

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

LINDA GOMEZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 05-835
Issued: March 7, 2006**

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 23, 2005 appellant filed a timely appeal of the December 2, 2004 merit decision of the Office of Workers' Compensation Programs, which terminated wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective May 17, 2003 on the basis that she no longer had any disability or residuals due to her September 23, 1990 employment injury.

FACTUAL HISTORY

On September 23, 1990 appellant, then a 34-year-old distribution clerk, sustained a traumatic injury to her right lower extremity. She was pushing a skid loaded with mail when she felt a pull in her right knee and pain in her thigh. The Office accepted the claim for right knee

sprain and synovitis.¹ Appellant last worked on March 16, 1991. In early 1992, the Office placed her on the periodic compensation rolls. She also underwent authorized right knee arthroscopic surgeries on January 31, 1992 and August 4, 1998.

In a June 27, 2000 work capacity evaluation (Form OWCP-5c), appellant's treating physician, Dr. Alan M. Crystal, a Board-certified orthopedic surgeon, indicated that she could not work an eight-hour day. He noted that her knee arthritis was progressive and x-rays demonstrated a worsening of her condition. Appellant was limited to a half hour of sitting, walking and standing and she was precluded from performing any twisting, squatting, kneeling or climbing. Dr. Crystal also noted that appellant could perform only a half hour of lifting, with a 10-pound weight restriction.

Dr. Stanley Soren, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on July 6, 2000 and found that she could work full-time, light-duty work in an office setting. He advised that appellant could work a full day sitting, but she should limit walking and standing to no more than a couple hours per day. Dr. Soren also indicated that appellant should not lift more than 15 pounds at a time. He apportioned 20 percent of appellant's current disability to her September 23, 1990 employment injury. The remaining 80 percent was attributable to her preexisting conditions, which included a torn anterior cruciate ligament that was surgically repaired on January 31, 1992. Dr. Soren further indicated that appellant would likely need a knee replacement.

The Office found a conflict in medical opinions based on the respective findings of Dr. Crystal and Dr. Soren. In a February 4, 2002 report, Dr. Harvey B. Bishow, a Board-certified orthopedic surgeon and impartial medical examiner, found that appellant's accepted conditions were no longer active and her current degenerative arthritis of the knee was unrelated to the September 23, 1990 employment injury. He stated that appellant would be able to perform her regular work duties based on resolution of her right knee sprain and synovitis, but because of her non-work-related condition she was unable to perform her regular duties.

On March 13, 2003 the Office issued a notice of proposed termination of benefits. The Office found that the impartial medical examiner's February 4, 2002 report established that appellant no longer suffered from residuals of her accepted employment injury. Appellant was afforded 30 days to submit any additional evidence or argument.

By decision dated April 29, 2003, the Office terminated appellant's wage-loss compensation and medical benefits.

Appellant requested reconsideration and submitted a September 26, 2003 report from Dr. Crystal who stated that appellant tore her right anterior cruciate ligament (ACL) at work on September 23, 1990. He also indicated that appellant's current disabling arthritic condition was a result of the employment-related ACL tear.

¹ The record revealed that appellant had a preexisting right knee condition. In 1982 she had surgery to correct a patella subluxation and in 1988 she underwent arthroscopic surgery for chondromalacia patella and synovitis.

By decision dated June 30, 2004, the Office set aside the April 29, 2003 decision terminating benefits. The Office found that it had neglected to provide appellant's counsel with copies of surveillance videotapes submitted by the employing establishment.² The Office was instructed to reissue a decision once it provided the requested videotapes to appellant's counsel.

On December 2, 2004 the Office provided copies of the surveillance videotapes to appellant's counsel and issued a decision terminating compensation and medical benefits effective May 17, 2003.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ 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.⁶

ANALYSIS

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Crystal and Dr. Soren. Therefore, the Office properly referred appellant to an impartial medical examiner.⁷ Dr. Bishow, the impartial medical examiner, found that appellant's accepted right knee conditions were no longer active. He also found that her degenerative arthritis of the right knee was unrelated to the September 23, 1990 employment injury. Dr. Bishow opined that, but for appellant's current arthritic condition, she would be able to perform her regular work duties. The Office properly relied on the impartial medical examiner's February 4, 2002 report in determining that appellant was no longer disabled by nor had residuals from her September 23, 1990 employment injury. Dr. Bishow's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed her medical records. Dr. Bishow also reported accurate medical and employment histories.

² These videotapes were previously made available to the impartial medical examiner in conjunction with his February 4, 2002 evaluation.

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings.⁸

Dr. Crystal's September 26, 2003 report is insufficient to overcome the weight of the medical evidence as reflected by the impartial medical examiner's February 4, 2002 opinion. Dr. Crystal indicated that appellant's current disabling arthritic condition was a result of an employment-related ACL tear sustained on September 23, 1990.⁹ In contrast, Dr. Bishow found appellant's current disability was due to preexisting, nonwork-related osteoarthritis, patellofemoral subluxation and arthritis. Because Dr. Crystal was on one side of the conflict that Dr. Bishow resolved, Dr. Crystal's September 26, 2003 report is insufficient to overcome the special weight accorded Dr. Bishow's opinion and insufficient to create a new conflict.¹⁰

As the weight of the medical evidence establishes that appellant no longer had employment-related disability or residuals due to her September 23, 1990 injury, the Office properly terminated appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective May 17, 2003.

⁸ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁹ Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

¹⁰ See *Alice J. Tysinger*, 51 ECAB 638, 646 (2000).

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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