



## **FACTUAL HISTORY**

On March 14, 2013 appellant, then a 52-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a left knee condition due to the standing, bending, and stooping required by her job over time. OWCP accepted her claim for temporary aggravation of left knee osteoarthritis, Sub OWCP File No. xxxxxx505. On March 14, 2013 appellant also filed an occupational disease claim alleging that she sustained a right knee condition due to the same job duties. OWCP accepted her claim for temporary aggravation of right knee osteoarthritis, Master OWCP File No. xxxxxx468.<sup>3</sup> Appellant stopped work on July 1, 2013 and filed a claim for compensation (Form CA-7) alleging that she had work-related disability for the period July 1 to August 5, 2013. Appellant later filed a claim for compensation alleging work-related disability for the period August 6 to November 29, 2013.

In a note dated July 8, 2013, Dr. Pankaj Shukla, an attending Board-certified internist, indicated that appellant should be off work from July 1 to August 5, 2013 due to her left knee condition. In a note dated July 17, 2013, Dr. Pritam Badesha, an attending Board-certified internist at the Department of Veterans Affairs, noted that she was medically unable to return to work until October 5, 2013.

OWCP referred appellant for a second opinion evaluation of her work-related condition to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon.

In an August 28, 2013 report, Dr. Hanley detailed appellant's factual and medical history, including her accepted work injuries and past history of medical treatment. He indicated that upon physical examination on August 28, 2013 appellant had full range of motion in her left knee, but also had ligament instability and significant effusion. Appellant had no effusion or instability in her right knee. Dr. Hanley determined that appellant had confirmed diagnoses of advanced degenerative arthritis of the left knee, as a consequence of long-standing knee instability and mild osteoarthritis of the right knee. He acknowledged that appellant's work activities as a mail processing clerk aggravated her underlying knee conditions, but indicated that the aggravation was temporary and ceased when she no longer performed the work activity. Dr. Hanley noted that there was no evidence of material and substantive change that occurred as a result of the work exposure. He noted that what had occurred was the natural progressive history of an unstable knee in a susceptible individual. Dr. Hanley opined that there is no period of total disability due to the work-related temporary aggravation. Appellant's total disability was related to the underlying knee condition and would continue to exist until definitive treatment occurred.<sup>4</sup>

In a September 27, 2013 decision, OWCP denied appellant's claim for work-related disability for the period July 1 to November 29, 2013 (File No. xxxxxx468). It noted that several

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<sup>3</sup> OWCP initially developed the two occupational disease claims under separate claim files, but it later combined them into the same master file. It appears from the record that appellant was granted 20 percent disability rating from the Department of Veterans Affairs due to a 2003 left knee injury.

<sup>4</sup> Dr. Hanley completed a work capacity evaluation form on August 28, 2013 indicating that appellant had permanent restrictions with regard to standing, walking, pushing, pulling, lifting, climbing, kneeling, and squatting due to her underlying preexisting condition.

attending physicians had placed her off work for various periods beginning July 1, 2013, but that the record did not contain a rationalized medical opinion relating her disability on or after that date to the accepted work injuries.

In an October 10, 2013 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she no longer had residuals of her accepted work injuries (File No. xxxxxx505). It indicated that the proposed action was justified by the August 28, 2013 report of Dr. Hanley, the OWCP referral physician. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed termination action.

Appellant requested reconsideration of the September 27, 2013 decision. She also submitted a letter in response to the proposal to terminate her compensation benefits in which she argued that the medical evidence showed that she continued to have disabling residuals of her accepted work injuries. She submitted an August 29, 2013 report in which Dr. Alfred Coppola, an attending Board-certified orthopedic surgeon, indicated that she could not work due to her advanced osteoarthritis. In a disability slip dated August 29, 2013, Dr. Coppola noted that appellant could not work for three months. On September 6, 2013 he noted that appellant was totally disabled from September 6, 2013 until approximately November 29, 2013. In an August 12, 2013 note, Dr. Shukla noted that appellant was seen on July 1, 2013 for left knee pain and was taken off work for the period July 1 to August 5, 2013.

