the work incident and that he had not recovered from that injury or reached maximum medical improvement.

In a December 13, 2000 report, Dr. Alborno diagnosed post-traumatic osteoarthritis, which “likely” stemmed directly from the injury sustained in May 1999. In a November 17, 2000 report, Dr. Brooks stated that appellant had no history of arthritic symptomatology and his left knee showed no such development. Therefore, he concluded that the osteoarthritis found in appellant’s right knee was exacerbated if not totally caused by the work-related injury to that joint.

By contrast Dr. Valentino, the second opinion evaluator, concluded that the degenerative changes found in appellant’s right knee were age related and not caused by the work injury. He noted a June 19, 2000 MRI scan of appellant’s right knee revealed an intact reconstructed ACL and that no ongoing knee symptoms could be apportioned to the work injury because it had completely healed.

Because of this conflict, the Office referred appellant, a statement of accepted facts and the medical records to Dr. Schmidt to resolve the issue of whether the degenerative arthritis in appellant’s right knee was work related.

In his August 15, 2001 report, Dr. Schmidt reviewed the medical records and the statement of accepted facts, examined appellant’s right knee and reported his findings. He found no clinical evidence that the degenerative arthritic changes were symptomatic because the knee on examination was without crepitation, synovitis or effusion. There was full range of motion and normal gait with no extensor lag or any medial or lateral instability. Various diagnostic tests of the knee produced negative results.

Based on his review of the medical reports, Dr. Schmidt was unable to correlate appellant’s subjective complaints of pain with either the ACL reconstruction or the degenerative changes noted in Dr. Prodoehl’s report of the December 6, 1999 operation. Dr. Schmidt stated that his clinical examination was within normal limits and demonstrated the physiological stability of appellant’s right knee.

Dr. Schmidt reviewed the extensive case record and appellant’s medical treatment since the 1999 injury and surgery. He examined appellant’s knee thoroughly, discussed the diagnostic testing, explained his clinical findings and provided medical rationale for his conclusion that appellant’s degenerative arthritic changes were not caused by the traumatic injury on May 11, 1999. The Board finds that his report is entitled to the special probative weight accorded to impartial medical examiners and establishes that appellant had no residuals of the accepted work injury.⁷

Appellant’s representative argued that Dr. Valentino was improperly selected as a second opinion physician because he is not Board-certified and, therefore, his opinion cannot be equal in

⁷ See *Richard L. Rhodes*, 50 ECAB 259, 263 (1999) (finding that the impartial medical examiner’s opinion that appellant’s hysterical conversion disorder had resolved was sufficiently well rationalized to merit special weight).

weight to create a conflict with that of Dr. Prodoehl, who is Board certified.⁸ The Office's procedures do not require that a second opinion physician to whom the Office refers a claimant be Board certified. Rather, these physicians are selected from a roster of specialists in the appropriate branch of medicine or from the physicians directory system.⁹

Dr. Valentino is recognized as an orthopedic specialist, as indicated by his letterhead and his report was sufficiently well rationalized to be of "approximately equal value" with that of Dr. Prodoehl regarding whether the degenerative changes in appellant's right knee were work related.¹⁰ Therefore, the Board finds that the Office properly found a conflict in the medical opinion evidence.

The June 6, 2002 and October 5, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 12, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁸ Appellant's representative had objected to the selection of Dr. Valentino previously on the grounds that he had performed fitness-for-duty examinations for the employing establishment. The record contains no evidence supporting this assertion and Board precedent allows physicians who regularly perform these examinations to serve as second opinion referrals. *Cleopatra McDougal-Saddler*, 50 ECAB 367, 369 n.4 (1999).

⁹ Federal (FECA) Procedure Manual, Medical, *Medical Examinations*, Chapter 3.500.3.b. (December 1994). The database of physicians for referee examinations comes from the MARQUIS' *Directory of Medical Specialists*, which contains the following physician specialties: allergy and immunology, cardiovascular disease, neurology, neurological surgery, orthopedic surgery, otolaryngology, pulmonary disease and psychiatry. The database for second opinion examinations contains all the physicians in the previous groups, plus others chosen by the district offices for efficiency in scheduling these examinations. *Id.* at Chapter 3.500.7.a. (March 1994).

¹⁰ *Id.* at Chapter 3.500.4.a. (March 1994).