

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNNE BOWEN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Baltimore, MD

*Docket No. 01-885; Submitted on the Record;
Issued January 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective December 20, 2000 for an accepted right knee condition; and (2) whether the Office properly terminated entitlement for medical expenses.

On June 7, 1994 appellant a 31-year-old contract representative filed a traumatic injury claim, alleging that on that date she fell into a metal cabinet and injured her right knee. On July 26, 1996 the Office accepted appellant's claim for right knee contusion and later for right lateral meniscus tear and arthroscopy of the right knee. Dr. Robert Kan, a Board-certified orthopedic surgeon, performed the arthroscopic lateral menisectomy on July 5, 1994 and appellant later returned to full-duty work on September 6, 1994.

The record reflects that in the summer of 1999, Dr. Ramana Gopalan, a Board-certified internist evaluated appellant for continued right knee pain and referred her to Dr. John O'Donnell, a Board-certified orthopedic surgeon, who treated her for the condition.

On February 8, 2000 appellant filed a recurrence of disability claim for her right knee condition, which was accepted by the Office. According to the record, appellant stopped work around March 3, 2000 and did not return.¹ Dr. O'Donnell performed an arthroscopic partial medial menisectomy on March 22, 2000.

On June 22, 2000 the Office requested clarifying information from Dr. O'Donnell regarding information contained in earlier reports of record concerning appellant's condition. Specifically, the Office inquired how appellant's tear of the right medial meniscus as discussed in his October 19, 1999 and March 22, 2000 reports was related to the employment-related

¹ The Board notes that on March 1, 2000 appellant filed a traumatic injury claim, alleging that on March 1, 2000 she pulled out the top drawer from her desk at work and the drawer with all of its components fell on her right knee. The record does not reflect adjudication of this claim.

injury June 7, 1994 which was accepted for a torn lateral meniscus. The Office also inquired whether Dr. O'Donnell believed that appellant sustained a new injury after the arthroscopic procedure March 22, 2000. The Office then asked whether the physician believed that appellant was partially or totally disabled due to her accepted condition or whether appellant was capable of gainful employment.

In a June 27, 2000 report, Dr. O'Donnell stated:

“From review of my records in regards to [appellant's] right knee, she apparently underwent an arthroscopy in 1994, following that she continued to have some discomfort in her [right] knee and a couple years following that [appellant] noted catching. Then I saw her eventually for her [right] knee. As far as to whether this knee injury was related to her original injury, it does appear to me from reviewing her medical records, it is clearly a relationship between the two.”

The Office subsequently received a report dated July 14, 2000 from Dr. Gopalan, who noted that she continued to treat appellant and that she expected appellant to be able to return to work in October 2000 depending on her progress.

On September 13, 2000 the Office referred appellant to Dr. David Kreisberg, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation of her condition and disability status.

On September 21, 2000 the Office received a medical report from Dr. Michael Shear, a Board-certified physician in physical medicine and rehabilitation, dated August 14, 2000, which discussed appellant's medical condition and ability to work. He initially stated that appellant was treated following a work incident when she struck her right knee on her desk, made a full recovery and returned to full time, full-duty work. Dr. Shear then stated that in 1996 appellant began experiencing pain in her right knee again and sought treatment in October 1999 when an arthroscopic procedure was recommended and later performed on March 22, 2000 for right medial meniscal tear. He examined her and noted that appellant received postoperative therapy but had not been seen since July 26, 2000 and was discharged from care by Dr. O'Donnell, who felt that nothing further could be done. Dr. Shear noted that appellant's current complaints seemed to be out of proportion to the history described by Dr. O'Donnell, that it was extremely unusual that appellant could perform active motion and exercise in physical therapy without much problem, but then require bed rest afterwards. He stated that he did not believe her complaints of left knee pain and numbness in her feet were employment related and that he deferred to Dr. O'Donnell regarding her right medial meniscal pathology and chondral defect for which surgery was performed in 1994. Dr. Shear stated his belief that appellant was capable of working in a sedentary position immediately and that with approximately three weeks of physical therapy, she would likely reach maximum medical improvement.

On September 27, 2000 the Office received a radiology report from Dr. Nicholas Georges, a Board-certified radiologist, outlining a magnetic resonance imaging (MRI) scan performed September 13, 2000 of appellant's right knee. Dr. Georges stated that there was no evidence of cruciate ligament tear but he found a slight signal abnormality involving the

posterior horn of the medial meniscus, most likely related to appellant's previous surgery. The MRI revealed no evidence to suggest a large recurrent tear.

