

aggravation of a preexisting left knee condition and paid appropriate compensation.¹ The Office authorized arthroscopy and meniscectomy of the left knee on September 20, 1991. Appellant worked intermittently until June 22, 1992 when he stopped completely.

Appellant sought treatment from Dr. Dennis B. Zaslow, an osteopath, who treated appellant from June 24, 1991 to January 30, 1996. He noted a history of appellant's injury on June 17, 1991 and subsequent treatment for an aggravation of his preexisting left knee condition and diagnosed chondromalacia of the patella with persistent swelling and soreness. The physician advised that appellant's work-related left knee condition caused him to be temporarily disabled from employment.

Beginning in January 1996, the Office began developing the medical evidence regarding the extent of appellant's work-related condition. On January 25, 1996 the Office referred appellant to a second opinion physician, Dr. Bong S. Lee, a Board-certified orthopedist. In a medical report dated February 13, 1996, Dr. Lee diagnosed degenerative joint disease of the left knee and status postsurgical arthroscopy of the left knee. He opined that appellant did not suffer residuals of the injury of June 17, 1991, rather his current condition was the result of his preexisting internal derangement of the left knee from his nonwork-related injury of 1989.

On March 18, 1996 the Office issued a notice of proposed termination of compensation benefits on the grounds that second opinion physicians report established that appellant's employment-related disability of June 17, 1991 ceased. After finding a conflict between Dr. Zaslow, appellant's treating physician, and Dr. Bong S. Lee, an orthopedist and Office referral physician, in reports dated June 21 and September 12, 1996, Dr. Joseph J. Toland, a Board-certified orthopedic surgeon who provided an impartial evaluation for the Office, opined that appellant was suffering from the residuals of his work-related injury which occurred on top of the previous internal disruption of the left knee. He advised that appellant could not return to his date-of-injury position but could return to a sedentary position subject to various restrictions on kneeling, standing and crawling. Dr. Zaslow continued submitting reports dated July 2, 1996 to April 9, 1997 supporting total disability from employment due to appellant's work-related injury.

On May 22, 1997 the Office issued a notice of proposed reduction of compensation, finding that appellant was no longer totally disabled. The Office noted that appellant was partially disabled and had the capacity to earn wages as a check cashier at the rate of \$229.60 a week.

Appellant submitted several reports from Dr. Zaslow dated June 24, 1996 to November 17, 1997 who noted that appellant was partially disabled from work due to the June 17, 1991 injury but could return to part-time sedentary employment.

On August 28, 1997 the Office referred appellant to a second opinion physician, Dr. Kevin A. Mansmann, a Board-certified orthopedist. In a medical report dated September 24,

¹ The record reveals that appellant sustained several nonwork-related injuries to his left knee. On May 16, 1989 appellant was involved in a motor vehicle accident and sustained a tear of the posterior horn of the medial meniscus and underwent arthroscopic surgery; and on September 19, 1989 appellant injured his left knee while exiting a bus.

1997, Dr. Mansmann diagnosed a tear of the posterior horn of the medial meniscus with chondromalacia in the patella. He opined that appellant could return to sedentary work with a lifting restriction of 20 pounds. Based on Dr. Mansmann's report, on December 3, 1997 the Office issued a notice of proposed reduction of compensation, finding that appellant was no longer totally disabled. The Office noted that appellant was partially disabled and had the capacity to earn wages as a check cashier at the rate of \$229.60 a week.

By decision dated January 12, 1998, the Office adjusted appellant's compensation benefits to reflect his wage-earning capacity as a check cashier. In a letter dated January 13, 1998, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

In a decision dated July 9, 1998, the hearing representative reversed the Office decision dated January 12, 1998 finding that the Office prematurely reduced appellant's compensation benefits to reflect his wage-earning capacity as a check cashier. The hearing representative noted that both Dr. Zaslow and Dr. Mansmann determined that appellant was fit for sedentary duty prior to the Office's loss of wage-earning determination, but Dr. Zaslow believed appellant's condition had deteriorated since that time. It was noted that Dr. Mansmann had not examined appellant since 1997 and had not reviewed the physical requirements of the position of check cashier to determine the suitability of the position. Therefore, the hearing representative instructed the Office to refer appellant and the case record including a job description and physical requirements for the position as a check cashier to Dr. Mansmann for a supplemental opinion as to appellant's capability of performing the duties as a check cashier.

