

FACTUAL HISTORY

OWCP accepted that on April 1, 2009 appellant, then a 35-year-old part-time social services assistant, sustained tears of the anterior cruciate and medial collateral ligaments of the right knee and a right medial meniscus tear when she struck her knee on a metal bracket during a rescue challenge course. She stopped work on April 12, 2009. Appellant received continuation of pay from April 12 to May 15, 2009. Her temporary appointment expired on May 31, 2009. From May 15 to July 15, 2009 and from July 19 to September 26, 2009, appellant received wage-loss compensation on the supplemental rolls. OWCP placed her case on the periodic rolls effective September 27, 2009 and paid wage-loss compensation through October 24, 2009.

The employing establishment submitted a position description for appellant's date-of-injury job. Appellant assisted in supervising dormitory and group living activities, primarily in an office setting. She also supervised off site field trips.

Dr. Gregory M. Behm, an attending orthopedic surgeon, treated appellant beginning on April 14, 2009. He diagnosed anterior cruciate and medial collateral ligament tears of the right knee with a right medial meniscus tear.² On May 22, 2009 Dr. Behm performed right knee arthroscopy with reconstruction of the anterior cruciate ligament. On July 28, 2009 he performed manipulation of the right knee under anesthesia to address significant postoperative stiffness. As appellant continued to have significant stiffness, Dr. Behm performed arthroscopic debridement of the right knee on September 22, 2009. He released appellant to limited sedentary duty as of October 16, 2009.

In a December 17, 2009 letter, appellant noted that the employing establishment had rehired her effective November 24, 2009 and that she had worked a few intermittent shifts. She noted that she sustained a previous right knee injury while in the military.

In an April 1, 2010 report, Dr. Behm found that appellant had reached maximum medical improvement.³ He released her to full duty with no restrictions, noting that she could resume teaching rescue training.

By notice dated June 25, 2010, OWCP proposed to terminate appellant's wage-loss compensation benefits on the grounds that the accepted right knee injuries had resolved without disabling residuals. Appellant did not submit additional evidence or argument prior to July 27, 2010.

By decision dated July 27, 2010, OWCP terminated appellant's wage-loss compensation benefits effective August 1, 2010. It stated that she remained entitled to medical benefits for treatment of the accepted injuries.

² An April 28, 2009 magnetic resonance imaging (MRI) scan of the right knee showed possible patellar tendinosis.

³ On May 1, 2010 appellant claimed a schedule award. As there is no final decision of record regarding this claim, the schedule award issue is not before the Board on the present appeal.

In an August 3, 2010 letter, counsel requested a telephonic hearing, held November 3, 2010. At the hearing, appellant stated that she was physically able to perform her supervision duties but no longer wished to work as it interfered with her college studies. She acknowledged that her job did not require rescue training. Appellant submitted reports from Dr. Mike Righetti, an attending Board-certified orthopedic surgeon.

In October 20 and December 22, 2010 reports, Dr. Righetti found slight laxity of the right knee with vastus medialis atrophy. He opined that appellant could not perform rescue work due to the anterior cruciate ligament reconstruction. Dr. Righetti obtained a December 16, 2010 MRI scan of the right knee showing mild cartilage degenerative changes.

In a November 24, 2010 letter, the employing establishment stated that the rescue training during which appellant injured her knee was not a requirement of the social services assistant position. Appellant had volunteered to participate.

By decision dated and finalized January 19, 2011, an OWCP hearing representative affirmed the July 27, 2010 termination decision, finding that Dr. Behm's April 1, 2010 opinion continued to represent the weight of the medical evidence. The hearing representative found that Dr. Righetti did not find appellant disabled from her assigned duties.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

OWCP's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

OWCP accepted that appellant sustained tears of the right medial meniscus, anterior cruciate ligament and medial collateral ligament on April 1, 2009 when she struck her right knee during rescue training. Appellant's date-of-injury position was described as supervising dormitory residents in an office setting, with occasional supervision of field trips.

Dr. Behm, an attending Board-certified orthopedic surgeon, performed an arthroscopic reconstruction of the right anterior cruciate ligament on May 22, 2009, closed manipulation of the right knee on July 28, 2009 and arthroscopic debridement of the right knee on September 22, 2009. Appellant returned to limited-duty work in late November 2009. On

⁴ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁵ *Id.*

⁶ *Raymond W. Behrens*, 50 ECAB 221 (1999).

April 1, 2010 Dr. Behm found that she had reached maximum medical improvement and released her to full duty, including teaching rescue skills. OWCP issued a June 25, 2010 notice proposing to terminate appellant's wage-loss compensation, to which she did not respond. Based on Dr. Behm's opinion, it issued a July 27, 2010 decision terminating her wage-loss compensation benefits effective August 1, 2010.

At a November 3, 2010 telephonic hearing, appellant stated that she could physically perform her required duties since returning to work in November 2009 but preferred not to work as it interfered with her schooling. Also, she acknowledged that her job did not require rescue training. The employing establishment confirmed that the rescue training was not a job requirement.

Appellant submitted an October 20, 2010 report from Dr. Righetti, an attending Board-certified orthopedic surgeon, who opined that she could not perform rescue training due to her postsurgical status. However, the employing establishment and she both confirmed that the social services assistant position did not require rescue training. Dr. Righetti did not indicate that the observed vastus medialis atrophy would disable appellant from her required duties. Also, he did not explain whether the vastus medialis atrophy, a condition not accepted by OWCP, was causally related to the accepted injuries. Thus, Dr. Righetti's opinion is of limited probative value with regard to whether the accepted injuries disabled appellant for work on and after August 1, 2010.

The Board finds that Dr. Behm's opinion is sufficient to represent the weight of the medical evidence. It is detailed, well rationalized and based on a complete factual and medical history.⁷ Also, there was no reasoned medical evidence submitted indicating that appellant could not perform the date-of-injury position as of August 1, 2010. Therefore, OWCP's July 27, 2010 decision was proper under the law and facts of this case.

On appeal, counsel contends that OWCP's January 19, 2011 decision is "contrary to fact and law." As stated, OWCP met its burden of proof in terminating appellant's wage-loss compensation benefits. There is no probative medical evidence demonstrating that she was disabled for work as of August 1, 2010 due to residuals of the accepted injuries.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's wage-loss compensation benefits effective August 1, 2010.

⁷ James R. Taylor, 56 ECAB 537 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2011 is affirmed.

Issued: November 8, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board