

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANNY L. KAGE and U.S. POSTAL SERVICE,
ELMWOOD PARK STATION, Omaha, NE

*Docket No. 03-1730; Submitted on the Record;
Issued December 1, 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 in terminating appellant's compensation.

On March 10, 1999 appellant, then a 35-year-old mail carrier, filed a claim for a traumatic injury alleging that he injured his left elbow and right knee on March 9, 1999 when he slipped on ice and fell. On March 31, 1999 the Office accepted appellant's claim for a right knee contusion, left elbow contusion and chondromalacia of the right knee.

In a report dated March 16, 1999, Dr. Samuel P. Phillips, appellant's attending Board-certified orthopedic surgeon, provided findings on examination and diagnosed chondromalacia and patellofemoral syndrome of the right knee.

In a report dated April 26, 2000, Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on examination, the results of x-rays and a magnetic resonance imaging (MRI) scan and diagnosed chronic patellofemoral syndrome and chondromalacia of the right knee. In a supplemental report dated September 8, 2000, Dr. Agarwal provided findings on examination of the right knee and stated that appellant could perform his regular job.

In a response to a letter from the Office, Dr. Phillips indicated on November 2, 2000 that appellant's right knee chondromalacia had not resolved and that appellant could not perform his regular job.

The Office determined that there was a conflict in the medical opinion evidence between Dr. Phillips and Dr. Agarwal and referred appellant, together with the case record and a statement of accepted facts, to Dr. Lonnie R. Mercier, a Board-certified orthopedic surgeon and impartial medical specialist, for an examination and evaluation to resolve the conflict.

In a report dated August 30, 2001, Dr. Mercier provided a history of appellant's condition and findings on examination. He stated that appellant still had chronic patellar tendinitis which preexisted his March 9, 1999 employment injury. Dr. Mercier stated:

"I do not believe that the fall on March 9, 1999 caused any chronic tendinitis in the right knee. I believe it most likely existed prior to that time. The fall certainly could have aggravated it temporarily, but the condition itself appears to have existed prior to the fall of March 9, 1999. I do not believe that there will be any residuals with regards to the right knee from the fall itself. Any residuals that may affect the right knee would be related to the preexisting condition...."

"I think it is certainly possible that [appellant] could return to regular duty but, the pain that is associated with chronic patellar tendinitis may preclude him from his more vigorous work activities. I suspect that his present state is essentially the same as it had been prior to his injury of March 9, 1999 in that it appears to be a chronic patellar tendinitis...."

"I believe that any injury that may have occurred on March 9, 1999 was a temporary aggravation of an underlying condition. I believe that ... aggravation has ceased and that [appellant] simply continues to have the same problem at this point that he had prior to the injury of March 9, 1999."

In a supplemental report dated February 28, 2002, Dr. Mercier stated his opinion that appellant's chronic tendinitis of the right knee was previously misdiagnosed as chondromalacia. He reiterated his opinion that appellant did not have any residuals from his March 9, 1999 employment injury.

By letter dated December 31, 2002, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Mercier, established that he had no residual disability causally related to his March 9, 1999 employment injury.

Appellant, through his representative, advised the Office on January 29, 2003 that he had undergone right knee surgery on October 16, 2002 and had work restrictions as established by Dr. Phillips. He asserted that his surgery established continuing work-related disability.

By decision dated April 2, 2003, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that appellant had no residual disability causally related to his March 9, 1999 employment injury.

The Board finds that the Office met its burden in terminating appellant's compensation.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation

without establishing that the disability had ceased or that it is no longer related to the employment.¹

In this case, Dr. Phillips, appellant's attending Board-certified orthopedic surgeon, provided findings on examination and opined that appellant's work-related right knee chondromalacia had not resolved and he could not perform his regular job. Dr. Agarwal, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on examination and opined that appellant could perform his regular job.

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician will be appointed to make an examination.²

To resolve the conflict in the medical opinion evidence, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Mercier for an impartial medical examination and opinion on appellant's continuing employment-related disability.

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

The Board finds that the weight of the medical evidence is represented by the opinion of Dr. Mercier, who was provided with the complete case record and a statement of accepted facts as factual background. He conducted a thorough physical examination of appellant and, in reports dated August 30, 2001 and February 28, 2002, he provided a well-reasoned explanation of his opinion that appellant's March 9, 1999 employment injury had resolved and his continuing right knee problems were due to his preexisting condition.⁴

¹ *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

² 5 U.S.C. § 8123(a).

³ *Glenn C. Chasteen*, 42 ECAB 493 (1991); *Juanita H. Christoph*, 40 ECAB 354 (1988).

⁴ Although appellant asserted that his surgery on October 16, 2002 established that he had a continuing work-related disability, Dr. Mercier determined that appellant's continuing right knee problems were due to his preexisting condition, not the March 9, 1999 employment injury.

The decision of the Office of Workers' Compensation Programs dated April 2, 2003 is affirmed.

Dated, Washington, DC
December 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member