

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEONARD M. BURGER and DEPARTMENT OF THE ARMY,  
COMBAT READINESS DIVISION, Fort Dix, NJ

*Docket No. 98-1532; Submitted on the Record;  
Issued March 15, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective February 18, 1997; and (2) whether appellant has met his burden of proof to establish that he is entitled to continuing compensation benefits on or after February 18, 1997.

The Board has duly reviewed the case record in the present appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation effective February 18, 1997.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her 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.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

In the present case, the Office accepted that appellant, then a 50-year-old scheduling coordinator, sustained a contusion of the left knee when he accidentally struck it against the corner of a table while in the performance of duty on February 13, 1995. Appellant did not stop

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<sup>1</sup> *Lawrence D. Price*, 47 ECAB 120 (1995).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> *Id.*

work. The Office authorized a magnetic resonance imaging (MRI) scan, performed on May 11, 1995, which revealed osteoarthritis, joint effusion, a Baker's cyst with osteochondral bodies and possible other loose bodies, and tears of the anterior horn of the lateral meniscus and posterior horn of the medial meniscus. Appellant subsequently sought authorization for surgical arthroscopy, for repair of these conditions. Appellant underwent arthroscopic surgery on June 12, 1995, losing only a few days from work for the surgery.<sup>5</sup> In his operative report dated June 13, 1995, Dr. Ronald M. Krasnick, a Board-certified orthopedic surgeon and appellant's treating physician, diagnosed appellant's condition, both preoperatively and postoperatively as "degenerative arthritis, loose bodies and meniscal tears, left knee."

The Office referred the claim to an Office medical adviser, who opined that the accepted contusion had aggravated appellant's preexisting arthritis, but was unlikely to have caused any of the findings on an MRI scan for which surgical intervention was sought. Consequently, the Office denied authorization for the surgery. Appellant requested a hearing, and in a decision dated August 26, 1996, the Office hearing representative found a conflict existed between appellant's primary treating physician, Dr. Krasnick, who opined that the accepted contusion significantly aggravated appellant's preexisting condition and necessitated the surgery, and the Office medical adviser who opined that the contusion had aggravated appellant's knee condition but had not caused any of the conditions which necessitated the surgery. Appellant was referred to an impartial medical examiner, Dr. Alexander Sapega, a Board-certified orthopedic surgeon, who opined that appellant's accepted knee contusion had not caused the conditions which necessitated surgery.

On January 10, 1997 the Office issued a notice of proposed termination and on February 12, 1997, after no response had been received from appellant, issued a decision terminating appellant's compensation benefits. The Office specifically found that the weight of the medical evidence of file was represented by the well-rationalized opinion of the impartial medical examiner. Appellant disagreed with the decision and requested an oral hearing before an Office hearing representative. Appellant also submitted additional medical evidence from his treating physician, who provided additional rationale for his prior conclusions.

By decision dated January 29, 1998, the Office hearing representative affirmed the Office's decision terminating appellant's compensation benefits effective February 18, 1997 on the grounds that he had no disability due to his February 13, 1995 employment injury after that date. The Office determined that the weight of the medical evidence continued to rest with the opinion of Dr. Sapega, the impartial medical examiner.

Section 8123(a) of the Federal Employees' Compensation Act,<sup>6</sup> provides, "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." In this case, the Office properly found a conflict of medical opinion evidence between appellant's treating physician, Dr. Krasnick, who opined that the accepted contusion

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<sup>5</sup> In April 1996 appellant underwent a second arthroscopic procedure.

<sup>6</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

significantly aggravated appellant's preexisting condition, necessitating surgical repair, and the Office medical adviser who opined that the contusion had aggravated appellant's knee condition but had not caused any of the conditions which necessitated the surgery. The Office properly referred appellant for an impartial medical examination with Dr. Sapega.

In a report dated December 11, 1996, Dr. Sapega noted appellant's history of injury, his medical history and reviewed the statement of accepted facts. He summarized several of Dr. Krasnick's reports, noting that while Dr. Krasnick had diagnosed an arthritic knee that had sustained a contusion and possibly had either meniscal tears or loose bodies, Dr. Krasnick had not commented as to whether he thought the meniscal tears or loose bodies might have been due to the knee contusion. Dr. Sapega determined that, on February 13, 1995, appellant had suffered a sharp, but localized and low velocity contusion to the prepatellar and infrapatellar aspect of his left knee. The physician further stated that it was quite evident that all of the anatomic abnormalities seen on appellant's x-rays and an MRI scan antedated his February 13, 1995 contusion by many years and had nothing to do with that contusion. He explained that it was his opinion that appellant simply suffered a spontaneous progression of his symptomatic, preexisting disease, as was bound to occur at some point anyway, and that appellant's February 13, 1995 knee contusion had nothing other than a coincidental, temporal relationship with his preexisting disease progression. He further found that the aftereffects of appellant's contusion should have effectively resolved within 48 to 72 hours at most. In essence, he concluded that appellant's accepted knee contusion had not caused the conditions which necessitated surgery.

The Board notes, however, that contrary to Dr. Sapega's assertion that Dr. Krasnick had not commented on the etiology of appellant's diagnosed meniscal tears and loose bodies, in a report dated November 22, 1995, Dr. Krasnick specifically addresses this issue, stating in part:

"[Appellant] sustained a severe contusion to an arthritic knee. He also, without question, aggravated his condition significantly, resulting in interarticular loose material and tearing of both menisci.... With reasonable medical probability, it can be stated that the February 13, 1995 accident did severely aggravate a preexisting condition and in essence result in a situation which required surgical intervention."

As Dr. Sapega was apparently not aware of Dr. Krasnick's comments as expressed in his November 22, 1995 report, the factual history relied upon by the impartial specialist was not complete and accurate. Therefore, Dr. Sapega's opinion is insufficient to resolve the conflict in medical opinion as to whether appellant's severe knee conditions and consequent surgical repair of such are causally related to his accepted 1995 left knee contusion.<sup>7</sup> Accordingly, as there remains an unresolved conflict of medical opinion in this case, the Office did not meet its burden of proof to terminate appellant's compensation benefits effective February 18, 1997.

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<sup>7</sup> See *Donald G. Aitken*, 42 ECAB 237 (1990).

The decision of the Office of Workers' Compensation Programs dated January 29, 1998 is hereby reversed.<sup>8</sup>

Dated, Washington, D.C.  
March 15, 2000

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> In light of the Board's decision on the primary issue in this claim, the issue of whether appellant has met his burden of proof to establish that he is entitled to continuing compensation benefits on or after February 18, 1997 is moot.