

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCO A. GALEAZZI and U.S. POSTAL SERVICE,
POST OFFICE, West Sacramento, CA

*Docket No. 00-2670; Submitted on the Record;
Issued August 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective May 15, 2000.

In this case, the Office accepted that appellant, then a 40-year-old letter carrier, sustained a right knee strain during the course of his employment on August 30, 1994. He underwent a right knee arthroscopy, debridement and high tibial osteotomy on June 8, 1995 which the Office had authorized. Appellant eventually returned to part-time modified duty. On or about February 11, 1999, appellant's right knee gave way, which resulted in a left knee injury. The Office accepted a left knee strain as a consequential injury. Appellant received compensation for all appropriate periods.

By decision dated May 15, 2000, the Office terminated appellant's compensation benefits finding that the injury-related disability had ceased. The Office stated that as the medical evidence, as represented by the independent medical examiner, supports that the accepted right knee strain resolved within six months of August 30, 1994, appellant's left knee strain is not accepted as related to the resolved right knee strain.

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.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

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.⁴

In this case, Dr. Michael Purnell, a Board-certified orthopedic surgeon and appellant's treating physician, supported appellant's continued disability and medical residuals due to his accepted condition in his July 2, 1997 report. He stated that appellant has persistent right knee pain and appellant should continue to work only four hours of modified work. In a previous treatment note of May 14, 1997, Dr. Purnell opined that appellant should work only four hours of modified work per day because of appellant's size and the amount of underlying arthritis.

In a July 13, 1998 report, Dr. Thomas Bielejeski, a Board-certified orthopedic surgeon and an Office referral physician, noted appellant's history of injury and diagnosed degenerative arthritis, right knee; status post partial lateral meniscectomy and arthroscopy with debridement of the right knee and osteotomy, right proximal tibia and significant exogenous obesity. Dr. Bielejeski opined that appellant's current disability was related to work-related factors and the degenerative arthritis of his right knee was a consequence of surgeries performed after sustaining a work-related right knee injury. He further opined that appellant could work for eight hours with restrictions on walking and standing.

Section 8123(a) of the Federal Employees' Compensation Act⁵ 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 that there was a conflict of medical opinion evidence between appellant's physician, Dr. Purnell, who opined that appellant continued to have residuals of his employment injury and that he could only work four hours of modified duty and Dr. Bielejeski, the Office's second opinion physician, who also opined that appellant had continuing residuals of his employment injury but stated that he was capable of working full-time modified duty.

The Office properly referred appellant to Dr. Ernest B. Miller, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In his July 9, 1999 report, Dr. Miller reviewed appellant's history of injury. He noted that appellant indicated a long history of symptoms and complaints (problems) with respect to the right knee dating from a 1977 medial meniscal tear and arthrotomy of the right knee. Dr. Miller stated that appellant did not volunteer this information and that the information was elicited during the course of the physical examination which noted a three inch median parapatellar scar about the right knee. The presence of the scar and appropriate questioning elicited the prior meniscectomy of the right knee. Dr. Miller further stated that it should be noted with significant prejudice that the physical examination documented by Dr. Purnell on multiple occasions as well as the history documented

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ 5 U.S.C. §§ 8101-8193, § 8123(a).

by Dr. Purnell on multiple occasions does not clearly indicate a prior medial meniscal tear of the right knee in 1977 and right knee arthrotomy in 1978 for medial meniscal tear.

Dr. Miller performed a physical examination and diagnosed a resolved right knee sprain, mild osteoarthritis and varus deformity left knee, severe osteoarthritis right knee, and status post arthroscopic debridgement and valgus osteotomy with implanted fixation metal and residual limitation of motion and flexion contracture right knee. He stated that appellant sustained injury to his right knee in 1977, which was diagnosed as medial meniscal tear. Dr. Miller underwent arthrotomy of the right knee in 1979 to remove medial meniscus. As a result of the surgery, he had persistent symptoms and developed varus deformity and osteoarthritis of the right knee. Because of appellant's excessive obesity, he also has significant progression of the osteoarthritis of the right knee and progression to a lesser extent of osteoarthritis and varus deformity of the left knee. Dr. Miller stated that appellant apparently sustained a right knee strain as a result of an industrial injury August 30, 1994 which the Office accepted for a diagnosed right knee strain. He stated that review of the medical record of Drs. Pricco and Purnell indicates complete resolution of the sprain of the right knee within six months of the injury. Dr. Miller indicated that Dr. Purnell performed arthroscopic surgery of the right knee on June 8, 1995 to rule out any residual injury, which possibly may have occurred August 30, 1994. He stated that Dr. Purnell did indeed rule out any possible injury, which may have occurred August 30, 1994. Dr. Purnell then performed debridement of the right knee and valgus osteotomy of the right tibia to correct coincidental and completely unrelated problem of severe osteoarthritis with varus deformity of the right knee secondary to morbid exogenous obesity and varus deformity with prior arthrotomy of the right knee. Dr. Miller stated that it appears from the medical record of Dr. Purnell that all treatment provided by Dr. Purnell has been treatment performed for varus deformity and osteoarthritis. He opined that Dr. Purnell has not performed any treatment for the accepted industrial injury of right knee strain.

