

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

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**P.P., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Brooklyn, NY, Employer**

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**Docket No. 08-936  
Issued: January 2, 2009**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 11, 2008 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 20, 2007 that terminated his benefits. He also appealed a November 23, 2007 decision, which denied reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's medical and compensation benefits effective July 8, 2007; and (2) whether the Office properly denied appellant's request for reconsideration.

**FACTUAL HISTORY**

On June 29, 2005 appellant, then a 51-year-old corrective therapist, was in an automobile accident and sustained injuries to multiple sites including his right side, lower back and buttocks while in the performance of duty. The Office accepted the claim for contusion of the bilateral

knees, sprain of the neck and lumbar spine, right shoulder sprain, contusion to multiple sites and bilateral abrasions and friction burns to the legs without infection. It authorized arthroscopic surgery on the right knee, which was performed on April 10, 2006. Appellant stopped work on June 29, 2005.

In a statement dated August 26, 2005, appellant noted that he provided home physical therapy to patients. He noted that on June 29, 2005 he departed a patient's home en route to another patient and was hit by another automobile. Appellant came under the treatment of Dr. Ludwig Licciardi, a Board-certified orthopedist, from June 30 to October 3, 2005 for injuries sustained in an automobile accident. Dr. Licciardi diagnosed status post multiple trauma with acute cervical radiculopathy predominately right sided, right shoulder rotator cuff tendinitis, nerve entrapment in the elbows, lumbosacral derangement with possible right sciatica, right knee internal derangement with a possible medial meniscal tear and left knee contusion. He opined that appellant was totally disabled. On October 3, 2005 Dr. Licciardi noted that a September 22, 2005 magnetic resonance imaging (MRI) scan revealed multi-level disc protrusions at L3-4 and L4-5 while a September 27, 2005 MRI scan revealed an extruded herniated disc at C5-6 and additional protrusions at C3-4 and C4-5. He advised that appellant was totally disabled and unlikely to return to his work as a physical therapist. An October 4, 2005 MRI scan of the right shoulder revealed downsloping of the acromion process of the scapula with Grade 1 impingement. An October 11, 2005 MRI scan of the right knee showed small joint effusion and a horizontal intrasubstance tear of the medial meniscus with a meniscal cyst. A left knee MRI scan revealed intrameniscal mucoid degenerative changes at the posterior horn of the medial meniscus. Dr. Licciardi referred appellant to Dr. Dennis J. Alne, a psychologist, who treated him on October 21, 2005 for anxiety and depression that developed after the June 29, 2005 work injury.

On October 21, 2005 the Office referred appellant to Dr. Robert Israel, a Board-certified orthopedist, for a second opinion. In a November 4, 2005 report, Dr. Israel discussed appellant's work history and indicated that examination of the cervical spine revealed normal lordosis, normal range of motion and reflexes were symmetric with no sensory deficit. Examination of the right shoulder revealed no deltoid atrophy, normal range of motion, negative impingement sign, no winging of the scapula and no sensory loss. Examination of the elbows, thoracic spine and lumbar spine was essentially normal. Examination of the knees showed no joint line tenderness or effusion, normal muscle tone and strength, normal range of motion with no patellofemoral crepitus. Dr. Israel diagnosed resolved cervical, thoracic and lumbar spine sprains, resolved right shoulder sprain, bilateral elbow sprains, bilateral wrist and hand sprains, bilateral knee sprains, bilateral hip sprains, bilateral ankle sprains, arm sprains and leg sprains. He opined that appellant could return to work and continue his activities of daily living without restrictions.

Appellant submitted reports from Dr. Licciardi, dated November 29, 2005 to March 10, 2006, who noted that he had decreased range of motion of the cervical and lumbar spine with crepitus in the patella femoral joint bilaterally and opined that he was totally disabled.

On January 17, 2006 the Office requested Dr. Licciardi review the second opinion report and address whether appellant had residuals of his accepted work injury and whether he was disabled from work. On February 3, 2006 Dr. Licciardi opined that appellant was totally

disabled. In a January 25, 2006 treatment note, he recommended arthroscopic surgery on the right knee and continued conservative therapy for the right shoulder. In an April 10, 2006 operative report, Dr. Licciardi performed arthroscopic surgery of the right knee and diagnosed internal derangement. In a duty status report dated April 17, 2006, he noted that appellant was totally disabled from work for 6 to 10 months and might require additional surgery.

The Office found a medical conflict between Dr. Licciardi and Dr. Israel regarding whether appellant had residuals or disability due to his accepted work injury. To resolve the conflict, it referred appellant to Dr. J. Mervyn Lloyd, a Board-certified orthopedist.