By decision dated November 27, 2013, OWCP terminated appellant's wage-loss and medical compensations benefits effective November 27, 2013 because it found that she did not have residuals of her accepted work injuries after that date. It indicated that the weight of the medical evidence, with respect to work-related residuals, rested with the August 28, 2013 report of Dr. Hanley. OWCP found that the reports of attending physicians did not contain a rationalized medical opinion relating appellant's continuing disability or need for medical care due to the accepted work injuries.

In a February 3, 2014 decision, OWCP denied modification of its September 27, 2013 decision denying appellant's claim for work-related disability for the period July 1 to November 29, 2013. It again found that appellant had not submitted rationalized medical evidence establishing the claimed period of work-related disability and noted that her wage-loss compensation and medical benefits had been terminated effective November 27, 2013.

On February 4, 2014 appellant requested reconsideration of the November 29, 2013 termination decision.

In a June 5, 2014 note, Dr. Coppola reported that appellant was scheduled for surgery on June 10, 2014 and that she was temporarily disabled for three months.

In an August 9, 2014 letter, appellant's counsel also requested reconsideration of the November 27, 2013 decision and argued that the medical evidence of record showed that appellant had work-related disability since July 1, 2013.

Counsel submitted a June 25, 2014 report by Dr. Badesha who noted that appellant had a 20 percent service-connected disability rating due to a left knee injury in 2003 and noted that, over the past few years, her left knee condition had worsened. He noted that the work appellant

performed for the employing establishment included prolonged bending, stooping, standing, walking, pushing, and pulling. This work gradually affected her condition causing aggravation to the injury affecting both knees. Dr. Badesha noted that appellant had been advised to be off work by her private physician since July 1, 2011 due to her knee condition. He indicated that on June 10, 2014 appellant underwent total knee replacement surgery of her left knee and concluded that, as a result, she had been advised to remain off work for an additional three months postsurgery.<sup>5</sup>

In an October 27, 2014 decision, OWCP denied modification of its February 3, 2014 decision finding that appellant did not meet her burden of proof to establish work-related disability for the period July 1 to November 29, 2013. It found that the newly submitted medical evidence did not contain rationalized medical opinion evidence relating her continuing disability since July 1, 2013 to the accepted work injuries.

In an October 29, 2014 decision, OWCP denied modification of its November 27, 2013 decision terminating appellant's wage-loss compensation and medical benefits effective November 27, 2013 noting that the weight of the medical evidence with respect to work-related residuals continued to rest with the August 28, 2013 report of Dr. Hanley. It also found that the medical evidence appellant submitted after the November 27, 2013 termination action did not establish her work-related disability or need for medical treatment after November 27, 2013.

Appellant, through counsel, request reconsideration of OWCP's October 27 and 29, 2014 decisions, which OWCP received on December 20, 2014.

In a December 20, 2014 report, Dr. Coppola noted that he had reviewed appellant's chart and found confirmation of disability forms and clinical appointments that supported the fact that she was on disability from July 1 through November 29, 2013. He noted that appellant's diagnosis was directly related to the progression of her knee osteoarthritis and he felt that office notes and dictations supported that diagnosis and those findings. Dr. Coppola noted that his disability reports and findings were in complete agreement with a December 11, 2014 report of an attending physician<sup>6</sup> who concluded that appellant's "progression was related to activities associated at the [employing establishment]." He concluded that the physical findings, radiographic findings, and symptoms were all concurrent and consistent.

By decision dated March 18, 2015, OWCP denied modification of its October 29, 2014 decision, noting that it met its burden of proof to terminate appellant's compensation benefits effective November 27, 2013 and that appellant did not meet her burden of proof to establish work-related disability or entitlement to medical benefits after November 27, 2013.

In another decision dated March 18, 2015, OWCP denied modification of its October 27, 2014 decision finding that appellant did not establish work-related disability for the period July 1 to November 29, 2013.

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<sup>5</sup> There is no indication in the record that this surgery, left total knee replacement, has been determined to be related to appellant's accepted work conditions.

<sup>6</sup> The referenced December 11, 2014 report does not appear to be in the record.

