

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

R.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Plainfield, NJ, Employer**

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**Docket No. 13-605
Issued: October 21, 2013**

Appearances:
Andrew M. Baron, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument July 23, 2013

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 17, 2013 appellant, through her attorney, filed a timely appeal from the July 25, 2012 Office of Workers' Compensation Programs' (OWCP) decision which affirmed the February 3, 2012 decision terminating her compensation benefits effective February 6, 2012. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's compensation benefits effective February 6, 2012.

FACTUAL HISTORY

On May 24, 2011 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim alleging that she slipped on a wet dock and fell to both knees. She stopped work on

¹ 5 U.S.C. § 8101 *et seq.*

May 24, 2011. OWCP accepted the claim for left knee sprain. Appellant received appropriate compensation benefits.

A June 3, 2011 magnetic resonance imaging (MRI) scan of the left knee, read by Dr. Michael Kessler, a Board-certified orthopedic surgeon, revealed a highly suspicious tear of the anterior horn of the lateral meniscus, advanced chondromalacia of the patella and small joint effusion with a one centimeter Baker's cyst.

Appellant received treatment from Dr. Fauzia Hameed, a Board-certified internist, who diagnosed left knee pain, left knee sprain and strain and placed her off work. She also received treatment from Dr. Mark Zientek, a chiropractor, who diagnosed left knee derangement "complicated by multiple VSC of the cervical, thoracic and lumbar spine." In a July 27, 2011 report, Dr. Jeffrey M. Warshauer, a Board-certified orthopedic surgeon and osteopath, noted appellant's history of injury and treatment and examined her left knee. He diagnosed torn lateral meniscus with preexisting chondromalacia patella. Dr. Warshauer recommended an arthroscopy.

On July 29, 2011 Dr. Hameed requested authorization for left knee arthroscopy. By letter dated August 4, 2011, OWCP advised appellant that the arthroscopy could not be authorized as her claim was only accepted for left knee sprain.

On August 26, 2011 OWCP referred appellant for a second opinion medical examination with Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for an opinion regarding the nature extent of her work-related condition and her ability to work.

In a September 9, 2011 report, Dr. Lakin described appellant's history and examined her. The left knee had minimal tenderness over the anterior patella tendon, no joint line tenderness, 0 to 120 degrees of motion, no effusion, negative patellofemoral grind, negative patellofemoral crepitus, negative patellofemoral apprehension, negative Apley's test, negative McMurray's test, and negative Ege's test. Appellant had no anterior/posterior varus or valgus instability. Quad and hamstring strength was normal and the sensation was intact. Dr. Lakin noted that appellant had an MRI scan of her left knee, which revealed minimal chondromalacia to the patella, no meniscal tears and intact ligaments. He advised that the June 3, 2011 x-rays revealed a highly suspicious tear of the anterior horn of the lateral meniscus, advanced chondromalacia of the patella and small joint effusion with a one-centimeter Baker's cyst. Dr. Lakin indicated that appellant sustained a sprain to the left knee and that, based upon his evaluation, she had excellent strength and excellent motion to the knee with no disabling residuals. He advised that she needed no further treatment for her left knee sprain and had no further disability. Dr. Lakin also indicated that appellant did not have any concurrent nonwork-related disability. He opined that she was capable of returning to her date-of-injury job full time, full duty, with no restrictions states that there was "no reason why she cannot return to work full duty." Dr. Lakin advised that appellant did not suffer any other additional injuries on May 24, 2011. He indicated that she was capable of performing her date-of-injury position without restrictions and had reached maximum medical improvement. Dr. Lakin advised that there was no need for further treatment, and that he would not recommend a work capacity evaluation or a work hardening program.

On October 21, 2011 OWCP proposed to terminate appellant's benefits based on the report of Dr. Lakin, which established that the residuals of the work injury of May 24, 2011 had

ceased. Appellant was given 30 days to submit additional evidence or argument. She continued submitting treatment records from her chiropractor, Dr. Zientek and a physical therapist. Also submitted treatment notes from November 9, 2011 to January 9, 2012 from Dr. Hameed reported appellant's status and diagnosed chondromalacia patellae, suprapatellar bursitis, knee joint pain and left knee strain and sprain.

