

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY R. LEE and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Chattanooga, TN

*Docket No. 02-92; Submitted on the Record;
Issued May 28, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's wage-loss and medical benefits effective September 9, 2001.

On May 21, 2000 appellant, then a 45-year-old temporary enumerator, filed a claim alleging that on May 16, 2000 she tripped and turned her right ankle and knee while approaching a residence. She stopped work on May 18, 2000 and did not return. The Office accepted the claim for right knee strain. Appellant was paid appropriate compensation.

Accompanying appellant's claim were treatment notes from Occu Net medical center dated May 18, 2000; and progress notes from Dr. Terrance Orme, a family practitioner, dated May 22 and 29, 2000. The medical center notes dated May 18, 2000 indicated that appellant was treated for a right knee injury. The progress notes from Dr. Orme dated May 22 and 29, 2000 noted appellant was treated for a right knee strain which was sustained while she was walking on uneven ground. He noted appellant's knee was stable medially and laterally with no evidence of an effusion. Dr. Orme returned appellant to work with restrictions on pushing, pulling, lifting, standing, walking and climbing.

Appellant continued submitting physical therapy notes and several reports from Dr. R. William Donaldson, a Board-certified orthopedic surgeon, dated August 1 to November 21, 2000. Dr. Donaldson's August 1, 2000 report noted appellant was treated for a right knee injury sustained while working for the employing establishment. He indicated that appellant underwent a previous left knee surgery. Upon physical examination there was no definite effusion. Dr. Donaldson diagnosed appellant with an aggravation of an underlying condition with acceleration of the right knee degenerative process. His report dated August 22, 2000 noted appellant's continued complaints of right knee discomfort and recommended further diagnostic studies. Dr. Donaldson's report of October 10, 2000 noted appellant's significant arthrosis of the knee and indicated that some of this condition was related to appellant's fall. He noted x-rays revealed significant tricompartmental disease and he recommended arthroplastic

surgery. Dr. Donaldson prepared an attending physicians report dated November 21, 2000 and noted a history of osteoarthritis of the knees with a diagnosis of internal derangement of the knee. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by her fall. Dr. Donaldson noted that appellant was totally disabled from August 1, 2000 to an undetermined time and indicated that appellant was a candidate for a total knee replacement.

The case record was sent to the medical adviser to determine the appropriateness of the total knee replacement. The medical adviser determined that appellant's need for the total knee arthroplasty preexisted the injury of May 16, 2000. He indicated that the knee strain was not the cause of appellant's need for arthroplasty but her preexisting knee arthritis.

Appellant submitted a CA-7 requesting compensation for the period July 2, 2000 to November 21, 2000. In a decision issued January 12, 2001, the Office accepted appellant's claim for compensation for the period of July 2 to November 21, 2000 and from December 21, 2000 to January 27, 2001.

Thereafter appellant submitted an attending physicians report from Dr. Donaldson dated January 11, 2001 diagnosing appellant with internal derangement of the knee and osteoarthritis of the knee. He noted with a checkmark "yes" that appellant's condition was aggravated by appellant's fall. Dr. Donaldson indicated that appellant was totally disabled from August 1, 2000 to an undetermined time and noted appellant was a candidate for a knee replacement.

On January 18, 2001 appellant was referred to a second opinion physician, Dr. Neil Spitalny, a Board-certified orthopedic surgeon. In a medical report dated February 1, 2001, Dr. Spitalny indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Upon physical examination, Dr. Spitalny noted range of motion of the knee from 5 to 95 degrees; tenderness medially; with crepitation. He diagnosed appellant with tricompartmental arthritis of the right knee unrelated to her on-the-job injury. Dr. Spitalny noted appellant's knee complaints were consistent with the arthritic finding on both film and magnetic resonance imaging (MRI) scan. He indicated that he did not believe appellant's mild knee twist in May 2000 permanently aggravated or caused a more rapid progression of her underlying arthritic problems as appellant was able to finish her shift, she was not in significant discomfort nor did she experience instability or an effusion following the incident. Dr. Spitalny noted appellant did not have any significant aggravation which would have lasted past two weeks. He noted appellant sustained a temporary aggravation of her preexisting arthritic condition that was currently resolved and there were no residuals of this injury. Dr. Spitalny indicated that appellant would benefit from a total knee replacement, however, he noted that the replacement would be the result of her obesity and her tricompartmental osteoarthritis not her work-related injury. He submitted a work evaluation form which noted that appellant could work eight hours a day with restrictions on walking, standing, squatting, kneeling and climbing.

