



On October 8, 2002 Dr. Glen E. Leer, an osteopath and appellant's attending physician, submitted a prescription slip which indicated that appellant was being treated for chondromalacia of the left knee. By letter dated November 1, 2002, the Office asked Dr. Leer to submit a report containing an updated evaluation of appellant's accepted lumbosacral strain condition. In a November 7, 2002 report, Dr. Leer stated:

"Firstly, [appellant] has a chondral fracture of the left knee. [Appellant] injured his knee acutely approximately three weeks ago while trying to perform the exercises prescribed for his back injury. The knee injury I feel is workman's compensation related only because it occurred as a consequence of his treatment program for his back. It is obvious that this injury is fully debilitating to him at this time to such a degree that he cannot perform even a sitting job...."

"Secondly, the issue of [appellant's] back problem remains. [Appellant] needs an occupational functional capacity evaluation to assess his present back condition. However, this is not feasible at this time due to the knee problem. I do feel that if the knee problem improves that [appellant] will be able to do some type of work but I doubt he will ever again be able to perform his duties as mail carrier."

By letter dated January 31, 2003, the Office asked Dr. Leer to submit a report clarifying appellant's left knee injury and explaining how his current condition was causally related to the accepted March 2001 lumbosacral strain. In a February 4, 2003 report, Dr. Leer reiterated to the Office that appellant injured his left knee while performing knee bends which were prescribed for him due to his work-related back injury.

In order to determine appellant's current condition and to ascertain whether he still experienced residuals from his accepted lumbosacral condition, the Office referred appellant for a second opinion examination with Dr. Richard Hutson, a Board-certified orthopedic surgeon. In a report dated May 12, 2003, Dr. Hutson reviewed the medical records and a statement of accepted facts. He stated:

"[Appellant] apparently sustained a lumbar strain working at the employing establishment on March 12, 2001. He obviously had a previous problem with this area back in 1993. He had degenerative changes as noted extensively on his magnetic resonance imaging [MRI] scan. He was accepted for a lumbar strain as noted. He does subjectively complain of pain with losses of ranges of motion in the lumbar spine. Objectively, he has no muscle spasms, masses, rigidity or inflammation. The work-related lumbosacral strain has long since healed and any symptoms that his man is having at the present time would be because of his degenerative disc disease with some sciatic nerve irritation."

In two summary reports dated August 13, 2003, Dr. Leer diagnosed left knee medial chondral fracture, radiculopathy and lumbar degenerative disc disease and recommended that appellant be restricted from operating a motor vehicle.

In a supplemental report dated August 22, 2003, Dr. Hutson stated:

“There is no medical evidence that [appellant] injured his knee at the time of his original injury. [Appellant] stated that he had been doing some exercises for his back and there was a popping in his knee with pain. In my opinion, there is no medical evidence that this problem with the knee had anything to do with his original injury on March 12, 2001. An MRI did show some chondromalacia of the patellofemoral compartment with a Grade IV chondral deficit of the articular cartilage and a moderate size left knee joint effusion. Again, there is no medical evidence that these things occurred because of his injury to his back. In my opinion, these would be of a degenerative nature in a man who is 6 feet 2 inches tall and weighs 332 pounds.”

On September 12, 2003 the Office issued a notice of proposed termination of compensation, finding that the weight of the medical evidence was represented by Dr. Hutson’s opinion and established that appellant had no residuals from his accepted lumbosacral condition and that any disability he currently experienced was due to his nonwork-related left knee condition. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. No further evidence was submitted.

By decision dated October 21, 2003, the Office terminated appellant’s compensation for wage-loss and medical benefits.

### **LEGAL PRECEDENT**

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.<sup>1</sup> 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.<sup>2</sup>

### **ANALYSIS**

The Office based its decision to terminate appellant’s compensation on Dr. Hutson’s July 23 and August 22, 2003 reports. Dr. Hutson stated that appellant had degenerative changes in his lumbar spine as noted by MRI scan results and that his employment-related lumbosacral strain had long since healed. He advised that, although appellant had subjective complaints of pain and loss of range of motion in the lumbar spine, he objectively had no muscle spasms, masses, rigidity or inflammation. Dr. Hutson opined that any low back symptoms appellant currently had were attributable to his degenerative disc disease with some sciatic nerve irritation and not his accepted lumbosacral condition, which had resolved. In addition, Dr. Hutson stated in his August 22, 2003 supplemental report that there was no objective evidence that his alleged left knee condition was causally related to his March 2001 work injury. The Office relied on

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

Dr. Hutson's opinion in its October 21, 2003 termination decision, finding that appellant had no residuals stemming from his 2001 work injury and that he had no continuing disability for work resulting from the accepted employment injury.

The Board finds that Dr. Hutson's opinion does not support a causal relationship between appellant's current condition and his March 21, 2001 employment injury. Dr. Hutson found that he no longer had any residuals from the employment injury. His report is sufficiently probative, rationalized and based upon a proper factual background. The Office properly accorded greater weight to the opinion of Dr. Hutson, a Board-certified orthopedic surgeon, than to that of Dr. Leer, the attending physician, who is an osteopath. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>3</sup> Although Dr. Leer diagnosed chondromalacia condition in appellant's left knee and opined that this was caused by appellant performing exercises to strengthen his accepted low back condition, he fully explained how this left knee condition was causally related to the March 12, 2001 lumbosacral injury. His reports are insufficient to establish that the knee injury was work related.<sup>4</sup> Dr. Leer failed to provide a rationalized, probative medical opinion relating appellant's current condition to his March 21, 2001 accepted employment injury. Based on these facts, therefore, the Office properly found that Dr. Hutson's opinion constituted the weight of the medical evidence. The Board finds that Dr. Hutson's opinion constituted sufficient medical rationale to support the Office's October 21, 2003 decision terminating appellant's compensation.

### CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

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<sup>3</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>4</sup> Appellant did not file a claim for a consequential injury based on the left knee; nor did the Office ever accept a condition for his left knee.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member