

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

G.F., Appellant)

and)

**DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE, GRAND TETON)
NATIONAL PARK, Moose, WY, Employer)**

**Docket No. 06-1898
Issued: February 21, 2007**

Appearances:
Gordon Reisel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2006 appellant filed a timely appeal from a July 12, 2006 decision of the Office of Workers' Compensation Programs that denied continuing compensation benefits after August 11, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this decision. The Board does not have jurisdiction over the termination of benefits effective November 14, 2003 as the last decision on this matter was issued on February 11, 2005, over one year prior to the filing of this appeal on August 14, 2006.

ISSUE

The issue is whether appellant established that he had any continuing employment-related disability or condition after December 1, 2004.

FACTUAL HISTORY

On February 4, 1997 appellant, then a 58-year-old carpenter, filed a traumatic injury claim alleging that on February 4, 1997 he injured his right knee. He was standing on an

aluminum ladder which slipped, causing him to fall. On July 10, 1997 appellant underwent a partial medial meniscectomy, chondroplasty and partial lateral meniscectomy on the right knee performed by Dr. Christian Guier, a Board-certified orthopedic surgeon. On February 9, 1998 the Office accepted his claim for right meniscus tear. Appropriate compensation and medical benefits were paid.

In a medical report dated May 16, 1998, Dr. Guier opined that appellant had cartilaginous and meniscal damage to his right knee that would not enable him to return to his prior position as a journeyman carpenter. He noted that appellant had reached maximum medical improvement and no longer had cartilage protecting his right knee to the extent needed to perform his job duties.

On March 23, 1999 the Office referred appellant to Dr. Stan R. Griffiths, a Board-certified orthopedic surgeon, for a second opinion. In a report dated April 15, 1999, Dr. Griffiths indicated that appellant's primary problem was one of degenerative arthritis of the right knee. Appellant had loss of articular cartilage involving the medial compartment of the right knee probably due to the work injury. Dr. Griffiths noted that appellant was unable to do labor-type work but was able to perform limited-duty work.

In a duty status report dated February 10, 2003, Dr. Guier stated that appellant "has a permanent disability secondary to meniscal chondral damage and post-traumatic arthrosis."

On June 13, 2003 the Office referred appellant to Dr. Dewey C. Mackay, a Board-certified orthopedic surgeon, for a second opinion. In a report dated July 2, 2003, Dr. Mackay listed his impressions as severe degenerative arthritis of the right knee, moderate degenerative arthritis of the left knee, status post torn medial and lateral meniscus of the right knee and varus deformity in both legs. He opined that appellant was significantly impaired at the present time due to severe degenerative arthritis. Dr. Mackay stated, "These findings are due to severe degenerative arthritis which was not part of the original work injury; however, I do believe that the work injury aggravated his arthritic condition." ... "I believe the work injury of February 4, 1997 temporarily aggravated his arthritic condition of his knees." Dr. Mackay concluded that appellant was totally disabled from his prior position as a carpenter due to degenerative arthritis of both knees, but would consider the residuals of work injury now resolved as of one year past the injury. In response to questions from the Office, he submitted an additional report on August 27, 2003. Dr. Mackay did not believe that the fall from the ladder caused appellant's arthritis because a few months after the fall he underwent arthroscopic surgery that showed multiple erosions and injuries to the articular cartilage and arthritis of the knee that was more advanced that could be explained by the injury of February 4, 1997. Appellant's current symptoms were due to the preexisting underlying disease process of arthritis and the natural progression of the arthritic condition which now involved both knees, right greater than left.

On September 15, 2003 the Office issued a notice of proposed termination of benefits.

In a January 28, 2003 x-ray report, Dr. Guier found osteoarthritis involving the medial compartment of the left knee greater than the right knee. On October 17, 2003 Dr. Guier disagreed with Dr. Mackay's conclusion that appellant's work injury resulted in only a temporary aggravation of his arthritis condition. He noted that Dr. Mackay did not have first

hand visual contact of the knee. On October 31, 2003 Dr. Guier requested an extension to respond to Dr. Mackay's report. He believed that appellant's ongoing disability was a result of his work injury.

