

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE H. ROCK and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 03-635; Submitted on the Record;
Issued October 16, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to justify termination of appellant's wage-loss and medical compensation benefits effective January 27, 2001.

On November 2, 1970 appellant, then a 37-year-old boat builder, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee on October 31, 1970 when his foot slipped and twisted his leg.¹ The Office accepted the claim for internal derangement of the right knee and authorized arthroscopic meniscectomy of the right knee and a magnetic resonance imaging (MRI) scan test.² Appellant did not lose any time from work and was assigned light-duty work until his retirement on May 3, 1993.³

On May 14, 1999 appellant filed a claim for a recurrence of disability.⁴ The Office accepted the claim and authorized arthroscopic meniscectomy of the right knee.

¹ This was assigned claim number 02-0263049.

² An MRI scan test was performed on November 21, 1997 and an arthroscopic meniscectomy of the right knee was performed on May 13, 1999.

³ Appellant retired in May 1993 and began receiving retirement benefits from the Office of Personnel Management.

⁴ On the form appellant indicated the recurrence began January 29, 1997. The employing establishment noted that appellant had filed an occupational disease claim for arthritis in both knees with January 29, 1997 listed as the date of injury. This claim was assigned claim number 03-0224807 and denied by the Office, in decisions dated April 24 and August 14, 1997.

The Office started paying appellant compensation on May 13, 1999. By letter dated January 11, 2000, the Office placed appellant on the periodic rolls for temporary total disability effective January 2, 2000.⁵

In progress notes dated January 13, 2000, Dr. Arthur R. Bartolozzi, appellant's attending Board-certified orthopedic surgeon, diagnosed quadriceps tendinitis and related that appellant was "doing extremely well after his meniscectomy."

In work capacity evaluation forms dated January 28 and February 29, 2000 (Form OWCP-5c), Dr. Bartolozzi indicated that appellant has been retired since May 1993, in response to the question of why appellant cannot work eight hours.

In a report dated June 13, 2000, Dr. Gregory S. Maslow, a second opinion Board-certified orthopedic surgeon, reported findings from a physical examination revealed "relatively scrawny thigh musculature" of the knees, "some minimal patellofemoral crepitus at both knees," no compression pain of the patellofemoral area, "medial joint tenderness at the right knee and there are well-healed arthroscopic scars," full range of motion in both knees and "some pain on full flexion at the right knee." Dr. Maslow opined that the arthroscopic meniscectomy surgery was successful in repairing appellant's torn medial meniscus. He concluded that appellant "has mild permanency and mild disability," but "no additional treatment appears to be indicated." Regarding his ability to work, Dr. Maslow indicated that appellant was capable of working although appellant was retired. In the attached work capacity evaluation form, Dr. Maslow noted that the only restrictions were limitations on squatting and kneeling, but appellant was physically capable of working eight hours.

In a June 22, 2000 report, Dr. Bartolozzi released appellant from his care and attached a copy of his January 13, 2000 progress notes.⁶

On November 13, 2000 the Office issued a notice of proposed termination of benefits.

In a letter dated November 20, 2000, appellant's counsel disagreed with the proposed termination. He argued that Dr. Maslow's report did not support the Office's proposed action as the physician opined that appellant had mild disability and mild permanence.

On January 27, 2001 the Office finalized the termination of appellant's benefits.

Appellant's counsel requested an oral hearing by letter dated February 1, 2001. A hearing was held on June 27, 2001 at which appellant was represented by counsel and allowed to testify.

By decision dated October 3, 2001, the hearing representative affirmed the termination of appellant's compensation. In support of this finding, the hearing representative relied upon the

⁵ On August 2, 1999 appellant elected to receive benefits under the Federal Employees' Compensation Act instead of his Civil Service Retirement effective May 13, 1999.

⁶ In the attached letter from appellant's attorney, appellant requested the Office provide him election forms in order to return to his retirement annuity.

opinion of Dr. Maslow that appellant no longer had any residuals due to his accepted employment injury. She also found that appellant failed to present any medical evidence supporting any continuing disability due to his accepted employment injury.

In a letter dated July 25, 2002, appellant's counsel requested reconsideration and submitted a February 4, 2002 report, by Dr. David O. Weiss, an osteopath, who based upon a physical examination, employment injury history and review of the medical records, concluded that appellant's objective and subjective complaints were due to the October 31, 1970 employment injury. In support of his conclusion, Dr. Weiss stated that objective findings revealed "joint crepitation over the medial and lateral joint compartments," a pronounced medial femoral condyle, tenderness in the medial joint line, 4/5 muscle strength of the quadriceps and "quadriceps circumferential (sic) measurements at 10 centimeters (cm) above the patella are 35 cm on the right versus 36 cm on the left."

By decision dated October 22, 2002, the Office denied appellant's request for modification of the termination of his benefits.

The Board finds that the Office improperly terminated appellant's wage-loss and medical compensation benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁷ After it has determined that an employee has disability causally related to his 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.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. 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.⁹

In this case, the Office accepted the claim for internal derangement of the right knee and authorized arthroscopic meniscectomy of the right knee, which occurred on May 13, 1999. The Board finds that the weight of the medical evidence does not establish that appellant is no longer disabled due to his accepted October 31, 1970 employment injury. Dr. Bartolozzi, appellant's attending Board-certified orthopedic surgeon, released appellant from his care in a letter dated June 22, 2000. The Office requested he complete a work restriction evaluation, but the physician noted that appellant was retired and did not complete the form. Dr. Maslow, a second opinion Board-certified orthopedic surgeon, concluded that appellant had a "mild permanency and mild disability," but that he could work eight hours per day with restrictions.

⁷ *Fred Simpson*, 53 ECAB ___ (Docket No. 02-802, issued August 27, 2002).

⁸ *Barbara L. Chien*, 53 ECAB ___ (Docket No. 00-1646, issued June 7, 2002).

⁹ *Pamela K. Guesford*, 53 ECAB ___ (Docket No. 02-915, issued August 12, 2002).

The Board finds that Dr. Maslow's conclusions that appellant was capable of working are not sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits. The physician concluded that appellant continued to have residuals, including a "mild disability," due to appellant's accepted employment injury. In addition, there is no evidence that appellant could perform either his date-of-injury job or the light-duty job he was performing when he retired. While Dr. Maslow concluded that appellant was capable of working, he offered no opinion as to whether appellant was capable of performing his date-of-injury or light-duty position.

As there is no probative, rationalized medical evidence, based upon objective examination and testing results, establishing that appellant's accepted right knee related disability had fully resolved and that he had no further injury residuals, which required further medical treatment, the Office had no medical basis upon which to base its termination. Furthermore, as noted previously, Dr. Maslow, offered no opinion as to whether appellant was capable of performing his date-of-injury position or the light-duty job appellant performed before retiring on May 3, 1993. As the Office failed to establish that appellant no longer had any residuals or was capable of performing his date-of-injury job or the light-duty job he was performing at the time of his retirement, it has failed to meet its burden of proof to terminate appellant's monetary compensation and medical benefits entitlement.

The October 22, 2002 decision of the Office of Workers' Compensation Programs is hereby reversed.¹⁰

Dated, Washington, DC
October 16, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ The Board notes that the record file contains evidence that appellant is seeking a schedule award for his employment-related knee injury. As the record file does not contain the Office's final decision regarding appellant's eligibility for a schedule award, the Board has no jurisdiction over this issue. 20 C.F.R. § 501.2(c).