

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EARL S. BARBER and U.S. POSTAL SERVICE,  
P & DC, Capital Heights, MD

*Docket No. 00-773; Submitted on the Record;  
Issued January 23, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case and finds that the Office failed to meet its burden of proof to terminate appellant's compensation because of an unresolved conflict of medical opinion evidence.

Appellant, a mechanics helper, filed a notice of traumatic injury on February 6, 1997, alleging that on February 5, 1997 he slipped in the performance of duty injuring his knees, right hand and neck. The Office accepted appellant's claim for contusion of both knees and hands and his right wrist and a cervical strain.

By decision dated December 29, 1998, the Office terminated appellant's compensation finding that he had no continuing disability or medical residuals due to his accepted employment injuries. Appellant requested an oral hearing on December 29, 1998 and by decision dated September 13, 1999, the hearing representative affirmed the Office's December 29, 1998 decision.

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

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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

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 would require further medical treatment.<sup>4</sup>

In this case, appellant's attending physician, Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon, returned appellant to limited duty eight hours a day on June 27, 1997. He found that appellant had continuing disability and residuals due to his employment injuries and referred him to Dr. William Dorn, III, a Board-certified orthopedic surgeon, for evaluation of his right knee. Based on a magnetic resonance imaging (MRI) scan, he found that appellant required surgery on his right knee. The Office referred appellant and the record for a second opinion evaluation.

Dr. Louis Levitt, a Board-certified orthopedic surgeon, noted appellant's history of injury on February 5, 1997 as well as his prior employment injuries and performed a physical examination on June 16, 1998. He found that appellant had no evidence of any residual injuries to his spine or extremities. Dr. Levitt stated that appellant could return to full duty with no restrictions and that he did not require surgery or further medical treatment.

Based on this report, the Office proposed to terminate appellant's compensation benefits by letter dated August 12, 1998. He objected and submitted additional medical evidence from Drs. Jackson and Dorn. On August 19, 1998 Dr. Dorn diagnosed strain and internal derangement of both knees. He reviewed Dr. Levitt's report and stated that Dr. Levitt totally disregarded appellant's subjective complaints in evaluating appellant. Dr. Dorn stated: "The community standard of care dictates that patients experiencing persistent and prolonged joint pain despite having normal MRI scans should be evaluated arthroscopically."

In a report dated October 28, 1998, Dr. Jackson totally disagreed with Dr. Levitt's opinion. He stated that the MRI scan was not completely negative in that there were findings compatible with torn lateral retinaculum and a thickened medial retinaculum as well as a somewhat thin and truncated medial meniscus. Dr. Jackson further noted that appellant had persistent pain of the right knee that had gradually increased and had limited his activities. He concluded that it was completely reasonable and within the community standards of care that arthroscopic surgical procedures be performed.

In a report dated October 23, 1998, Dr. Jackson noted that physical examination demonstrated synovial thickening and pain on patellar compression. He stated that appellant's right wrist showed tenderness over the scapholunate ligament and some restriction of motion of the wrist as well as weakness in the right hand. Dr. Jackson stated: "There is still a positive head compression test and tenderness and spasm in the cervicodorsal area." He concluded: "The combination of his neck, wrist and knee conditions make it impossible for [appellant] to

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

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

engage in any gainful employment. He cannot stand, walk, bend, use the right hand enough, turn his head and neck enough for any gainful employment.”

Section 8123(a) of the Federal Employees’ Compensation Act,<sup>5</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 Board finds that there is an unresolved conflict of medical opinion evidence. Appellant’s attending physicians, Drs. Jackson and Dorn, both find that appellant’s subjective symptoms in his right knee coupled with the MRI scan results are sufficient to require further treatment. Dr. Jackson noted additional objective findings including spasm in appellant’s cervical spine suggesting continuing medical residuals. Dr. Levitt, the second opinion physician, found that appellant had no need for any further medical treatment due to his February 1997 employment injury and that appellant could return to full duty.

As there is an unresolved conflict of medical opinion regarding the extent of appellant’s employment-related disability and residuals, the Office failed to meet its burden of proof to terminate appellant’s compensation benefits.

The September 13, 1999 decision of the Office of Workers’ Compensation Programs is hereby reversed.

Dated, Washington, DC  
January 23, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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