

for lumbar strain and left knee sprain.¹ Following her injury, appellant returned to work full duty and was paid appropriate compensation benefits.²

Dr. Eric Freeman, a Board-certified orthopedic surgeon, first treated appellant for her work injury on March 15, 2006. He reviewed the history of injury and diagnosed internal derangement of the left knee with lumbar herniated disc. In reports dated April 17 and May 10, 2006, Dr. Freeman reiterated his diagnosis and noted that appellant was working. On May 16, 2006 Dr. Mario Torrents, a Board-certified physiatrist, diagnosed painful lumbosacral derangement and sprain secondary to a February 8, 2006 work accident. He also diagnosed painful left knee internal derangement. Dr. Torrents noted that appellant was partially disabled and was working. On June 2, 2006 he diagnosed improving painful left lumbar sciatica and noted that she was able to work and would continue physical therapy.

In a report dated June 5, 2006, Dr. Freeman diagnosed torn medial meniscus of the left knee and noted that appellant was working. He asked for authorization to perform a partial medial meniscectomy. A magnetic resonance imaging (MRI) scan performed for Dr. Freeman on June 1, 2006 revealed moderate joint effusion with no significant patellofemoral chondromalacia changes, osteoarthritis, greater medially, with the medial meniscus markedly compressed although no discrete tear was seen. On June 21, 2006 he reiterated his diagnosis of torn medial meniscus. Dr. Freeman further advised that appellant was unable to work from June 15 to 16 and June 21 to 30, 2006.

In reports dated September 25 and October 23, 2006, Dr. Torrents again diagnosed painful lumbar sprain and left knee sprain and torn meniscus secondary to a February 8, 2006 work accident. He indicated that appellant was partially disabled and working. On October 17, 2006 Dr. Torrents noted that she was unable to work on days she received physical therapy. In reports from January 8 to March 29, 2007, he reiterated his diagnoses, stated that appellant had partial disability but was still working. On May 4, 2007 Dr. Torrents advised that she complained of low back pain exacerbated by prolonged standing with pain radiating down her left thigh, leg and foot. Appellant also complained of left knee pain when standing and walking. She reported difficulty in bending the knee and going up and down stairs along with frequent giving way episodes. Dr. Torrents stated that April 9, 2007 MRI scan results showed bulging at L2-3, L3-4 and L4-5 with disc degeneration noted at L2-3 and L3-4 and anterolisthesis at L3-4. He assessed painful lumbar derangement with multiple bulging disc and left L4 and L5 lumbar radiculopathy and painful left knee internal derangement with meniscus pathology all secondary to the February 8, 2006 work injury. Dr. Torrents recommended that appellant continue physical therapy three times a week and continue working while partially disabled. On June 4, 2007 he diagnosed painful lumbar derangement, with multiple bulging discs and left L4 and L5 lumbar radiculopathies and left knee internal derangement, with torn cartilage, secondary to the February 8, 2006 injury. He indicated that appellant had severe permanent partial disability but noted that she was working. Dr. Torrents continued submitting reports supporting that her low back and left knee conditions were due to the February 8, 2006 work injury.

¹ The Board notes that the Office accepted appellant's claim for lumbar strain on August 24, 2006 and left knee sprain on July 25, 2007.

² The Board notes that appellant missed work several days each week due to physical therapy sessions.

The Office referred appellant to Dr. P. Leo Varriale, a Board-certified orthopedic surgeon, for a second opinion. In a May 24, 2007 report, Dr. Varriale summarized the history of injury and noted the medical records he reviewed. Upon examination, he found that appellant's lumbar spine had no spasm, tenderness or atrophy. Lumbar range of motion was normal. Appellant had full strength and no sensory deficits in the lower extremities and straight leg raising was negative. The left knee had mild effusion, mild quad atrophy and no instability. Dr. Varriale diagnosed resolved lumbosacral strain, resolved left knee strain and osteoarthritis of the knee. He noted no objective findings of the accepted conditions and opined that the injury-related condition had resolved. Dr. Varriale indicated that appellant currently had degenerative disc disease of the spine and osteoarthritis of the left knee. He opined that, based on his loss of motion findings and the MRI scan results, appellant had some disability attributable to arthritis of the knee and degenerative disc disease of the spine but advised that this was not work related. Dr. Varriale advised that there was no need for further physical therapy or orthopedic treatment, as the condition was chronic, permanent, not work related and due to degenerative disease. He also noted that appellant was able to perform her duties as a legal assistant for six hours per day, five days per week with work limitations being due to her arthritis and degenerative disc disease. Dr. Varriale also submitted a report outlining her work restrictions.

On June 26, 2007 the Office issued a proposed notice of termination of compensation. It found that the weight of the medical evidence, represented by Dr. Varriale's report, demonstrated that appellant no longer had any disability or residuals due to her accepted February 8, 2006 work-related condition. The Office allowed 30 days for her to submit additional evidence.

