

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD VALLONE and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 01-1412; Submitted on the Record;
Issued January 18, 2002*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective November 18, 1999; (2) whether appellant met his burden of proof, following the Office's termination of compensation, to establish that he had any residuals of his accepted January 13, 1999 right knee injury on or after November 18, 1999; and (3) whether the Office abused its discretion on February 15, 2001 in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

On January 22, 1999 appellant, then a 43-year-old computer specialist, filed a claim for traumatic injury alleging that on that date he sustained an injury to his right knee while carrying some computer equipment in the performance of duty. The Office accepted his claim for a torn lateral meniscus of the right knee and authorized arthroscopic surgery which was performed on February 23, 1999. In addition to his employment-related torn lateral meniscus, appellant was also diagnosed with preexisting arthritis of the right knee and subsequently suffered a back injury which is not the subject of this claim. He was paid appropriate compensation benefits. Appellant returned to modified duty on June 23, 1999, but stopped work again on September 7, 1999, due to back pain.

In a letter dated October 14, 1999, the Office proposed to terminate appellant's compensation benefits. After reviewing additional evidence, by decision dated November 18, 1999, the Office terminated appellant's compensation and medical benefits effective immediately. Appellant, through counsel, requested an oral hearing before an Office representative. In a decision dated May 11, 2000, an Office hearing representative affirmed the Office's prior termination of compensation benefits. By letter dated May 19, 2000, appellant, through counsel, requested reconsideration and submitted additional evidence in support of his claim. In a decision dated August 21, 2000, the Office found the arguments submitted by

appellant insufficient to warrant modification of its prior decision terminating compensation benefits. By letter dated November 14, 2000, appellant, through counsel, requested reconsideration and submitted additional evidence in support of his claim. In a decision dated February 15, 2001, the Office found the evidence submitted by appellant to be immaterial and therefore insufficient to warrant reopening his claim for further merit review.

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 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.⁴ In this case, in a narrative report dated August 24, 1999, appellant's treating physician, Dr. Brian J. Sennett, a Board-certified orthopedic surgeon, stated that appellant was doing very well following his arthroscopic knee surgery and had returned to work and was tolerating his job. He reported that, on physical examination, appellant had full range of motion of his knee, no effusion, no medial or lateral joint line tenderness and no instability. Dr. Sennett stated that, while appellant was also complaining of numbness and tingling in his toes and needed further evaluation for a possible back injury, with respect to his knee, appellant was doing well and was cleared for full duty. He noted that appellant expressed concerns about limitations due to his back condition, but stated that he had explained to appellant that his knee and his back were separate entities. In an accompanying work restrictions evaluation form, Dr. Sennett indicated that appellant could work eight hours a day with his only restrictions being no pushing, pulling or lifting over 50 pounds.

On September 21, 1999 the Office referred appellant, together with a statement of accepted facts, the medical opinions of record and a list of issues to be addressed, to Dr. Steven J. Valentino, an osteopath and Board-certified orthopedic surgeon, for a second opinion evaluation. In his narrative report dated October 4, 1999, Dr. Valentino noted appellant's history with respect to his knee injury and further noted that appellant currently denied any knee symptoms, but also noted that appellant had recently stopped work due to low back and right leg pain, with accompanying numbness and tingling in his feet. He performed a complete physical examination, noting that appellant had no evidence of synovitis or effusion, that circumferential measurements were equal and that evaluations of the tibial tubercle, patella tendon, femoral condyles, tibial plateau, joint lines and menisci were all normal. In addition, Dr. Valentino reported that patellofemoral compression and inhibition tests, apleys compression and distraction tests and anteroposterior drawer sign, varus and valgus stress testing, pivot shift

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

² *Id.*

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

⁴ *Id.*

test, Lachman's test and McMurray's test were all negative. He further noted that there was no evidence of any internal derangement process about the right knee and that appellant had well-healed arthroscopic portals without residual. Dr. Valentino concluded that, based on his examination, appellant had fully recovered from the effects of his January 13, 1999 work injury and had reached maximum medical improvement. He stated that appellant had recovered without any ongoing disability or need for ongoing supervised medical care and that the effects of his injury were no longer evident as all objective findings with respect to the right knee were normal and appellant had no subjective complaints referable to his right knee. Dr. Valentino concluded that appellant's current symptoms were apportioned to his back condition and were not causally related to the January 13, 1999 right knee injury. On an accompanying work restriction evaluation form, he reiterated that appellant had no restrictions with respect to his January 13, 1999 employment-related right knee injury.

The Board finds that the weight of the medical opinion evidence rests with Dr. Valentino's well-rationalized narrative report. He provided a history of injury and appellant's medical history, reviewed the results of early tests and performed a complete physical examination. Dr. Valentino noted that there were no objective signs of appellant's accepted right knee condition and added that the accepted condition, given the normal studies and lack of complaints, had resolved. While Dr. Valentino noted that appellant had additional back problems, he specifically stated that as far as appellant's accepted January 13, 1999 right knee injury was concerned, he could be employed with no restrictions and required no further medical treatment. Therefore, the Office properly relied on his report in terminating appellant's benefits. Furthermore, the record contains no contrary probative medical evidence to indicate that appellant has any residual disability or need for medical treatment due to his right knee condition as appellant's treating physician released appellant to full duty on August 24, 1999, noting that he had full range of motion of the knee, with no effusion or joint line tenderness and no instability.⁵ As Dr. Valentino stated that appellant had no objective signs of his accepted condition and further stated that his current disability was not due to his accepted right knee condition, but was due to a separate back condition, the Office met its burden of proof to terminate appellant's compensation benefits effective November 18, 1999.