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

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>7</sup> In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>8</sup> This meaning, for brevity, is expressed as disability for work.<sup>9</sup>

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

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

OWCP accepted appellant’s claim for temporary aggravation of bilateral knee osteoarthritis. Appellant stopped work on July 1, 2013 and filed a claim for compensation (Form CA-7) alleging that she had work-related disability commencing July 1, 2013 and continuing. The Board finds that appellant did not establish work-related disability for the period July 1 to November 26, 2013.<sup>11</sup>

Appellant submitted reports indicating that she had disability for various periods on or after July 1, 2013. However, none of these reports contained a rationalized medical opinion relating her disability on or after that date to the accepted work injuries.

In a note dated July 8, 2013, Dr. Shukla, an attending Board-certified internist, indicated that appellant should be off work from July 1 to August 5, 2013 due to her left knee condition. In an August 12, 2013 note, he noted that appellant was seen on July 1, 2013 for left knee pain and was taken off work for the period July 1 to August 5, 2013. The Board finds that these reports do not establish appellant’s claim for work-related disability for the period July 1 to

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<sup>7</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>8</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1985 (issued April 23, 2010); 20 C.F.R. § 10.5(f).

<sup>9</sup> *Id.*

<sup>10</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>11</sup> The Board notes that appellant actually filed Forms CA-7 covering the period July 1 to November 29, 2013, but that her wage-loss compensation (and medical benefits) were terminated November 27, 2013. Therefore, appellant’s entitlement to wage-loss compensation from November 27, 2013 onwards will be considered under the portion of this decision concerning the second and third issues of the case.

November 26, 2013 because they do not contain an opinion that her disability was due to the accepted work injuries. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.<sup>12</sup>

In a note dated July 17, 2013, Dr. Badesha, an attending Board-certified internist at the Department of Veterans Affairs, noted that appellant was medically unable to return to work until October 5, 2013. However, he did not provide any opinion on the cause of this period of disability. In a June 25, 2014 report, Dr. Badesha noted that appellant had 20 percent service-connected disability rating due to a left knee injury in 2003 and further noted that, over the past few years, her left knee condition had worsened. He indicated that appellant's work gradually affected her condition causing aggravation to the injury affecting both knees. Dr. Badesha reported that appellant had been advised to be off work by her private physician since July 1, 2011 due to her knee condition and that on June 10, 2014 she underwent total knee replacement surgery of her left knee (with her private physician recommending three months off post-surgery).<sup>13</sup> In his June 25, 2014 report, he merely repeated the disability opinion of another physician without providing his own opinion. The Board notes that it was accepted that appellant's knee condition was aggravated by work factors, but that the present question is whether that work-related aggravation caused disability on or after July 1, 2013. The reports of Badesha do not directly address that question.

Appellant submitted an August 29, 2013 report in which Dr. Coppola, an attending Board-certified orthopedic surgeon, indicated that she could not work due to her advanced osteoarthritis. In a disability slip dated August 29, 2013, he noted that appellant could not work for three months. On September 6, 2013 Dr. Coppola noted that appellant was totally disabled from September 6 until approximately November 29, 2013. In a June 5, 2014 note, he noted that appellant was scheduled for surgery on June 10, 2014 and that she was temporarily disabled for three months. The Board finds that these reports do not establish appellant's claim for work-related disability for the period July 1, 2013 and continuing because they do not contain an opinion that her disability was due to the accepted work injuries.

In a December 20, 2014 report, Dr. Coppola noted that appellant was on disability from July 1 through November 29, 2013 due to the progression of her knee osteoarthritis. He noted that his disability reports and findings were in complete agreement with a December 11, 2014 report of an attending physician<sup>14</sup> who concluded that appellant's "progression was related to activities associated at the [employing establishment]." Although Dr. Coppola related appellant's disability beginning July 1, 2013 to work factors, he did not provide a rationalized medical opinion in support of this position. He did not describe the accepted work injuries in any detail or explain how they would have been competent to cause disability on or after

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<sup>12</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>13</sup> The Board notes that there is no indication in the record that this surgery, left total knee replacement, has been determined to be related to appellant's accepted work conditions and the medical evidence does not otherwise establish such a relationship to work.

<sup>14</sup> *Supra* note 6.

July 1, 2013. Dr. Coppola did not explain why appellant's disability was not due to a nonwork-related condition.