In response, appellant submitted a November 12, 2006 report from Dr. Freeman. Based on x-rays, Dr. Freeman diagnosed internal derangement of the left knee with lumbar herniated disc. He noted that on June 5, 2006 he found a torn medial meniscus and osteoarthritis. Dr. Freeman stated that based on appellant's history and findings she had a "causally related" left knee and lumbar spine injury and noted that she had no previous left knee problems. He opined with a reasonable degree of medical certainty that there was a causally related disability to the left knee and lumbar spine as a result of the February 2006 injury.

On June 12, 2007 Dr. Torrents summarized his findings from each date of treatment and noted treating appellant since May 16, 2006 for the February 8, 2006 work injury. He diagnosed painful lumbosacral derangement sprain due to the work injury. Dr. Torrents also diagnosed status post left knee internal derangement due to the work injury and confirmed by electromyogram (EMG). He opined that appellant had a permanent partial disability of a marked degree such that she could not perform any physical activities without pain. Dr. Torrents further noted that her disability had not improved with physical therapy, had not changed and would continue indefinitely. He indicated that appellant's left knee torn meniscus could improve with surgery but there were permanent defects at the left knee joint secondary to chronic changes. Dr. Torrents opined that the February 8, 2006 incident was the only competent cause of her condition. He noted that appellant's prognosis was poor and that her condition would continue indefinitely. Dr. Torrents also submitted July 13 and 16, 2007 treatment notes listing her back and knee diagnoses and indicating that her conditions were a direct consequence of the February 8, 2006 work injury. He indicated that appellant had a permanent partial disability and was working.

In a decision dated August 1, 2007, the Office terminated appellant's compensation benefits effective that day finding that Dr. Varriale's report established that the accepted conditions had resolved.

On September 24, 2007 appellant requested reconsideration. She also asserted that the Office did not accept all injuries and conditions sustained as a result of the work accident, which was supported by medical evidence provided by her treating physicians. Appellant further asserted that her treating physicians' opinions established that she continued to have disability from the work injury. Medical reports previously of record from Drs. Torrents and Freeman were also submitted.

In a decision dated August 21, 2008, the Office denied modification of its August 1, 2007 decision finding that appellant did not submit sufficient medical evidence to establish that termination was not warranted.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his 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.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁶

ANALYSIS

The Office terminated appellant's compensation benefits based on the opinion given by Dr. Varriale, it's second opinion referral physician, who explained that there were no objective findings of the accepted compensable conditions as her lumbar spine had no spasm, tenderness or atrophy and her left knee had only mild effusion, mild quad atrophy and no instability. Dr. Varriale further found that the range of motion of her lumbar spine was normal and that her lower extremities had full strength and no sensory deficits. As a result, he opined that appellant's lumbosacral strain and left knee strain had resolved with no residuals related to her February 8, 2006 injury. Dr. Varriale noted that she did have residual disability limiting the number of hours she could work, but this was due to her unaccepted arthritis and degenerative

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁶ *E.J.*, 59 ECAB ___ (Docket No. 08-1350, issued September 8, 2008).

disc disease conditions. He found no basis on which to attribute any continuing condition to the February 8, 2006 work injury.

In contrast, Dr. Torrents, appellant's treating physician, found that appellant remained partially disabled due to the February 8, 2006 work injury. He diagnosed lumbosacral derangement sprain and status post left knee internal derangement, both secondary to the February 8, 2006 work injury and confirmed by EMG results. Dr. Torrents opined that appellant had a permanent partial disability of a marked degree that she could not perform any physical activities without pain. He further opined that her disabling condition would continue indefinitely and that her work injury was the only competent cause for her current condition.

As the Office accepted appellant's claim and paid benefits, it has the burden of proof to establish that residuals of the accepted conditions resolved by August 1, 2007.⁷ The Board notes that, while the report of the referral physician, Dr. Varriale, supports that residuals of the accepted conditions have resolved, reports from appellant's physician, Dr. Torrents, support that conditions caused by the work injury have not resolved. The Board finds that the opinion of Dr. Varriale, the referral physician, conflicts with the opinion of Dr. Torrents, appellant's treating physician.⁸ The Board has held that, when there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁹ As there is an unresolved conflict in the medical evidence, the Board finds that the Office did not meet its burden of proof to justify the termination of appellant's compensation benefits.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to justify the termination of appellant's compensation benefits. A conflict in medical opinion exists between appellant's treating physician and the Office referral physician on whether appellant has continued disability or residuals of her accepted condition.

⁷ See *supra* notes 3-6; *Robert Dickerson*, 46 ECAB 1002 (1995).

⁸ See 5 U.S.C. § 8123(a) (section 8123(a) provides that, if there is 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).

⁹ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 21, 2008 is reversed.

Issued: November 17, 2009
Washington, DC

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

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

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