The record reveals that the Office did not refer appellant to Dr. Mansmann as instructed, rather on September 3, 1998 referred appellant to Dr. Randall N. Smith, a Board-certified orthopedic surgeon, to resolve a conflict of opinion between appellant's treating physician, Dr. Zaslow and the Office referral physician, Dr. Mansmann with regard to the cause and extent of appellant's work-related impairment. In a report dated September 28, 1998, Dr. Smith diagnosed post-traumatic degenerative arthritis of the left knee which was the result of the nonwork-related injury of May 1989. He advised that appellant had an aggravation of his preexisting condition due to his work-related injury, and opined that appellant could return to work as a cashier.

Thereafter, on December 17, 1998 the Office issued a notice of proposed reduction of compensation, finding that appellant was no longer totally disabled. The Office noted that appellant was partially disabled and had the capacity to earn wages as a check cashier at the rate of \$229.60 a week. In a decision dated January 22, 1999, the Office adjusted appellant's compensation benefits to reflect his wage-earning capacity as a check cashier. In a letter dated January 26, 1999, appellant requested an oral hearing before an Office hearing representative. The hearing was held on September 24, 1999. Appellant submitted numerous reports from Dr. Zaslow dated September 24, 1998 to January 11, 1999 who indicated that appellant was experiencing severe left knee symptoms and was unable to stand even for a few minutes. He also noted that appellant was experiencing difficulties with his right knee as well, due to the

shifting weight from his left leg to his right leg.² The physician opined that appellant was completely and totally disabled at this time and could not work as a cashier or any other type of employment.

In a decision dated December 15, 1999, the hearing representative vacated the decision dated January 22, 1999. The hearing representative noted that the July 9, 1998 decision instructed the Office to refer appellant back to Dr. Mansmann for a supplemental opinion regarding appellant's ability to perform sedentary work as a check cashier; however, the Office referred appellant to an impartial medical adviser to resolve a conflict between Dr. Zaslow, appellant's treating physician and Dr. Mansmann, the Office referral physician. The hearing representative noted that there was no true conflict of opinion between Dr. Zaslow and Dr. Mansmann as both physicians found appellant fit for sedentary duty prior to the Office development of appellant's loss of wage-earning capacity; however, Dr. Mansmann had not examined appellant since 1997 and had not reviewed the physical requirements of the position of check cashier to determine the suitability of the position. Therefore, the hearing representative found that Dr. Smith was an Office referral physician because there was no true conflict to be resolved. However, the hearing representative determined that a medical conflict existed between Dr. Zaslow, for appellant, who indicated in a report dated January 11, 1999 that appellant's was completely and totally disabled at this time and could not work as a cashier, and Dr. Smith, for the Office, who determined that appellant could do sedentary work as a check cashier. To resolve the conflict, appellant was referred to a referee physician, Dr. John T. Williams, a Board-certified orthopedic surgeon.

In a report dated June 19, 2000, Dr. Williams diagnosed acute sprain, strain and contusion of both knees, resolved, and patellofemoral arthroses of both knees, left worse than right. He advised that appellant would be able to function with restrictions on his knees. The physician opined that appellant's condition was not related to the June 17, 1991 injury, rather that his 1991 injury was superimposed upon a preexisting pathology, which may have been aggravated. Dr. Williams, however, advised that he believed the aggravation would have been temporary and would have resolved, leaving appellant with his preexisting pathology.

On June 29, 2000 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Williams' report dated June 19, 2000 established that appellant had no employment-related disability. Appellant submitted reports from Dr. Zaslow dated August 3 and September 6, 2000 who disagreed with the determination of Dr. Williams and indicated that appellant's current condition was directly related to his work injury of June 17, 1991. He opined that appellant was totally and permanently disabled from work.

In an August 3, 2000 report, Dr. Zaslow noted reviewing Dr. Williams' report and explained how he disagreed with Dr. Williams' conclusion.

² In the record before the Board, no claim for compensation was made for the right knee and the Office did not adjudicate a compensation claim with regard to the right knee. Therefore, the Board does not have jurisdiction over whether appellant sustained a right knee injury. See 20 C.F.R. § 501.2(c).

In a decision dated October 24, 2000, the Office terminated appellant's compensation benefits effective November 5, 2000 on the grounds that Dr. Williams' report dated June 19, 2000 established that appellant's work-related disability had ceased.

By letter dated October 25, 2000, appellant requested an oral hearing before an Office hearing representative. The hearing was held on April 24, 2001.