By decision dated November 14, 2003, the Office terminated appellant's compensation and medical benefits effective November 14, 2003.

In a report dated November 13, 2003, received by the Office on November 25, 2003, Dr. Guier contended that Dr. Mackay did not have access to the photos of appellant's knee and was unable to fully assess the degree of traumatic injury sustained as a result of his job injury.

By letter dated December 9, 2003, appellant requested a hearing. The hearing was held on October 28, 2004. On February 10, 2004 appellant's counsel entered his appearance in this case.

In a July 9, 2004 letter, appellant's attorney asked Dr. Mackay to address whether appellant's bowlegged condition would alter his opinion. Dr. Mackay noted his reference to "varus deformity of both legs" in the July 2, 2003 report and that this deformity probably occurred from degenerative arthritis.

In a medical report dated August 29, 2004, Dr. Guier evaluated appellant's treatment and concluded:

"In summary, I believe that the current objective medical findings support the fact that [appellant] sustained a complex posterior horn medical meniscal tear of his right knee, as well as findings consistent with chondral damage of his medial femoral condyle. I believe this chondral damage, in all medical probability, is the result of the injury of February 4, 1997, but irrespective of whether this is felt to be the case or not, it is my firm belief, and also the belief of Alvin Forbes, MD and Stan Griffiths, MD that this would cause acceleration and permanent aggravation of an arthritic process in the right knee.

"With respect to whether these residuals are permanent or temporary, I feel that these are permanent residuals and that recommended treatment would eventually require at least a high tibial osteotomy and, in all medical probability, an eventual uni- or total knee replacement on the right."

In a decision dated February 11, 2005, the hearing representative affirmed the November 14, 2003 termination of benefits. However, the hearing representative noted that Dr. Guier's subsequent report was sufficient to create a conflict in medical opinion with Dr. Mackay. The case was remanded for the Office to refer the case to an impartial medical examiner to determine the nature and extent of appellant's disability due to his injury.

On June 27, 2005 the Office referred appellant to Dr. Robert Hansen, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion. By letter dated July 1, 2005, appellant's attorney acknowledge this appointment. Appellant saw Dr. Hansen on August 11, 2005. By letter dated August 15, 2003, appellant's attorney asked the Office to send documentation regarding the selection of Dr. Hansen as impartial medical examiner, noting that

appellant had to travel over 800 miles for this examination. On September 23, 2005 the Office responded by indicating that proper protocol had been followed.

In a report dated August 30, 2005, Dr. Hansen listed his impression as right knee degenerative medial meniscus tear and osteoarthritis of the right knee, lesser degree of osteoarthritis of the left knee. He stated:

“The type of meniscal tear described in the operative report and the associated arthritic changes in my experience would not medically reasonably be caused by less than a one foot fall off the bottom rung of the ladder. Unfortunately, there are no intraoperative arthroscopic pictures or videotape available to review the findings at the time of surgery. The descriptions of the findings as noted above are more consistent with a preexisting osteoarthritic knee and a degenerative-type meniscal tear rather than an acute meniscal tear from twisting the knee off a bottom rung of a ladder. The described findings of the apparent degenerative-type meniscal tear in both medial and also degenerative tearing in the lateral meniscus and chondromalacia of the patella, the medial femoral condyle and the lateral femoral condyle as described in the operative report, are all consistent with an osteoarthritic knee and degenerative-type medial meniscus tear. All of these findings would not medically reasonably be caused by less than a one foot fall off the first step of a ladder. This minimal injury medically reasonably would cause an aggravation of a previously osteoarthritic knee, which certainly possibly was previously asymptomatic.

