

FACTUAL HISTORY

On January 13, 1999 appellant, then a 43-year-old housekeeping aid, sustained injury to her right leg and knee and lower back when she slipped while going up steps. The Office accepted the claim for right lateral meniscus tear and authorized right knee arthroscopic surgery, which was performed on June 1, 1999. Appellant stopped work on February 15, 1999 and returned to light-duty work on March 27, 2000. She stopped work on May 22, 2000 and returned to work for four hours per day on September 12, 2000. Appellant filed a claim for a recurrence of disability beginning January 31, 2002.

On March 11, 2003 the Office issue a loss of wage-earning capacity decision. It reduced appellant's wage-loss compensation, finding that her actual weekly wages of \$286.60 as a clerk effective September 25, 2000 fairly and reasonably represented her wage-earning capacity.

In an August 27, 2004 report, Dr. Charles Xeller, a second opinion Board-certified orthopedic surgeon, provided a history and results on examination. He diagnosed right knee progressive degenerative arthritic deterioration and status post right knee lateral partial meniscectomy and patellar chondroplasty. Dr. Xeller attributed appellant's current right knee condition to both her preexisting condition and to the January 13, 1999 employment injury and subsequent surgery. He also concluded that the January 13, 1999 employment injury caused a permanent aggravation of her preexisting right knee degenerative condition.

On July 7 and 18, 2005, Dr. William J. Comai, a treating physician, requested authorization from the Office for right knee total arthroplasty surgery.

On August 29, 2005 the Office referred appellant to Dr. Xeller for a supplemental report on the issue of whether right knee total arthroplasty surgery was appropriate. In an October 4, 2005 report, Dr. Xeller concluded that surgery was a viable option, but that in view of appellant's age he suggested nonsurgical treatment should be considered first.

In a February 28, 2006 report, Dr. Comai disagreed with Dr. Xeller's October 4, 2005 report and reiterated his opinion that right knee total arthroplasty surgery was necessary.

On July 24, 2006 the Office referred appellant to Dr. Michael E. Holda, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Drs. Comai and Xeller on the issue of whether right knee total arthroplasty surgery was appropriate.

On July 25, 2006 appellant filed claims for recurrence of disability beginning June 20, 2006.¹ She submitted a July 18, 2006 disability note from Dr. Comai indicating that she would be off work for four months. On July 19, 2006 Dr. Comai diagnosed end stage knee osteoarthritis and reported appellant had "significantly worsening knee pain." Dr. Comai again requested authorization for right knee total arthroplasty surgery.

In his September 7, 2006 report, Dr. Holda reviewed the medical evidence, statement of accepted facts and set fourth findings on physical examination. He diagnosed moderate right

¹ The record reflects that appellant stopped work on June 20, 2006 and returned to work on January 4, 2008.

knee degenerative arthritis. Dr. Holda opined that appellant had recovered from her the right lateral meniscus tear. He advised that her right knee degenerative arthritis was unrelated to her January 13, 1999 employment injury, but was due to her age, the aging process and obesity. Dr. Holda opined that the proposed total knee arthroplasty surgery was unrelated to appellant's accepted January 13, 1999 employment injury and due solely to degenerative disease, the aging process and obesity. In a supplement report dated November 2, 2005, he opined that her January 13, 1999 employment injury temporarily aggravated her preexisting right knee arthritic condition and that she no longer had any residuals or disability due to that injury. Dr. Holda opined that appellant had recovered from the January 13, 1999 employment injury and the current work restrictions were due to her obesity and preexisting right knee degenerative arthritis.

In a December 22, 2006 report, Dr. Comai disagreed with Dr. Holda's opinion and reiterated that appellant's January 13, 1999 employment injury was a significant contribution to her present degenerative arthritis.

The Office found a conflict in the medical opinion evidence between Dr. Comai and Dr. Holda as to whether appellant continued to have residuals and disability from her accepted employment injury. It referred appellant, together with the entire medical record and a statement of accepted facts, to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a June 13, 2007 report, based upon an examination of appellant and review of the entire medical file and statement of accepted facts, Dr. Obianwu found no objective evidence of residuals directly attributable to the January 13, 1999 work injury. He advised that appellant's current disability was due exclusively to her preexisting right knee degenerative arthritis and was unrelated to the January 13, 1999 employment injury. Dr. Obianwu noted that her degenerative arthritis had not been caused or aggravated by the January 13, 1999 employment injury. He diagnosed moderate degenerative arthritis in both knees. Dr. Obianwu stated that, at the time of a June 1, 1999 arthroscopy, appellant had degenerative right knee arthritis, which "in any joint is an age-related condition that generally tends to be progressive." He noted that "overt arthritic changes were documented at the time of the surgery" and that her condition was progressive and age related. Dr. Obianwu stated that the lateral meniscus tear had no impact and had not aggravated or caused appellant's current osteoarthritic right knee condition. This was supported by the fact that appellant had similar changes in her left knee. Dr. Obianwu related that there were no objective findings that the accepted right lateral meniscus tear was presently active or disabling. He opined that appellant's current disability was due to the right knee degenerative arthritis, which had been recognized at the time of her June 1, 1999 surgery.

