



## **FACTUAL HISTORY**

This case has previously been before the Board. Pursuant to the first appeal, the Board issued a November 18, 2011 decision and order under File No. xxxxxx382, setting aside OWCP's October 29, 2010 decision finding that appellant had not established that he sustained a bilateral knee condition in the performance of duty.<sup>2</sup> The Board remanded the case to OWCP for further development of the medical evidence. Pursuant to the second appeal, the Board issued an order on August 12, 2013 setting aside a December 4, 2012 OWCP decision affirming the prior termination of appellant's claim.<sup>3</sup> The Board directed that OWCP double File No. xxxxxx382 with the present claim as both matters concerned the same part of the body. The law and facts of the case as set forth in the prior Board decisions and orders are incorporated by reference and the relevant facts are repeated herein.

OWCP accepted that on October 11, 2011 appellant, then a 55-year-old city carrier, sustained a left knee contusion, cervical spine sprain, thoracic spine strain, and brachial neuritis when his postal delivery vehicle was struck by a car. Appellant stopped work on the date of the accident and received compensation through May 22, 2012.

Following emergency room treatment on the date of the accident, appellant was followed by Dr. Colin A. Campbell, an attending osteopathic physician Board-certified in internal medicine. In reports from October 19, 2011 to February 13, 2012, Dr. Campbell held appellant off work due to continued cervical radiculopathy, and internal derangement of the left knee with meniscal tears, and osteoarthritis with osteophyte formation demonstrated by a February 17, 2012 magnetic resonance imaging (MRI) scan.

Dr. Campbell referred appellant to Dr. Marc L. Kahn, a Board-certified orthopedic surgeon. Dr. Kahn opined on December 15, 2011 that appellant had preexisting degenerative knee problems that were not permanently worsened by the accepted contusion. On February 27, 2012 he stated that appellant required a left knee arthroscopy to repair the meniscal tears.

On March 16, 2012 OWCP obtained a second opinion from Dr. Askin, a Board-certified orthopedic surgeon, who reviewed the medical record and a statement of accepted facts. Dr. Askin noted that he had previously examined appellant regarding another compensation claim. On examination, he found limited cervical motion and slightly restricted motion of the left knee. Dr. Askin opined that appellant could resume full duty as the accepted left knee contusion had resolved without residuals. He attributed appellant's ongoing knee symptoms to preexisting degenerative disease.

By notice dated April 9, 2012, OWCP advised appellant that it proposed to terminate his wage-loss and medical compensation benefits because the accepted injury had ceased without residuals, based on Dr. Askin's opinion as the weight of the medical evidence.

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<sup>2</sup> Docket No. 11-692 (issued November 18, 2011).

<sup>3</sup> Docket No. 13-924 (issued August 12, 2013).

In response, appellant submitted January 3 and April 30, 2012 reports from Dr. Campbell, finding appellant totally disabled for work due to meniscal tears in the left knee, and continued cervical and thoracic radiculitis.

By decision dated May 30, 2012, OWCP terminated appellant's wage-loss and medical benefits effective May 23, 2012, based on Dr. Askin's opinion as the weight of the medical evidence.

In a January 9, 2012 letter, counsel requested a hearing, held on September 10, 2012. At the hearing, appellant contended that an accepted 2003 left knee strain remained symptomatic through the time of the October 10, 2011 motor vehicle accident. Counsel asserted that Dr. Askin's opinion was too vague to represent the weight of the medical evidence. Alternatively, he contended that Dr. Askin's opinion created a conflict with appellant's physicians.

Counsel submitted October 11, 2011 x-ray reports showing no abnormalities of the left knee. He also provided a July 3, 2012 report from Dr. Campbell, noting restricted flexion and extension of the left knee.

On October 5, 2012 OWCP obtained a supplemental report from Dr. Askin, who noted that he was constrained by the limitations of the statement of accepted facts, which accepted "diagnoses which may or may not have any relatedness to the facts." Dr. Askin opined that appellant "repeatedly walking steps" while delivering mail was "not in and of itself an injury that explain[ed] the presence of arthritis." He explained that because the human body was built for ambulatory activity, such activities were not injurious in and of themselves. Dr. Askin found that appellant's history and the statement of accepted facts did not support that his "employment activities should be charged with causing, aggravating, accelerating, or precipitating [appellant's] knee conditions."