“I feel the Department of Labor accepted condition of medial meniscus tear would have reached maximal medical improvement by six months postsurgical treatment. The patient’s inability to return to his usual work duties or any work duty is due to the preexisting and progressive osteoarthritic changes which have occurred, which are unrelated to the described work injury falling off the first rung of a ladder. His current pain and swelling and arthritic change in his knee would limit his ability to work, but this is not due to the described work injury. [Appellant’s] current osteoarthritic condition would allow him to work in a light-duty sedentary-type occupation eight hours a day.”

In a decision dated July 12, 2006, the Office found that Dr. Hansen’s August 11, 2005 opinion represented the weight of the medical evidence. Appellant did not establish entitlement to compensation after August 11, 2005.

LEGAL PRECEDENT

If the Office meets its burden to terminate the claimant’s compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.¹ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the claimant must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal

¹ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

relationship. 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 the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one 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 the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.²

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³

ANALYSIS

In the instant case, the Office terminated appellant's compensation effective November 14, 2003 and the hearing representative affirmed this determination on February 11, 2005. The hearing representative also found that a conflict in the medical evidence arose as to whether appellant had a disability after the termination of benefits and remanded the case for referral to an impartial medical examiner.

The Board finds that the Office properly determined that there existed a conflict in the medical evidence as to whether appellant had established continuing disability after the November 14, 2003 termination. Appellant's physician, Dr. Guier, opined that appellant's chondral damage in all medical probability was the result of the injury of February 4, 1997. Dr. Mackay, the second opinion physician, disagreed and concluded that appellant's February 4, 1997 employment injury resulted in a temporary aggravation of appellant's arthritic condition, and that this condition resolved within one year of the injury. He concluded that appellant's current symptoms were due to the preexisting underlying disease process of arthritis that was due to the natural progression of the arthritic condition which now involved both knees.

As there existed a conflict in the medical evidence between appellant's physician and the physician appointed by the Office, the Office properly referred appellant to Dr. Hansen for an impartial medical evaluation. Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴ After examining appellant and reviewing the medical evidence, Dr. Hansen concluded that appellant's accepted condition of medial meniscus tear would have reached maximum medical improvement by six months postsurgical treatment and that appellant's inability to return to his usual work

² See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

³ *James P. Roberts*, 31 ECAB 1010 (1980).

⁴ *Richard O'Brien*, 53 ECAB 234, 241-42 (2001).

duties or any work duty is due to the preexisting and progressive osteoarthritic changes “which have occurred, which are unrelated to the work injury.” Dr. Hansen pointed out that, although the pain, swelling and arthritic changes in the knee would limit appellant’s ability to work, the current condition was not due to the accepted employment injury. The Board finds that the opinion of Dr. Hansen is well rationalized and based on a proper factual and medical background. Therefore, it is entitled to special weight. Accordingly, the Office properly found that appellant as not entitled to continuing compensation.⁵

CONCLUSION

Appellant has not established that he had any continuing employment-related disability or condition after December 1, 2004.

⁵ Appellant’s contention that the selection of the impartial medical examiner was improper is without merit. Initially, the Board notes that he was referred to Dr. Hansen in a letter dated June 27, 2005 and his attorney acknowledge the referral in a letter dated July 1, 2005. Appellant’s appointment with Dr. Hansen occurred on August 11, 2005. However, it was not until a letter dated August 15, 2005 that appellant’s attorney contended that appellant had to travel over 800 miles for the examination and that he should have seen a physician closer to his home. By letter dated September 23, 2005, the Office responded that the only appropriate specialist who was closer to appellant was Dr. Rork. However, he was bypassed because he had seen appellant before and therefore could not be used for the impartial medical evaluation. The Office noted that, due to the rural area where appellant resided, it was sometimes necessary for claimant’s to travel a long distance for examinations. The Office procedure manual notes that, on occasion, where appellant lives in a remote area, the nearest physician with the appropriate specialty may be hundreds of miles away. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.0500.4(d)(3) (October 2005). Accordingly, appellant has not established that there was an error made in choosing the impartial medical examiner.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 12, 2006 is affirmed.

Issued: February 21, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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