Accordingly, Dr. Miller opined that appellant does not continue to suffer residuals of the injury as the medical records clearly indicate resolution of symptoms and complaints with respect to the accepted injury of right knee strain within six months of the right knee strain. The present symptoms and complaints are solely related to obesity and osteoarthritis with varus deformity both knees. Dr. Miller stated that review of the medical record and physical examination indicates complete resolution of the accepted injury within six months of the injury. The medical record of Dr. Purnell is quite specific on this point and he indicates no residual symptoms or complaints with respect to the accepted injury of strain right knee subsequent to his surgery for osteoarthritis, a completely unrelated condition. Dr. Miller opined that appellant has no disability with respect to either the right or left knee arising out of his course of employment. He noted that appellant has a significant disability with respect to obesity, osteoarthritis of the knees, varus deformity knees and vagus osteotomy of the right knee which preclude and limit walking, running, jumping, prolonged standing, etc. However, work activities performed while sitting on a stool would not be limited in any way. This disability is completed unrelated to the accepted industrial injury and diagnosis of right knee strain.

In a letter dated July 30, 1999, the Office requested Dr. Purnell to review the reports of Drs. Miller and Bielejeski and to provide any comments supported by a rationalized medical opinion if there was any area of disagreement. In a report of November 9, 1999, Dr. Purnell stated that it has been readily acknowledged that appellant's right knee arthritis with varus deformity and exogenous obesity are preexisting conditions. He noted that this would also be

true for underlying arthritis in appellant's left knee. Dr. Purnell stated that he would specifically categorize appellant's right knee injury that resulted in the need for arthroscopic surgery with proximal tibial osteotomy as an exacerbation of his underlying knee arthritis. He stated that appellant did regain function to his preexisting level of disability after this resolved. Any future medical care for this condition would indeed be considered nonindustrial in nature but the care that he received at the time was reasonable and medically necessary as a result specifically of his industrial injury. The same is true for his left knee.

In a November 21, 1999 statement, appellant disagreed with Dr. Miller's statements and provided his account of the events surrounding and following his injury.

In situations when there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist of the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

In this case, Dr. Miller's report was based on a proper factual background as provided in the statement of accepted facts. He offered an opinion, based upon medical findings from his own examination, the medical reports of record, and a full medical history surrounding appellant's right knee, that the right knee strain of August 30, 1994 resolved within six months following the injury. Dr. Miller also identified that the June 8, 1995 arthroscopic surgery performed on the right knee ruled out any possible injury, which may have occurred August 30, 1994. He stated that the debridement of the right knee and valgus osteotomy of the right tibia was done to correct a coincidental and completely unrelated problem of severe osteoarthritis with varus deformity of the right knee secondary to morbid exogenous obesity and varus deformity with prior arthrotomy of the right knee. Dr. Miller further opined that appellant has no disability with respect to either the right or left knee arising out of his course of employment. Appellant's disability with respect to obesity, osteoarthritis of the knees, varus deformity knees and vagus osteotomy of the right knee are completely unrelated to the accepted industrial injury and diagnosis of right knee strain.

Dr. Purnell's November 9, 1999 report does not contest Dr. Miller's opinion that appellant's continued disability and medical residuals due to his accepted condition has resolved. He stated that appellant regained function of his preexisting level of disability after arthroscopic surgery with proximal tibial osteotomy and noted that any further medical care would be considered nonindustrial. Although Dr. Miller found that the accepted right knee strain resolved within six months following the injury and Dr. Purnell found that the exacerbation of appellant's underlying knee arthritis resolved after the June 8, 1995 surgery, Dr. Purnell's opinion regarding the time appellant's accepted right knee strain resolved is of diminished probative value. Dr. Purnell failed to report appellant's prior medical history regarding the right knee or that appellant had a preexisting problem.⁷ Moreover, Dr. Purnell failed to provide any objective findings to support appellant's complaints related to residuals of his work injury and no well-rationalized medical opinion was provided to explain how appellant's work injury would

⁶ *Rosie E. Garner*, 48 ECAB 220, 225 (1996).

⁷ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

aggravate his preexisting condition and require such an extensive procedure.⁸ Accordingly, the weight of the medical evidence is represented by Dr. Miller, the independent medical examiner.

The Office had further accepted a consequential left knee strain in February 1999 due to appellant's right knee giving out. In order to rescind prior acceptance of a claim, the Office must establish that its prior acceptance was erroneous through new or different evidence.⁹ As the weight of the medical evidence as represented by Dr. Miller's opinion clearly states that the accepted right knee strain had resolved within six months of August 30, 1994, the Board affirms the Office's finding that the left knee strain of February 1999 is not accepted as related to the resolved right knee strain.

Accordingly, the Board finds that Dr. Miller's opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation.

The May 15, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁸ See *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

⁹ *Alphonso Walker*, 42 ECAB 129 (1990); see also *Laura J. Womack*, 42 ECAB 528 (1991).