In an April 19, 2006 report, Dr. Lloyd noted reviewing the record, noted a history of appellant's work-related injury and examined him. He noted findings upon physical examination of the cervical and lumbar spine of no spasm, normal range of motion, the right shoulder Examination of the left knee revealed no abnormalities and the right knee revealed recent arthroscopic scars, a small effusion with limited range of motion with pain. Dr. Lloyd diagnosed revealed no atrophy, normal range of motion and no focal weakness or signs of impingement. cervical sprain resolved with no evidence of cervical radiculopathy, right shoulder sprain resolved, lumbar sprain resolved with no evidence of lumbar radiculopathy, left knee contusion resolved and right knee contusion/sprain status post arthroscopic surgery. He opined that appellant had recovered from the cervical sprain, right shoulder sprain, lumbar sprain and left knee contusion and required no further treatment for these areas and had no disability related to them. Dr. Lloyd noted that, regarding the right knee, appellant was two weeks' postsurgery and required physical therapy for four weeks and could not perform all aspects of his normal work for one month because of his recent right knee surgery.

Appellant continued to submit reports from Dr. Licciardi, dated April 10 to August 31, 2006, who continued to opine that appellant was totally disabled due to his work-related injuries.

On June 23, 2006 the employing establishment offered appellant a position as a modified corrective therapist, full time, subject to the restrictions set forth by Dr. Lloyd. On June 26, 2006 appellant refused the job offer. On July 25, 2006 he asserted that Dr. Licciardi determined that he was totally disabled. Appellant submitted a report from Dr. Alne, dated June 10, 2006, who opined that appellant's disabling physical injuries caused him to develop anxiety and depression.

On September 6, 2006 the Office responded to the employing establishment's request that appellant's compensation be terminated. It recommended a follow-up examination with the referee physician, Dr. Lloyd, to determine if appellant had recovered from right knee surgery and whether he continued to require work restrictions.

On October 2, 2006 the Office referred appellant to Dr. Lloyd for a follow-up examination. In an October 18, 2006 report, Dr. Lloyd advised that he previously examined appellant on April 18, 2006. He noted findings upon physical examination of no abnormalities of the cervical spine, lumbar spine, right shoulder or left knee. Examination of the right knee revealed healed arthroscopic scars, no joint effusion and normal range of motion. Dr. Lloyd diagnosed cervical sprain resolved, right shoulder sprain resolved, lumbar sprain resolved, left knee contusion resolved and right knee contusion/sprain, internal derangement, now resolved following arthroscopic surgery. He found no objective abnormality and no evidence of cervical

or lumbar radiculopathy. Dr. Lloyd opined that appellant had recovered from the cervical sprain, right shoulder sprain, lumbar sprain, left knee contusion and right knee contusion and sprain and required no further treatment for these areas and had no disability related to them. He noted that appellant reached maximum medical improvement and could return to work eight hours per day with no restrictions.

Appellant submitted reports from Dr. Licciardi, dated October 2, 2006 to April 4, 2007, who noted that appellant continued to have back pain and stiffness with radicular symptoms and remained totally disabled.

On May 15, 2007 the Office proposed to terminate appellant's compensation benefits on the grounds that Dr. Lloyd's reports established no residuals of the employment injury.

On June 8, 2007 appellant asserted that he was totally disabled. He submitted reports from Dr. Licciardi, dated May 4 to July 13, 2007, who noted that appellant continued to have residuals of his work injury with episodes of lumbar and cervical pain with radiculopathy and opined that he continued to be totally disabled.

By decision dated July 20, 2007, the Office terminated appellant's benefits effective July 8, 2007 on the grounds that the weight of the medical evidence as represented by Dr. Lloyd established that he had no continuing disability or residuals resulting from his accepted employment injury.

On November 2, 2007 appellant requested reconsideration and asserted that he continued to be totally disabled due to his work-related injury. He further noted that he sustained injuries and conditions in addition to those accepted by the Office including those of a psychiatric nature. Appellant submitted reports from Dr. Licciardi, dated July 13 to August 10, 2007, who noted appellant's continued complaints of right knee pain, cervical and lumbar pain, spasms and radiculopathy. Dr. Licciardi opined that appellant remained totally disabled. Appellant also submitted a report from Dr. Alne, dated August 10, 2007, who treated appellant for anxiety and depression which developed after his work accident on June 29, 2005.

In a November 23, 2007 decision, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period

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<sup>1</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>2</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>3</sup>

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

The Office accepted appellant's claim for contusion of the bilateral knees, sprain of the neck and lumbar spine, right shoulder sprain, contusion to multiple sites and bilateral abrasions and friction burns to the legs without infection and authorized arthroscopic surgery on the right knee, which was performed on April 10, 2006. It subsequently developed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Licciardi, who disagreed with the Office referral physician, Dr. Israel, regarding whether appellant had residuals of his accepted work injury and whether he was totally disabled from work.<sup>4</sup>