In a decision dated August 7, 2001, the hearing representative reversed the decision dated October 24, 2000. The hearing representative determined that, while Dr. Williams' reports provided some medical rationale in support of his opinion, it was not so fully rationalized as to outweigh the reports of Dr. Zaslow, his treating physician and Dr. Toland a prior impartial medical adviser. The hearing representative did find, however, that the report of Dr. Williams was sufficient to create a new medical conflict between Dr. Zaslow, appellant's treating physician, who indicated that appellant still experienced residuals of his injury, and Dr. Williams, who determined that appellant's accepted work-related injury had resolved.

To resolve the conflict, appellant was referred to a referee physician, Dr. Edward J. Resnick, a Board-certified orthopedic surgeon. In reports dated January 15 and February 19, 2002, Dr. Resnick indicated that he reviewed the records provided to him and noted a history of appellant's work-related injury. Upon physical examination of the right knee, the doctor noted flexion of 0 degrees to 110 degrees. Effusion was present, with pain and tenderness. With regard to the left knee, flexion was 10 degrees to 110 degrees. Effusion present, with generalized tenderness. Dr. Resnick diagnosed multiple contusions and strains of both knees, status postarthroscopic treatment, degenerative joint disease of both knees, and a contusion and strain of the left knee from the June 17, 1991 injury which had resolved. He advised that the June 17, 1991 injury produced a temporary exacerbation of the preexisting osteoarthritis and appellant's symptoms and disablement continued until the arthroscopic meniscectomy of September 20, 1991. The physician noted that the surgery gave improvement and that further improvement took place sufficiently by February 1992, and that any effects of the accident of June 17, 1991 would be resolved by that time. Dr. Resnick concluded that there was no permanent aggravation of the left knee condition and that the present condition of both knees was primarily the result of degenerative joint disease or osteoarthritis and that there was no definite evidence that past trauma made any difference in the present condition of appellant's knees. Dr. Resnick indicated that appellant could not return to work as a sandblaster but could perform limited-duty sedentary work, without significant standing, walking, lifting or carrying and no kneeling or climbing. In his supplemental report of February 19, 2002, Dr. Resnick noted that appellant provided a medical history that his left knee continued to swell and fill with fluid. He again noted that appellant could not return to his position as a sandblaster but could perform sedentary work. The physician specifically noted that this restriction was not related to the June 17, 1991 injury but to the preexisting degenerative joint disease or osteoarthritis.

On January 31, 2002 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Resnick's reports of January 15, February 14 and 19, 2002 established that appellant's work-related disability ceased.

In a letter dated February 8, 2002, appellant indicated that Dr. Resnick's reports were speculative with regard to whether the June 17, 1991 injury caused an exacerbation of

appellant's preexisting osteoarthritis. He also noted that Dr. Resnick's opinion was unrationalized in its conclusion that appellant's condition would have been resolved in February 1992 when appellant returned to work. Appellant submitted a report from Dr. Zaslow dated February 14, 2002, who concluded that as a result of appellant's work he sustained permanent problems with both knees. He disagreed with Dr. Resnick and noted that the injury of 1991 did not produce a temporary exacerbation of a preexisting arthritis. The physician advised that appellant was 34 years old at the time of his injury and was asymptomatic prior to the injury. Dr. Zaslow opined that appellant's injury was permanent, but that he could return to sedentary work at a desk, with no standing or walking.

In a decision dated March 19, 2002, the Office terminated appellant's compensation benefits effective March 24, 2002 on the grounds that Dr. Resnick's reports of January 15, February 14 and 19, 2002 established that appellant's work-related disability ceased.

By a letter dated March 22, 2002, appellant requested an oral hearing before an Office hearing representative. The hearing was held on August 5, 2003. Appellant submitted medical reports from Dr. Zaslow dated May 21 to November 10, 2002 who noted appellants continued symptoms of swelling and pain in both knees. He opined that appellant suffered from residuals in both knees as a direct result of his work injury of June 17, 1991. In his report of August 12, 2003, he advised that the underlying degenerative process did not cause appellant's symptoms but that the June 17, 1991 injury triggered the underlying problem into becoming permanently symptomatic. The physician further noted that the problems with appellant's right knee were directly related to his inability to bear weight on his left knee and he would require medical attention for the rest of his life.

In a decision dated November 26, 2003, the hearing representative affirmed the decision of the Office dated March 19, 2002.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

ANALYSIS -- ISSUE 1

In this case, the Office accepted appellant's claim for a temporary aggravation of the preexisting left knee condition.