By letter dated July 17, 2007, the Office proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Obianwu's June 13, 2007 report. Appellant was provided 30 days to submit additional evidence or argument in support of her case. The Office also found the evidence insufficient to establish a recurrence of disability beginning June 20, 2006.

In a letter dated August 11, 2007, appellant disagreed with the proposed termination, contending that the medical evidence established that she was disabled and that the January 13, 1999 employment injury had permanently aggravated her preexisting right knee condition

By decision dated August 28, 2007, the Office modified the March 11, 2003 wage-earning capacity determination effective September 1, 2007. It found that the Dr. Obianwu's medical opinion was sufficient to establish a material change in the employment-related condition resulting in no loss of wage-earning capacity. The Office found that appellant was not entitled to medical benefits after September 1, 2007. It also denied her claim for a recurrence of total disability beginning June 20, 2006.

On September 16, 2007 appellant requested an oral hearing before an Office hearing representative, which was held on January 25, 2008.

By decision dated April 28, 2008, the Office's hearing representative affirmed modification of the March 11, 2003 wage-loss compensation, terminating appellant's wage-loss and medical benefits effective September 1, 2008 and the denial of her claim for a recurrence of disability beginning June 20, 2006. He found that Dr. Obianwu's report constituted the weight of the medical evidence that appellant no longer had any residuals or disability due to her accepted employment injury. The Office hearing representative also found that Dr. Obianwu's report established that the worsening of appellant's knee condition as of June 20, 2006 was unrelated to the accepted January 13, 1999 employment injury. He denied her claim for a recurrence of total disability beginning June 20, 2006 as it was not related to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.² The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.³

Section 8123(a) provides 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."⁴ 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

² *M.A.*, 59 ECAB ____ (Docket No. 07-349, issued July 10, 2008); *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Sue A. Sedgwick*, 45 ECAB 211 (1993).

³ *D.M.*, 59 ECAB ____ (Docket No. 07-1230, issued November 13, 2007); *Sherman Preston*, 56 ECAB 607 (2005).

⁴ 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB ____ (Docket No. 08-254, issued September 9, 2008).

specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right lateral meniscus tear and authorized right knee arthroscopic surgery. On March 11, 2003 it issued a wage-earning capacity decision, which was based on appellant's actual earnings working part time in a clerk position. Pursuant to 5 U.S.C. § 8115, the wage-earning capacity of an employee is determined by actual earnings if the actual earnings fairly and reasonably represent wage-earning capacity. Once a wage-earning capacity decision is made, it remains in effect until it is properly modified.⁶

The Board finds that the Office properly determined that a conflict arose in the medical opinion evidence as to whether appellant had any disability or residuals due to her accepted condition. Appellant's treating physician, Dr. Comai, opined that she had residuals from and was partially disabled due to, her accepted right knee condition and that her January 13, 1999 employment injury had permanently aggravated her preexisting degenerative arthritis necessitating surgery. On the other hand, Dr. Holda, a second opinion physician, opined that appellant had no disability resulting from her accepted condition and that no further treatment was necessary as her ongoing disability was due to her preexisting degenerative arthritis and unrelated to the January 13, 1999 employment injury. He had initially been chosen to resolve the conflict in the medical opinion which existed between Dr. Comai, appellant's treating physician, and Dr. Xeller, an Office referral physician, on the issue of whether right knee total arthroplasty surgery was necessary and should be authorized. The Office properly determined that Dr. Holda's report should be treated as a second opinion as he created a new conflict in the medical opinion evidence when he opined that appellant had no residuals or disability due to the accepted January 13, 1999 employment injury.

In order to resolve the conflict, the Office referred appellant to Dr. Obianwu for an impartial medical examination. Dr. Obianwu reviewed the record and statement of accepted facts and performed a thorough examination of appellant. In a June 13 2007 report, he found that appellant was not disabled as a result of her accepted conditions and found no objective evidence of residuals directly attributable to the January 13, 1999 work injury. Dr. Obianwu determined that degenerative arthritic changes were noted at the time of her June 1, 1999 surgery and that this type of condition was progressive. He opined that appellant's current disability and condition was due to the progressive nature of her arthritis condition and unrelated to the accepted January 13, 1999 employment injury. Dr. Obianwu stated that there was no evidence that the accepted right lateral meniscus tear had any impact or aggravated her right knee osteoarthritic condition. He found that appellant had similar changes in her left knee.