By decision dated and finalized December 4, 2012, an OWCP hearing representative affirmed OWCP's May 30, 2012 decision, finding that the additional evidence submitted was insufficient to outweigh Dr. Askin's opinion. Appellant then filed an appeal with the Board, resulting in the issuance of the Board's August 12, 2013 order setting aside the December 4, 2012 OWCP decision and directing that OWCP double File No. xxxxxx382 with the present claim.

On September 9, 2013 OWCP doubled appellant's claim for a bilateral knee condition under File No. xxxxxx382 with the present claim under File No. xxxxxx345.<sup>4</sup> In a July 5, 2012 addendum originally submitted under File No. xxxxxx382, Dr. Askin explained that he had not considered whether prolonged stair-climbing in the performance of duty would aggravate or accelerate osteoarthritis of the left knee as OWCP had not included the diagnosis of osteoarthritis in the statement of accepted facts. Dr. Campbell provided a November 18, 2012 report asserting

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<sup>4</sup> In a September 9, 2013 letter, counsel requested to participate in the selection of an impartial medical examiner should OWCP select one. OWCP denied the request by decision dated September 9, 2013 on the grounds that appellant did not provide a valid reason to participate in selecting an impartial medical specialist. Counsel did not appeal the September 9, 2013 decision.

that Dr. Askin had failed to explain why he thought appellant did not have osteoarthritis of the left knee when the February 16, 2012 MRI scan clearly showed degenerative changes and osteophyte formation in addition to the two meniscal tears. He opined that the October 11, 2011 accident aggravated, and accelerated osteoarthritis of the left knee.

OWCP obtained a November 28, 2012 supplemental report from Dr. Askin to clarify the issue of causal relationship. Dr. Askin equated appellant walking up and down stairs in the performance of duty to him having “pebbles in his shoes on his way to work, such that when he gets to work it would hurt to stand, walk, climb stairs, and so forth.” He opined that stair-climbing at work would cause discomfort but did not affect the underlying degenerative condition. OWCP requested a second supplemental report addressing causal relationship. In a December 11, 2012 addendum, Dr. Askin noted reviewing an updated statement of accepted facts that included the December 2003 left knee injury. He opined that, based on the revised statement of accepted facts, climbing stairs at work and the October 11, 2011 motor vehicle accident caused symptoms of knee discomfort which did not significantly alter the underlying osteoarthritis.

By decision dated December 10, 2013, OWCP denied modification of the December 4, 2012 decision on the grounds that the additional evidence submitted was insufficient to outweigh Dr. Askin’s opinion. It found that Dr. Askin agreed with Dr. Kahn that the accepted contusion had resolved without residuals, there was no conflict of opinion.

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

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>5</sup> 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.<sup>6</sup>

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

OWCP accepted that appellant sustained a left knee contusion, cervical spine sprain, thoracic spine strain, and brachial neuritis in an October 11, 2011 motor vehicle accident. Appellant stopped work on October 11, 2011 and received compensation for total disability through May 22, 2012.

Dr. Campbell, an attending osteopathic physician Board-certified in internal medicine, held appellant off work through April 30, 2012 due to meniscal tears, internal derangement, and osteoarthritis of the left knee, and cervical radiculopathy. Dr. Kahn, an attending Board-certified orthopedic surgeon, opined that appellant had preexisting degenerative knee problems. He explained that the accepted left knee contusion did not permanently worsen these conditions.

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<sup>5</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>6</sup> *Id.*

As appellant's attending physicians provided inconsistent opinions regarding the nature and extent of appellant's injury-related conditions, OWCP obtained a second opinion from Dr. Askin, a Board-certified orthopedic surgeon. Based on a clinical examination, review of the medical record, and statement of accepted facts, Dr. Askin opined that the accepted left knee injury had resolved without residuals. He explained that appellant's continuing left knee symptoms were due only to preexisting degenerative processes.

