

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VENICEE HOWELL and U.S. POSTAL SERVICE,  
POST OFFICE, Youngstown, OH

*Docket No. 00-2524; Submitted on the Record;  
Issued June 8, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's entitlement to medical benefits effective August 31, 1999 on the grounds that she had no further residuals of her accepted left knee strain; (2) whether appellant has established that she is entitled to a schedule award for a permanent impairment of the left knee.

This case is before the Board for the second time. In a decision dated March 21, 1997, the Board reversed the Office's August 5, 1994 and September 30, 1993 decisions finding that appellant had not established an injury in the performance of duty.<sup>1</sup> The findings of facts and conclusions of law from the prior decision are hereby incorporated by reference.

By letter dated May 23, 1997, the Office informed appellant that her claim was accepted for a contusion and sprain of the left knee. By decision dated October 29, 1998, the Office terminated appellant's authorization for medical benefits and found that she was not entitled to a schedule award as the evidence established that her accepted condition had resolved. In a decision dated May 29, 1999, a hearing representative set aside the October 28, 1998 Office decision due to procedural deficiencies.<sup>2</sup>

By letter dated June 24, 1999, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Jeffrey Cochran, an osteopath, to resolve a conflict in medical opinion. The Office requested that Dr. Cochran address whether appellant had residuals of her employment injury and whether she had a permanent impairment of the left knee causally

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<sup>1</sup> *Venicee Howell*, Docket No. 95-181 (issued March 21, 1997).

<sup>2</sup> The hearing representative cited sections of the Office's procedure manual requiring pretermination notice and review of an impairment determination by an Office medical adviser; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(b)(4) (March 1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability*, Chapter 2.808.6(d) (November 1998).

related to her employment injury. In a decision dated August 31, 1999, the Office terminated appellant's entitlement to medical benefits and found that she was not entitled to a schedule award for a permanent impairment of the left knee. By decision dated June 19, 2000, a hearing representative affirmed the August 31, 1999 Office decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant's entitlement to medical benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup> Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</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>6</sup>

In this case, the Office determined that a conflict existed between appellant's attending osteopathic physician, Dr. Ronald Fasline, who found that she had continuing residuals and limitations due to her employment injury, and Dr. V.G. Raghavan, a Board-certified orthopedic surgeon and Office referral physician, who found that her left knee condition had resolved and that she had no impairment of the left knee. The Office referred appellant to Dr. Cochran for resolution of the conflict. Based on Dr. Cochran's opinion, the Office terminated appellant's entitlement to medical benefits and found that she did not have a permanent impairment of the left knee due to her accepted employment injury. The Board notes, however, that there is no indication in the record that Dr. Cochran is a Board-certified specialist. The Office's procedures require that an impartial medical specialist be a Board-certified physician unless the physician has special qualifications for performing the examination as documented by the Office medical adviser.<sup>7</sup> Therefore, Dr. Cochran's opinion cannot be accorded the special weight given to an impartial specialist.<sup>8</sup> Consequently, an unresolved conflict exists on the issue of whether appellant has any further residuals of her August 31, 1999 left knee condition entitling her to continued medical benefits. The Office, therefore, did not meet its burden of proof to terminate appellant's entitlement to medical benefits.

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<sup>3</sup> *David W. Green*, 43 ECAB 883 (1992).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (March 1994); *see also Charles M. David*, 48 ECAB 543 (1997).

<sup>8</sup> *See James P. Roberts*, 31 ECAB 1010 (1980).

The Board further finds that the case is not in posture for decision on the issue of whether appellant has established that she is entitled to a schedule award for a permanent impairment of the left knee.

Appellant's attending physician, Dr. Fasline, found that she had continuing residuals from her employment injury which necessitated work restrictions. Dr. Raghavan, the Office referral physician, found that appellant had no impairment of the left knee causally related to her accepted employment injury of left knee strain and contusion. The Office requested clarification from Dr. Cochran regarding whether she had residuals of her employment injury and the degree, if any, of appellant's permanent impairment of the left knee. However, as noted above, Dr. Cochran's opinion is not entitled to special weight as the impartial medical specialist as it does not appear that he is a Board-certified physician. As the record currently contains a conflict regarding whether appellant's employment-related left knee condition has resolved, the case is not in posture for a determination of whether appellant has a permanent impairment of the left knee causally related to her accepted employment injury. The case, therefore, will be remanded for the Office to refer appellant to an appropriate specialist for a determination of whether she has any further residuals of her accepted conditions of the left knee sprain and the left knee contusion and, if necessary, to address the extent of any permanent impairment of the left upper extremity.

The decisions of the Office of Workers' Compensation Programs dated June 19, 2000 and August 31, 1999 are reversed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC  
June 8, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member