The Board finds that, under the circumstances of this case, the opinion of Dr. Resnick 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.

In his report of January 15, 2002, Dr. Resnick reviewed appellant's history, reported findings and diagnosed multiple contusions and strains of both knees, status postarthroscopic treatment, degenerative joint disease of both knees and contusion and strain of the left knee from the June 17, 1991 injury which was resolved. He advised that the June 17, 1991 injury produced a temporary exacerbation of the preexisting osteoarthritis of the left knee and that his symptoms and disablement continued until the arthroscopic meniscectomy of September 20, 1991. The physician opined that the surgery gave improvement so that the temporary exacerbation caused by the employment injury of June 17, 1991 ceased by February 1992 with no permanent aggravation of the left knee condition. Dr. Resnick concluded that the present condition of both knees was primarily the result of degenerative joint disease or osteoarthritis and there was no definite evidence that the trauma in the past made any difference in the present condition of the knees. While Dr. Resnick opined that appellant could not return to his position as a sandblaster, he could perform sedentary work, and this restriction was not related to the June 17, 1991 injury but to degenerative joint disease or osteoarthritis present in both knees.

Appellant submitted a report from Dr. Zaslow dated February 14, 2002 who concluded that as a result of appellant's work he sustained problems with both knees that will never resolve. He disagreed with Dr. Resnick and noted that the injury of 1991 did not produce a temporary exacerbation of a preexisting arthritis as appellant was 34 years old at the time of his injury and was not having any difficulties with his knees at that time and was asymptomatic. The physician opined that appellant's injury was permanent; however, he could return to sedentary work at a desk, with no standing or walking. The Board notes that Dr. Zaslow had been on one side of the conflict in medical evidence and merely reiterated their prior conclusions in the above-mentioned reports. After an impartial specialist resolves a medical conflict, additional reports submitted by a physician who was on one side of the conflict that the impartial specialist resolved, are generally insufficient to overcome the opinion of the impartial specialist or to create a new medical conflict.⁶ Dr. Resnick provided thorough, well-rationalized reports in which he

⁵ *Gloria J. Godfrey, supra* note 3. See also 5 U.S.C. § 8123(a) (if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination).

⁶ See *Michael Hughes*, 52 ECAB 387 (2001).

explained his findings and conclusions that any work-related orthopedic condition had ceased. The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits effective March 24, 2002.

Dr. Resnick 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 he clearly opined that appellant had absolutely no work-related reason for disability. His opinion as set forth in his reports of January 15 and February 19, 2002 are found to be probative evidence and reliable. The Board finds that Dr. Resnick's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.⁷

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had any disability causally related to his accepted injuries after March 24, 2002.⁸ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS -- ISSUE 2

The medical evidence submitted by appellant after termination of benefits either did not specifically address how any continuing condition was due to the June 17, 1991 work injury or other incidents or was duplicated evidence previously considered by the Office.

In reports from Dr. Zaslow dated May 21 to November 10, 2002, he noted appellant's continued symptoms of swelling and pain in both knees and opined that appellant suffered from

⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁸ *See Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Id.*

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

residuals in both knees as a direct result of his work injury of June 17, 1991. This opinion is conclusory with no medical rationale to support such statement.¹² Additionally, Dr. Zaslow did not mention what effect if any appellant's prior nonwork-related injuries to the left knee would have on appellant's continuing condition, specifically the May 16, 1989 motor vehicle accident where appellant sustained a tear of the posterior horn of the medial meniscus and underwent arthroscopic surgery and the September 19, 1989 injury to his left knee. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹³

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related injury of June 17, 1991.¹⁴ The Board has found that vague and unrationalized medical opinion on causal relationship have little probative value. Therefore, the reports from Dr. Zaslow are insufficient to overcome that of Dr. Resnick or to create a new medical conflict.¹⁵

The Board finds that Dr. Zaslow's reports are insufficient to meet appellant's burden to establish that he has any continuing disability causally related to his accepted conditions. As appellant has submitted no probative medical evidence establishing that he continues to be disabled from employment-related conditions, he has not met his burden of proof.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective March 24, 2002, and that appellant has not established continuing disability after March 24, 2002.

¹² See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹³ See *Jimmie H. Duckett*, *supra* note 12.

¹⁴ *Id.*

¹⁵ See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 26, 2003 is affirmed.

Issued: November 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member