



knee arthroscopic surgery on May 15, 2001, which the Office authorized.<sup>1</sup> The Office later expanded the claim to include brief depressive reaction.<sup>2</sup> Appellant received appropriate wage-loss compensation and the Office placed her on the periodic compensation rolls effective February 25, 2001.<sup>3</sup> The employing establishment discharged her effective April 18, 2002, for failure to meet the requirements of her position in the area of attendance.

On May 28, 2002 appellant's orthopedic surgeon, Dr. Bennett, released her to resume regular work effective June 1, 2002. He also indicated that she should limit walking, standing, climbing and lifting. However, Dr. Bennett did not impose any specific time limitations or weight restrictions. Physical examination of the knee revealed normal alignment and no swelling. Appellant also exhibited full extension and flexion with no instability. Dr. Bennett further noted that there was no crepitation, no fluid effusion and the joint was stable. On June 26, 2002 Dr. Bennett indicated that appellant was cleared to return to her regular work with no restrictions on walking or standing.

Dr. Robert A. Smith, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on May 7, 2004 and reported that her right knee revealed no atrophy, swelling, loss of motion, weakness, instability, crepitation, meniscal sign or any type of deformity. He indicated that her knee examination was normal except for the well-healed and barely visible arthroscopic portals from her surgery three years prior. Dr. Smith noted that there was no evidence of any residuals of appellant's employment injury and she was capable of resuming her regular duties as a letter carrier.

The Office also referred appellant for evaluation by Dr. Bruce Hershfield, a Board-certified psychiatrist. In a report dated May 16, 2004, he indicated that she did not currently exhibit any signs of a depressive reaction or any other signs that would establish any emotional or psychiatric condition. Dr. Hershfield also indicated that appellant could return to work without restriction.

Appellant's psychologist, Dr. Eisenberg, saw her on June 14, 2004 and noted, among other things, that she was bored and wanted to return to work.

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<sup>1</sup> Dr. Errol L. Bennett, a Board-certified orthopedic surgeon, performed a major synovectomy and plica removal.

<sup>2</sup> Appellant was under the care of Joseph M. Eisenberg, Ph.D., psychologist, since August 9, 2000. He indicated that her depression was a consequence of her work-related injury and loss of physical function.

<sup>3</sup> This case was previously on appeal before the Board. In a decision dated June 25, 2001, the Office suspended appellant's compensation effective July 15, 2001, for failure to cooperate with rehabilitation efforts. By decision dated May 23, 2002, the Office denied modification of the June 25, 2001 decision. The Board set aside both decisions because the Office failed to provide appellant's then counsel with a copy of the Office's presuspension correspondence dated May 3, 2001 and the June 25, 2001 decision. Docket No. 02-1650 (issued April 17, 2003). The Office requested reconsideration, which the Board granted. In a November 4, 2003 order, the Board made technical corrections to the April 17, 2003 decision, but did not disturb its prior finding that the Office erred in failing to provide appellant's counsel with the May 3, 2001 Office correspondence and the June 25, 2001 decision. Docket No. 02-1650 (issued November 4, 2003). The Office subsequently paid her compensation retroactive to July 15, 2001.

On August 9, 2004 the Office issued a notice of proposed termination of compensation and medical benefits. Appellant was afforded 30 days to submit any additional evidence or argument.

In an August 26, 2004 letter, appellant stated that she was “ready, capable and cleared to return to [her] employment” with the employing establishment.

By decision dated September 24, 2004, the Office terminated appellant’s medical benefits and wage-loss compensation based on the opinions of Dr. Hershfeild, Dr. Smith and Dr. Bennett.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS**

Appellant’s treating physician, Dr. Bennett, stated as early as June 2002 that she was capable of resuming her regular duties without restriction. When Dr. Smith examined her almost two years later, he similarly concluded that she was capable of resuming her regular duties as a letter carrier. He explained that appellant’s physical examination was normal and there was no evidence of any residuals of the employment injury. Accordingly, the reports of Dr. Smith and Dr. Bennett establish that she no longer has any residuals of her accepted orthopedic condition.

With respect to appellant’s accepted emotional condition, Dr. Hershfeild, in his May 16, 2004 report, indicated that she did not currently exhibit any signs of a depressive reaction. He also noted that she did not exhibit any other signs that would establish an emotional or psychiatric condition. Dr. Hershfeild, therefore, released appellant to return to work without restriction. The Board finds that Dr. Hershfeild’s opinion establishes that she no longer has residuals of her accepted emotional condition.

Appellant’s psychologist, Dr. Eisenberg, did not submit any recent evidence indicating that she continued to suffer from an employment-related psychiatric or emotional condition.

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<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>7</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

When he last saw her on June 14, 2004 he reported that she was bored and wanted to return to work and she hoped the Department of Labor would have her reinstated soon.

As the weight of the medical evidence establishes that appellant's January 20, 2000 employment injuries have resolved, the Office properly terminated her wage-loss compensation and medical benefits.

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective October 2, 2004.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member