The Office determined that a conflict of medical opinion had been established between Dr. Donaldson, appellant's treating physician, who indicated that appellant was disabled and experiencing residuals of her work-related injury and Dr. Spitalny, an Office referral physician, who determined that appellant sustained a temporary aggravation of her preexisting arthritic

condition which was resolved and therefore she did not suffer residuals from her work-related injury.

To resolve the conflict appellant was referred to an impartial medical specialist, Dr. Richard Bagby, Jr., a Board-certified orthopedic surgeon. In a medical report dated June 26, 2001, Dr. Bagby indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Upon physical examination Dr. Bagby noted that appellant's right knee was without loss of motion; there was no crepitus; and no evidence of instability of the right knee. He diagnosed appellant with osteoarthritis of the right knee, long-standing and not work related. Dr. Bagby noted appellant had long-standing osteoarthritis prior to the injury of May 16, 2000. He noted that it was unlikely that the twisting injury contributed to or aggravated significantly the osteoarthritis because there was no evidence of an effusion and lack of any objective findings of injury. Dr. Bagby further noted that there was no true injury to her knee and therefore there would be no residuals from the work-related injury. He indicated that appellant experienced a worsening of her ability to stand, walk or climb, but noted that this residual disability was the result of her preexisting osteoarthritic condition and not the twisting incident of May 16, 2000. Dr. Bagby further noted that it was not advisable for appellant to return to her previous position with the employing establishment because of the condition of her knees and her other arthritis; however, he remarked that this recommendation was not the result of the May 2000 work injury.

On July 13, 2001 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that Dr. Bagby's report dated June 26, 2001 established no continuing disability as a result of the May 16, 2000 employment injury.

By decision dated August 23, 2001, the Office terminated appellant's benefits effective September 9, 2001 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her May 16, 2001 employment injury.

The Board finds that the Office has met its burden of proof to terminate benefits effective September 9, 2001.

Once the Office accepts a claim, it has the burden of proof 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

In this case, the Office accepted appellant's claim for right knee strain and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending physician, Dr. Donaldson,

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

who disagreed with Dr. Spitalny concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Bagby to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.³

The Board finds that, under the circumstances of this case, the opinion of Dr. Bagby is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Dr. Bagby reviewed appellant's history, reported findings, and diagnosed appellant with osteoarthritis of the right knee, long-standing and not work related. He noted appellant had long-standing osteoarthritis prior to the injury of May 16, 2000. Dr. Bagby indicated that it was unlikely that the twisting injury contributed to or aggravated significantly the osteoarthritis because there was no evidence of an effusion and lack of any objective findings of injury. He further noted that there was no true injury to her knee and therefore there would be no residuals from the work-related injury. Dr. Bagby indicated that appellant experienced a worsening of her ability to stand, walk or climb, but that this residual disability was the result of her preexisting osteoarthritic condition and not the twisting incident of May 16, 2000.

The Board finds that, under the circumstances of this case, the opinion of Dr. Bagby is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant's work-related condition has ceased. Dr. Bagby indicated that appellant did not suffer residuals from the condition of right knee strain. He noted that the condition had resolved.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.⁴ Appellant did not submit any additional argument or evidence in support of her claim.

The Board finds that there is no medical evidence which supports that appellant had any disability after September 9, 2001 that was causally related to her accepted work-related injury. Dr. Bagby had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated Dr. Bagby clearly opined that appellant had absolutely no work-related reason for disability. His opinion is found to be probative and reliable. The Board therefore finds that Dr. Bagby's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

³ *Aubrey Belnavis*, 37 ECAB 206 (1985).

⁴ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; *see Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated August 23, 2001 is hereby affirmed.

Dated, Washington, DC
May 28, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member