On November 6, 2000 the Office received the medical evaluation performed by Dr. Kreisburg on October 10, 2000. He reported the details of appellant's fall on June 7, 1994, which caused injury to her right knee, subsequent surgeries and continued complaints of right knee problems. Dr. Kreisburg stated that appellant had an unremarkable examination, that appellant had full range of motion, was neurologically intact and had minimal tenderness in both lower extremities. He reviewed the recent MRI and x-rays of the right knee, which showed a well-maintained joint base with no acute changes. Dr. Kreisburg noted that Dr. O'Donnell's operative report dated March 22, 2000 did show a medial meniscus tear of the right knee and advanced chondromalacia in the medial facet of the patella. Dr. Kreisburg diagnosed chondromalacia of the patellofemoral joint and lateral component and status post medial and lateral meniscectomies and assessed that appellant had reached maximum medical improvement relative to her right knee surgery. He indicated his belief that appellant was partially disabled due to decreased mobility and other unrelated conditions such as asthma and left knee dysfunction, however, that she was definitely physically capable of doing full-time sedentary work with the employing establishment.

In a November 20, 2000 letter, the Office proposed to terminate appellant's compensation for wage loss on account of the June 7, 1994 injury based on the second opinion medical examination by Dr. Kreisburg dated October 10, 2000. The Office advised appellant that, if she disagreed with the proposed decision, she should submit argument or evidence within 30 days or termination would ensue. Appellant submitted a report from Dr. O'Donnell dated December 5, 2000, which indicated that she was seen for both knees and that appellant apparently fell in October 2000 which caused further pain in her right knee.

By decision dated December 20, 2000, the Office terminated appellant's compensation effective that date for lost wages and medical care. The Office found that the weight of the medical evidence was afforded to Dr. Kreisburg, the second opinion examiner, who found that appellant was capable of returning to full-duty work in her date-of-injury position. The Office determined that both Drs. Kreisburg and Shear found that appellant was able to work in a sedentary position and that Dr. O'Donnell, appellant's attending physician did not provide any objective medical evidence that her current right knee condition or disability was directly related to the accepted work injury.

The Board finds that the Office met its burden of proof in terminating appellant's entitlement to wage-loss benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

² *Harold McGough*, 36 ECAB 332 (1984).

without establishing that the disability has ceased or that it is no longer related to the employment.³

In the present case, the Office requested on June 22, 2000 that Dr. O'Donnell, appellant's treating physician, provide a current status of her right knee condition, objective findings supporting disability and an opinion as to causal relationship of the condition and work injury. However, Dr. O'Donnell simply stated that there was a clear relationship between the condition and injury. He did not discuss whether appellant's medial meniscus condition found after the arthroscopic procedure was related to the original injury, accepted for a lateral meniscus tear or provide a clear opinion that appellant's current condition and disability was causally related to the accepted employment injury. Appellant submitted a subsequent report by Dr. O'Donnell dated June 5, 2000, however, it was also deficient of causal relation evidence that her current right knee condition and disability resulted from the June 7, 1994 employment injury.

The Office noted in its termination decision that in contrast to Dr. O'Donnell's June 22 and December 5, 2000 reports, other reports of record sufficiently establish that appellant's current condition and disability was not causally related to the June 7, 1994 employment injury. Both Dr. Kreisburg, a Board-certified orthopedic surgeon and second opinion examiner and Dr. Shear, a Board-certified physician in physical medicine and rehabilitation found that appellant's right knee condition had reached maximum medical improvement and that she was capable of full-duty sedentary work.

The report of Dr. Kreisburg constitutes the weight of the rationalized medical evidence because it was based upon a complete factual and medical history and a complete examination of appellant, consistent with examination findings and of reasonable medical certainty and was well rationalized and supported by physical evidence noted in the record.⁴ Accordingly, the Office has discharged its burden of proof to justify termination of appellant's compensation after December 20, 2000.

With respect to the second issue, the Board finds that the Office improperly denied entitlement to medical expenses.

Dr. Kreisburg's report supports that appellant is capable of returning to the duties of the sedentary work she was performing as a contract representative; however, the physician, in noting that appellant had reached maximum medical improvement, indicated that appellant continued to have decreased knee mobility. His report does not indicate that all residuals due to the accepted torn lateral meniscus have ceased.

In view of the foregoing, the Office's decision is reversed to the extent that entitlement to medical benefits incurred for residuals of the accepted torn lateral meniscus was terminated.

³ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1929).

⁴ *See Anna C. Leanza*, 48 ECAB 115 (1996); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Clara T. Norga*, 46 ECAB 473 (1995).

The decision of the Office of Workers' Compensation Programs dated December 20, 2000 is hereby affirmed with regard to termination of wage-loss benefits. The decision is reversed to the extent that the Office terminated appellant's entitlement to medical expenses.⁵

Dated, Washington, DC
January 4, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ With appellant's request for an appeal, appellant submitted additional medical evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).