OWCP terminated appellant's wage-loss and medical benefits effective May 23, 2012, based on Dr. Askin's opinion as the weight of the medical evidence. Following an oral hearing, counsel submitted additional reports from Dr. Campbell noting restricted left knee motion, and imaging studies. OWCP obtained a supplemental report from Dr. Askin, explaining that walking and stair-climbing while delivering mail did not cause or aggravate the degenerative processes affecting appellant's left knee. It affirmed its prior decision on December 4, 2012.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Askin, who based his opinion on the complete medical record, a statement of accepted facts, and a thorough clinical examination. Dr. Askin explained repeatedly that appellant's work duties, as well as the accepted left knee contusion, did not alter the course of preexisting, idiopathic degenerative disease of the left knee. Also, he specified the objective clinical findings and pathophysiologic principles that supported his opinion. In contrast, Dr. Campbell did not provide his reasons for attributing appellant's left knee condition to work factors. His opinion is therefore of diminished probative value, and of insufficient weight to create a conflict with that of Dr. Askin.<sup>7</sup> Additionally, Dr. Kahn opined that the accepted left knee contusion did not permanently worsen appellant's left knee. Therefore, OWCP's December 4, 2012 decision terminating appellant's wage-loss and medical compensation benefits is appropriate under the law and facts of the case.

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

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative, and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.<sup>8</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.<sup>9</sup> The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor shifts the burden of proof of OWCP to disprove an employment relationship.<sup>10</sup>

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<sup>7</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>8</sup> *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *see also Howard Y. Miyashiro*, 43 ECAB 1101(1992).

<sup>9</sup> *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>10</sup> *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

## **ANALYSIS -- ISSUE 2**

In its December 4, 2012 decision affirming the termination of appellant's compensation, OWCP directed that appellant's occupational disease claim accepted for bilateral knee arthritis under File No. xxxxxx382 be doubled with the present claim. It doubled the claims, then obtained July 5, November 28, and December 11, 2012 addenda from Dr. Askin, a Board-certified orthopedic surgeon and second opinion physician. When requesting the third addendum, OWCP provided Dr. Askin with a revised statement of accepted facts that included all accepted occupational incidents regarding appellant's knees. On review of the revised statement, Dr. Askin explained that climbing steps produced symptomatic discomfort, but not a significant alteration of the preexisting knee conditions. His addendum report reiterates his prior statements that stair-climbing and walking at work did not cause an organic change in appellant's left knee condition.

The Board finds that OWCP properly accorded the weight of the evidence to the medical opinion of Dr. Askin. Dr. Askin's reports contained detailed medical reasoning, based on the complete medical record and statement of accepted facts, explaining that work factors did not aggravate or accelerate appellant's underlying osteoarthritis of the left knee. Appellant's physicians did not find that the accepted cervical and thoracic strains or the brachial neuritis were sufficient to disable appellant for work on and after May 23, 2012. OWCP's December 10, 2013 decision was therefore correct under the law and facts of the case.

On appeal, counsel asserts that Dr. Askin's opinion was insufficiently rationalized to represent the weight of the medical evidence. Alternatively, he argues that there is a conflict of medical opinion between Dr. Askin and appellant's physicians regarding causal relationship. The Board has considered this adjustment and finds that Dr. Askin's opinion outweighs the opinions of appellant's physicians. Dr. Askin also supported his opinion with extensive reasoning, explaining why appellant's job duties, and the accepted injuries, did not alter the underlying osteoarthritis. Therefore, OWCP properly accorded his opinion the weight of the medical evidence. There is no conflict of medical evidence because the opinions, while they disagree, are not of equal weight.

Counsel also contends that OWCP did not properly consider all of the medical evidence relating to appellant's multiple knee injury claims. The Board notes, however, that the record demonstrates that OWCP doubled the case record under File No. xxxxxx382 with the present claim as directed. OWCP provided Dr. Askin with the complete record, and a statement of accepted facts revised to encompass the evidence in both claims.

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 to show that the accepted injuries and conditions had ceased without residuals and to terminate appellant's wage-loss and medical compensation benefits effective May 23, 2012. The Board further finds that appellant has not

established that he was disabled for work on and after May 23, 2012 due to accepted injuries of the left knee and cervical and thoracic spine.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 10, 2013 is affirmed.

Issued: July 20, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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