The Board finds that the Office properly relied on Dr. Obianwu's June 13, 2007 report in determining that appellant was not disabled as a result of and had no residuals from, her accepted

⁵ See *V.G.*, 59 ECAB ___ (Docket No. 07-2179, issued July 14, 2008); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

⁶ See *Katherine T. Kreger*, 55 ECAB 633 (2004).

employment injury. Dr. Obianwu's opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant thoroughly and reviewed all medical records. Dr. Obianwu reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.⁷

The Board finds that the Office properly modified the wage-earning capacity determination as the medical evidence established a material change in the nature and extent of appellant's employment-related condition. Dr. Obianwu found that appellant's condition had resolved and there was no continuing employment-related disability. Based on the evidence of record, the Office properly modified its wage-earning capacity determination.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁸ 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.⁹

ANALYSIS -- ISSUE 2

The issue of termination of medical benefits is separate from the modification of wage-earning capacity. The June 21, 2007 decision also found that appellant was not entitled to medical benefits after September 1, 2007.

As noted, the Office properly referred appellant to Dr. Obianwu to resolve the conflict in the medical opinion evidence between Dr. Holda and Dr. Xeller on the issue of whether she continued to have residuals and disability from her accepted employment injury. The June 13, 2007 report of Dr. Obianwu is probative medical evidence that the accepted right knee meniscus tear was repaired and that appellant had no continuing residuals warranting treatment. The Board finds that the Office properly relied on Dr. Obianwu's June 13, 2007 report in determining that appellant had no residuals from her accepted employment injury. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Obianwu provided a thorough examination of appellant and reported accurate medical and employment histories. The Office properly accorded special weight to the impartial medical specialist's findings.¹⁰ Based on this evidence, it met its burden of proof to terminate medical benefits in this case.

LEGAL PRECEDENT -- ISSUE 3

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes

⁷ Y.A., 59 ECAB ____ (Docket No. 08-254, issued September 9, 2008); *Bryan O. Crane*, 56 ECAB 713 (2005).

⁸ E.J., 59 ECAB ____ (Docket No. 08-1350, issued September 8, 2008).

⁹ T.P., 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007).

¹⁰ See *supra* note 7.

that light duty can be performed, the employee has the burden to establish, by the weight of reliable, probative and substantial evidence, a recurrence of total disability.¹¹ As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹²

This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.¹³ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁴

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.¹⁵ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.¹⁶

ANALYSIS -- ISSUE 3

The Board finds that appellant failed to sustain her burden of proof in establishing that she had a period of recurrent total disability commencing June 20, 2006, due to her accepted January 13, 1999 injury. There was no evidence presented that appellant's job requirements had changed or that she was required to perform duties outside of her job restrictions. The weight of medical evidence does not establish that appellant's condition had worsened to the degree that she was unable to perform the duties of her modified position.

The medical evidence relevant to appellant's recurrence claim includes a July 18 and 19, 2006 report of Dr. Comai, who merely indicated that she would be off work for four months due to end stage knee osteoarthritis. He reported that appellant had "significantly worsening knee pain." However, Dr. Comai did not explain how appellant's disability for work was causally related to her accepted right lateral meniscus tear. The Board has held that medical reports not supported by medical rationale are of limited probative value.¹⁷ The Board finds that Dr. Comai's records are of diminished probative value as he did not adequately address the issues of causal relation or disability for work. Dr. Comai did not provide any opinion

¹¹ *S.F.*, 59 ECAB ____ (Docket No. 07-2287, issued May 16, 2008).

¹² *See Shelly A. Paolinetti*, 52 ECAB 391 (2001); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

¹³ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁴ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁵ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

¹⁶ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁷ *S.S.*, *supra* note 15; *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

addressing the causal relationship between appellant's accepted employment injury and her worsening pain or end stage knee osteoarthritis. As noted, the weight of medical opinion as represented by Dr. Obianwu found that appellant's degenerative disease was not caused or aggravated by her accepted injury, Dr. Comai did not provided rationale on causal relation and his opinion is of diminished probative value.¹⁸

Appellant has not submitted sufficient medical evidence to establish that she was totally disabled beginning on June 20, 2006 due to her employment-related right lateral meniscus tear. There is no evidence showing that appellant experienced a change in the nature and extent of the limited-duty requirements or was required to perform duties which exceeded her medical restrictions. The medical evidence does not establish that her accepted injury caused disability commencing June 20, 2006.

CONCLUSION

The Office met its burden of proof to modify the March 11, 2003 wage-earning capacity determination and find that appellant had no loss of wage-earning capacity as of September 1, 2007. It also met its burden of proof to terminate medical benefits effective September 1, 2007. The Board further finds that appellant did not establish a recurrence of total disability beginning July 20, 2006.

¹⁸ *Richard A. Neidert*, 57 ECAB 474 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs' hearing representative dated April 28, 2008 and of the Office dated August 28, 2007 are affirmed.

Issued: June 10, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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