

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH B. CARTER and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Tooele, UT

*Docket No. 02-2297; Submitted on the Record;
Issued April 11, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

Appellant, a 25 year-old mechanics helper, filed a notice of traumatic injury alleging that on July 14, 1980 he injured his knee in the performance of duty. The Office accepted his claim for dislocation of the right patella and temporary aggravation of chondromalacia. Appellant returned to work on January 29, 1981 performing light duty. He filed a notice of recurrence of disability on July 11, 1981 alleging that he was totally disabled beginning June 1, 1981 due to work-related knee surgery. The Office entered appellant on the periodic rolls on May 31, 1982. The Office also accepted that appellant sustained a temporary aggravation of depression ending in 1984.¹

The Office reduced appellant's compensation benefits based on his capacity to earn wages as a small parts assembler on July 10, 1989. He requested an oral hearing and by decision dated November 16, 1989, the Branch of Hearings and Review vacated the Office's July 10, 1989 decision.

In a letter dated May 1, 2001, the Office proposed to terminate appellant's compensation benefits. He disagreed with this proposal in a letter dated May 20, 2001. By decision dated June 5, 2001, the Office terminated appellant's compensation benefits effective June 17, 2001.

¹ As the Office's decision on appellant's emotional condition claim was issued more than one year prior to the appeal to the Board on September 12, 2002, the Board will not address this issue on appeal. 20 C.F.R. § 501.3(d)(2).

Appellant requested an oral hearing on July 4, 2001.² By decision dated June 17, 2002, the hearing representative affirmed the Office's June 5, 2001 decision.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

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.³ 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.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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.⁶

Appellant sought treatment from Dr. Daniel S. Horwitz, an orthopedic surgeon, on January 11, 2001. He noted appellant's history of employment injury and performed a physical examination noting that appellant had significant quadriceps wasting bilaterally, hypermobile patellae and diffuse tenderness about both his knees. Dr. Horwitz found a positive Lachman sign on the right and a positive drawer sign on the right. He stated that appellant had some diffuse elasticity to his soft tissues. Dr. Horwitz did not have an opinion on the etiology of appellant's conditions and recommended a rheumatology evaluation to determine if he had a connective tissue disease.

This report does not support appellant's claim for continued disability for work due to his accepted employment injury. Dr. Horwitz indicated that appellant's current conditions could be due to a rheumatological disorder as he demonstrated diffuse elasticity in his soft tissues.

Appellant submitted a report dated August 2, 2001 from Dr. David J. Petron, a Board-certified family practitioner. Dr. Petron previously examined appellant on August 25, 1992 and found that he had extremely mobile patellae and significant quadriceps atrophy as well as advanced patellofemoral degenerative changes on both knees by x-ray. In his August 2, 2001 report, Dr. Petron noted appellant's complaints of right knee pain and occasional giving away. He stated that appellant had no swelling and no effusion in his right knee and a very hypermobile patella. Dr. Petron found that appellant had increased translation with a Lachman, but a solid endpoint. He also found that appellant had a negative posterior drawer, no varus or valgus instability and a negative pivot shift. Dr. Petron attributed appellant's knee pain to patellar

² At the oral hearing, appellant's attorney alleged that the Office should accept additional conditions arising from appellant's employment. As the Office has not issued final decisions on these issues, the Board will not address these issues on appeal. 20 C.F.R. § 501.2(c).

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

tracking and stated that appellant was not totally disabled. He did not offer his opinion regarding the causal relationship between appellant's current condition and his accepted employment injury.

The Office referred appellant for a second opinion evaluation with Dr. Robert P. Hanson. In his April 25, 2001 report, he noted appellant's history of injury and medical treatment. Dr. Hanson stated that the 1980 surgical report was not available for review. He performed a physical examination and found that appellant's right knee showed no effusion or swelling and that he had a somewhat hypermobile patella. Dr. Hanson found that appellant had no significant pain with patellofemoral compression or apprehension testing. He also noted that appellant had two to three millimeters of Lachman, negative pivot-shift, no specific joint line tenderness and negative McMurray test. Dr. Hanson noted that appellant had some quadriceps atrophy and moderate hamstring tightness. He reviewed appellant's x-rays and found moderate tricompartmental osteoarthritis changes with some narrowing of the joint space and marginal osteophytic reaction. Dr. Hanson diagnosed right knee arthrosis with early tricompartmental osteoarthritis status post probable lateral patellar dislocation with subsequent arthroscopic patellar chondroplasty and lateral retinacular release. He found that appellant's current condition was osteoarthritis but stated: "This cannot be medically reasonably attributable or caused by the work-related injury diagnosed as right knee lateral patellar dislocation." Dr. Hanson stated that appellant's patella showed no signs of dislocation or subluxation.

Dr. Hanson described appellant's employment injury and performed a physical examination. He indicated that he did not review appellant's earliest surgical report. Dr. Hanson concluded that appellant's current osteoarthritic condition was not due to his accepted employment injury of right patellar dislocation. Dr. Hanson's report is insufficient to constitute the weight of the medical opinion evidence and establish the Office's burden of proof that appellant's current condition is not causally related to his accepted employment injury. He did not have the opportunity to review all the surgical reports in evaluating appellant's treatment history. Furthermore, although Dr. Hanson offered the opinion that appellant's osteoarthritis was not caused or aggravated by his accepted employment injury, he did not explain why or how he reached this conclusion. Without medical reasoning explaining why it was his opinion that appellant's accepted patella dislocation would not or did not cause or contribute to his tricompartmental osteoarthritis, such that a causal relationship between the two was not "reasonably attributable or caused by the work-related injury diagnosed as right knee lateral patellar dislocation" his report is insufficient to meet the Office's burden of proof in establishing that appellant is no longer disabled and no longer has medical residuals as a result of his accepted employment injuries. The Office has failed to provide rationalized medical opinion evidence in support of its decision to terminate appellant's compensation benefits.

The June 17, 2002 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
April 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member