The Board further finds that appellant did not meet his burden of proof, following the Office's termination of compensation, to establish that he had continuing work-related disability or need for medical treatment on or after November 18, 1999, causally related to his accepted January 13, 1999 right knee condition.

Subsequent to the Office's November 18, 1999 termination of benefits, appellant submitted additional medical evidence from his treating physician, Dr. Sennett. In reports dated January 12 and April 26, 2000, he noted that at the time of his February 23, 1999 arthroscopy, appellant was found to have a Grade II articular cartilage lesion to his lateral tibial plateau, as well as an anterior horn lateral meniscal tear. Appellant's lateral meniscal tear was debrided and he underwent a general chondroplasty of his lateral tibial plateau. Dr. Sennett stated that when

⁵ While Dr. Sennett indicated on a work restriction evaluation form that appellant was restricted from pushing, pulling or lifting over 50 pounds, he did not explain the basis for these restrictions, in light of his completely normal findings on physical examination and further did not specify whether these restrictions were due to appellant's employment injury or to his back conditions or preexisting right knee arthritis.

appellant was evaluated on August 24, 1999, he was tolerating his job and had full range of motion and no effusion or medial or lateral joint line tenderness and no instability. He stated that when appellant returned for a follow-up evaluation on January 12, 2000, however, he reported continued discomfort over the lateral aspect of his knee joint in the region of his articular cartilage defect over his lateral tibial plateau, despite treatment with Motrin, glucosamine and chondroitin sulfate and was treated with an injection of Celestone. In his April 26, 2000 report, Dr. Sennett stated that appellant's joint line tenderness of the right knee was a residual of his January 13, 1999 work injury, however, he did not support his conclusions with any objective findings, but based his conclusions on appellant's subjective complaints of pain.⁶ In addition, he did not explain this finding in light of appellant's concurrent diagnosis of preexisting arthritis of the right knee. Also, while Dr. Sennett concluded that appellant's "limitation with respect to standing and hyperextension activities should be considered permanent," he did not explain what those limitations are or why he felt they were related to appellant's January 13, 1999 accepted knee condition and not to his preexisting right knee arthritis.⁷

In addition to submitting the evidence as discussed above, appellant, through counsel, asserted that the Office erred in relying on the opinion of Dr. Valentino, as he is biased in favor of the Office and always opines that appellant's condition has resolved. In support of his argument, counsel submitted copies of medical reports written by Dr. Valentino concerning other patients. A review of these reports reveals, however, that they are specific to each individual examined and evaluated by Dr. Valentino and contain no indication of any bias on the part of Dr. Valentino. Accordingly, as appellant has not submitted sufficient rationalized medical evidence which establishes either that he continues to suffer from disability or requires medical treatment causally related to his accepted employment injury, he has not met his burden of proof.

Subsequent to the Office's August 21, 2000 merit decision denying modification, in a November 14, 2000 letter, appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated February 15, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant review of its prior decision.

The Board finds, with respect to the Office's February 15, 2001 decision denying reconsideration, that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office

⁶ See *Carolyn Matthews*, 32 ECAB 748 (1981).

⁷ Rationalized medical opinion evidence is medical evidence that includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment. *Charles E. Evans*, 48 ECAB 692 (1997); *Earl D. Smith*, 48 ECAB 615 (1997).

erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

Appellant's March 18, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. He asserted that the Office erred in relying on Dr. Valentino's report to terminate appellant's benefits because Dr. Valentino had not been provided with a copy of appellant's job description. However, the Board finds that as the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence, represented by the report of Dr. Valentino, established that appellant's accepted condition had resolved, appellant's argument is not relevant to the issue in this claim. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In a report dated November 1, 2000, Dr. Keith M. Robinson states that appellant is under his care for lumbosacral discogenic disc disease and cannot yet return to work. As his report pertains solely to appellant's back condition, it is irrelevant to the instant claim, which pertains solely to appellant's January 13, 1999 right knee injury. In addition, appellant submitted a September 6, 2000 report from Dr. Sennett, in which he stated that appellant had explained to him that his employment duties included extensive standing, splicing cables and lifting batteries weighing up to 80 pounds. Dr. Sennett stated that if appellant's position could be pared down to one which was truly sedentary, with no extended standing or lifting of heavy objects, then he felt appellant could perform such a position. As his opinion does not address the principle issue in this claim, *i.e.*, whether appellant has any residuals of his accepted January 13, 1999 right knee condition, it is also irrelevant to the instant claim.¹⁰ Consequently, this evidence is not sufficient to warrant reopening the record for merit review.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.606(b).

¹⁰ Evidence which is not relevant to the particular issue in a claim is insufficient to warrant reopening a claim on its merits; *see James E. Salvatore*, 42 ECAB 309 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

The decisions of the Office of Workers' Compensation Programs dated February 15, 2001, August 21 and May 11, 2000 are affirmed.

Dated, Washington, DC
January 18, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member