By decision February 3, 2012, OWCP terminated appellant's compensation benefits effective February 6, 2012 on the grounds that she had no continuing residuals of her employment injury.

In a February 4, 2012 treatment note, Dr. Hameed noted that appellant was diagnosed with knee pain, chondromalacia patella and suprapatella bursitis. He placed her out of work until March 9, 2012. Dr. Hameed continued to treat appellant and submit treatment records.

In a February 28, 2012 treatment note, Dr. Zientek, a chiropractor, indicated that appellant had biomechanical dysfunctions at multiple spinal levels, exacerbated at the lower back condition due to the left knee instability and pain, which was affecting her gait and aggravating the lower back. He diagnosed exacerbation of spinal condition, lumbosacral muscle spasms, sacroiliac joint dysfunction and "VSC" of the lumbar spine. Dr. Zientek continued to treat appellant and submit reports.

On February 17, 2012 appellant requested a hearing, which was held on June 18, 2012. During the hearing, counsel indicated that a new medical report would be forthcoming. However, OWCP did not receive any medical reports after the hearing.

By decision dated July 25, 2012, OWCP's hearing representative affirmed the February 3, 2012 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² 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.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.⁶

ANALYSIS

OWCP accepted that appellant sustained a left knee sprain. It paid appropriate benefits and subsequently referred her to Dr. Lakin for a second opinion evaluation.

In his September 9, 2011 report, Dr. Lakin examined the left knee and noted findings that included minimal tenderness over the anterior patella tendon. He stated that an MRI scan of the left knee revealed minimal chondromalacia to the patella, no meniscal tears and intact ligaments. Dr. Lakin also advised that the June 3, 2011 x-rays revealed a highly suspicious tear of the anterior horn of the lateral meniscus, advanced chondromalacia of the patella and small joint effusion with a one-centimeter Baker's cyst. He indicated that appellant sustained a sprain to the left knee and that, based upon his evaluation, she had excellent strength and excellent motion in the knee with no disabling residuals. Dr. Lakin opined that she needed no further treatment for her left knee sprain and had no disability. He also indicated that appellant did not have any concurrent nonwork-related disability. Dr. Lakin opined that she was capable of returning to her date-of-injury job full time, full duty with no restrictions and there was "no reason why she cannot return to work full duty." He advised that he would not recommend a work capacity evaluation or a work hardening program. However, the Board finds that this report is incongruous and contradictory. On the one hand, Dr. Lakin advises that there are no meniscal tears and the ligaments were intact on MRI scan. In the same report, he notes that the June 3, 2011 radiology films were highly suspicious for tear of the anterior horn of the lateral meniscus, advanced chondromalacia of the patella, small joint effusion with a one-centimeter Baker's cyst. The Board finds this finding is conflicted and notes these issues should have been developed or clarified with regard to whether appellant continued with employment-related residuals. OWCP should have sought a supplemental opinion from Dr. Lakin and such additional evaluation and testing as is necessary.⁷

The Board finds that Dr. Lakin's report was insufficiently rationalized to establish that appellant ceased to have any disability or condition causally related to her employment injuries. The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits effective February 6, 2012.

Subsequent to oral argument, counsel submitted several arguments. They included that appellant's compensation benefits were prematurely terminated and that she continued to have

⁶ See *Connie Johns*, 44 ECAB 560 (1993).

⁷ See *Mae Z. Hackett*, 34 ECAB 1421 (1983) (once OWCP undertakes to develop the medical evidence it has the responsibility to obtain an evaluation that resolves the issue).

work-related injuries that prevented her from performing her date-of-injury position. However, in light of the Board's finding, it is premature address these arguments.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof in terminating appellant's compensation benefits effective February 6, 2012.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2012 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 21, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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