For these reasons, appellant did not establish work-related disability for the period July 1 to November 26, 2013.<sup>15</sup>

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

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>16</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>17</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

OWCP terminated appellant's wage-loss compensation and medical benefits effective November 27, 2013 based on the August 28, 2013 report of Dr. Hanley, a Board-certified orthopedic surgeon and OWCP referral physician. The Board finds that the thorough, well-rationalized opinion of Dr. Hanley is sufficient to terminate benefits by OWCP. The August 28, 2013 report of Dr. Hanley fails to establish disability or need for medical treatment due to her accepted work injuries after November 27, 2013.

In an August 28, 2013 report, Dr. Hanley detailed appellant's factual and medical history, including her accepted work injuries and past history of medical treatment. He determined that appellant had confirmed diagnoses of advanced degenerative arthritis of the left knee, as a consequence of long-standing knee instability, and mild osteoarthritis of the right knee. Dr. Hanley acknowledged that appellant's work activities as a mail processing clerk aggravated her underlying knee conditions, but indicated that the aggravation was temporary and ceased when she no longer performed the work activity. He noted that there was no evidence of material and substantive change that occurred as a result of the work exposure. Dr. Hanley opined that there is no period of total disability due to the work-related temporary aggravation. Appellant's total disability was related to the underlying knee condition and would continue to exist until definitive treatment occurred.<sup>19</sup> Appellant has not presented competent medical evidence to refute the opinion of Dr. Hanley.

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<sup>15</sup> On appeal, appellant alleged that the medical evidence supported her work-related disability for this period, but she did not identify rationalized medical evidence relating her disability to the accepted work conditions.

<sup>16</sup> *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>17</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

<sup>18</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>19</sup> Dr. Hanley completed a work capacity evaluation form on August 28, 2013 indicating that appellant had work restrictions, but that these were due to her underlying preexisting condition.

The Board has carefully reviewed the opinion of Dr. Hanley and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Hanley provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>20</sup> He provided medical rationale for his opinion by explaining that the temporary aggravation of appellant's underlying degenerative bilateral knee condition had resolved.<sup>21</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>22</sup>

### **ANALYSIS -- ISSUE 3**

After OWCP's November 27, 2013 decision terminating appellant's wage-loss compensation and medical benefits effective November 27, 2013, appellant submitted additional medical evidence which she claimed establishes that she was entitled to compensation after November 27, 2013 due to residuals of her accepted work injuries. Given that the Board has found that OWCP properly relied on the opinion of Dr. Hanley in terminating appellant's wage-loss compensation and medical benefits effective November 27, 2013, the burden shifts to appellant to establish that she is entitled to compensation after that date.

The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her accepted work injuries after November 27, 2013.

In several reports, Dr. Coppola noted that appellant was totally disabled for a period that extended through November 29, 2013. In June 5 and December 20, 2014 reports, Dr. Coppola mentioned appellant's June 10, 2014 left total knee replacement surgery and indicated that she was disabled from around the time of the surgery until three months postsurgery. However, Dr. Coppola did not provide a rationalized medical opinion relating appellant's disability or need for medical care due to work factors. In a June 25, 2014 report, Dr. Badesha noted that appellant had been advised to be off work by her private physician since July 1, 2011 due to her knee condition and that on June 10, 2014 she underwent left total knee replacement surgery (with her

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<sup>20</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>21</sup> Appellant submitted notes of Dr. Shukla, Dr. Badesha, and Dr. Coppola which found disability around that time of Dr. Hanley's August 28, 2013. However, for the reasons described above, these reports had limited probative value on the issue of causal relationship. On appeal, appellant alleged that the medical evidence supported her work-related disability and need for medical treatment on and after November 27, 2013, but she did not identify rationalized medical evidence relating her disability and need for medical treatment on and after November 27, 2013 to the accepted work conditions.

<sup>22</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

private physician recommending three months off postsurgery). However, as noted above, Dr. Badesha merely repeated the disability opinion of another physician without providing his own opinion.

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 appellant did not establish work-related disability for the period July 1 to November 26, 2013. The Board further finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective November 27, 2013 and that appellant did not meet her burden of proof to establish work-related disability or entitlement to medical benefits after November 27, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 15, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board