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>5</sup>

The Board finds that the opinion of Dr. Lloyd is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related conditions have ceased and that he can return to work full time without restrictions. In his April 19 and October 18, 2006 reports, Dr. Lloyd reviewed appellant's history, reported findings and noted that both subjective and objective medical evidence established that his physical injuries had resolved. In Dr. Lloyd's April 19, 2006 report, he noted that appellant had recovered from the cervical sprain, right shoulder sprain, lumbar sprain and left knee contusion and required no further treatment for these injuries and had no disability related to them. However, he noted that appellant was two weeks' postarthroscopic surgery of the right knee and required continued physical therapy and could not perform all aspects of his normal work for one month. Following appellant's recovery from his right knee surgery, Dr. Lloyd performed a follow-up examination and, in a report dated October 18, 2006 report, he noted essentially normal findings upon physical examination with regard to the cervical spine, right shoulder, lumbar spine, left and right knee. Dr. Lloyd diagnosed cervical sprain, resolved, right shoulder sprain resolved, lumbar sprain resolved, left knee contusion resolved and right knee contusion/sprain, internal derangement, now resolved following arthroscopic surgery. He found no objective abnormality and opined that appellant had recovered from the cervical sprain, right shoulder sprain, lumbar sprain, left knee contusion and right knee contusion and sprain required no further treatment for these conditions and had no disability related to them. Dr. Lloyd noted that appellant could return to work eight hours per day with no restrictions.

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<sup>3</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

<sup>4</sup> *See* 5 U.S.C. § 8123(a).

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

Appellant submitted reports from Dr. Licciardi, dated April 10 to August 31, 2006 and October 2, 2006 to April 4, 2007, who noted that appellant continued to experience back pain and stiffness with radicular symptoms into his legs and remained totally disabled. However, Dr. Licciardi failed to specifically explain the reasons why any continuing orthopedic condition, disability or restrictions were causally related to the accepted June 29, 2005 employment injury.<sup>6</sup> Additionally, he was on one side of a conflict that was resolved by Dr. Lloyd and his report does not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability was causally related to the June 29, 2005 work injury.<sup>7</sup>

Also submitted was a report from Dr. Alne, dated June 10, 2006, who opined that secondary to appellant's disabling physical injuries and severe disruption of his life and lifestyle he developed anxiety and depression. However, the Office never accepted that appellant developed an emotional condition as a result of his June 29, 2005 work injury and there is no medical evidence to support such a conclusion. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>8</sup>

After issuance of the pretermination notice, appellant submitted reports from Dr. Licciardi, dated May 4 to July 13, 2007, who noted that appellant continued to have residuals of his work-related injury with episodes of lumbar and cervical pain with radiculopathy and remained totally disabled. However, Dr. Licciardi failed to provide a rationalized opinion addressing how any continuing condition was causally related to the accepted employment injury. Additionally, as noted above, he was on one side of a conflict that was resolved by Dr. Lloyd and his report does not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability was causally related to the June 29, 2005 work injury.<sup>9</sup>

The Board finds that Dr. Lloyd had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated, Dr. Lloyd clearly opined that appellant had no residuals or disability attributable to his accepted orthopedic conditions. His opinion, as set forth in his April 19 and October 18, 2006 reports, are found to be probative evidence and reliable. The Board finds that Dr. Lloyd's opinion represents the weight of the medical evidence and is sufficient to justify the Office's termination of appellant's benefits for the accepted conditions of contusion of the bilateral knees, sprain of the neck and lumbar spine, right shoulder sprain, contusion to multiple sites and bilateral abrasions and friction burns to the legs without infection.

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<sup>6</sup> See *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>7</sup> See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>8</sup> See *supra* note 6.

<sup>9</sup> See *Michael Hughes*, *supra* note 7.

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

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>10</sup> the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>11</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>12</sup>

## **ANALYSIS -- ISSUE 2**

Appellant's November 2, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office.

Appellant submitted a statement dated November 2, 2007 and asserted that he continued to be totally disabled due to his work-related injury. He further noted that he sustained injuries and conditions in addition to those accepted by the Office including those of a psychiatric nature. However, appellant's general statements and allegations did not show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted treatment notes from Dr. Licciardi, dated July 13 to August 10, 2007, who noted his continued complaints of right knee pain, cervical and lumbar pain, spasms and radiculopathy. He opined that appellant remained totally disabled. Appellant also submitted a report from Dr. Alne, dated August 10, 2007, who treated appellant for anxiety and depression, which developed after his work accident on June 29, 2005. However, this evidence is essentially duplicative of medical records already contained in the

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<sup>10</sup> 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.606(b).

<sup>12</sup> *Id.*

record<sup>13</sup> and previously considered by the Office in its July 20, 2007 decision. The Office properly found that this evidence did warrant reopening the claim for a merit review.

Therefore, the Board finds that the Office properly determined that appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his November 2, 2007 request for reconsideration.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate benefits effective July 20, 2007.<sup>14</sup> The Board further finds that the Office properly denied appellant's request for reconsideration of his case on its merits.

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<sup>13</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>14</sup> The Board notes that the Office's July 20, 2007 decision indicated that the termination of benefits was effective July 8, 2007; however, the Office provided no explanation for retroactively terminating benefits. Therefore, the Board will modify the termination to be effective July 20, 2007, the date of the Office decision. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997) (to avoid creating an overpayment, the Office in terminating compensation may specify the end of the next periodic roll cycle as the date on which entitlement ceases).



**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 23, 2007 is affirmed and the July 20, 2007 decision is affirmed, as modified.

Issued: January 2, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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