



Office accepted her claim for left knee contusion and explained that the incident was considered inconsequential to her work restrictions, which appeared to be related to a preexisting osteoarthritic condition.

On October 1, 1997 appellant filed a claim alleging that her bilateral knee condition (“osteoarthritic with abnormal deformities”) was a result of the duties she performed at work since 1992, including bending, lifting heavy items, walking and standing. She underwent a left knee arthroscopy on February 12, 1998. The Office accepted this claim for a temporary aggravation of left knee degenerative joint disease and requested a second opinion on the extent of the aggravation and to determine whether to authorize the February 12, 1998 surgery retroactively.<sup>1</sup>

The Office obtained two reports from Dr. Joseph S. Gimbel, an orthopedic surgeon. Based on these reports, it issued a decision on October 26, 1998 terminating compensation for the accepted aggravation of degenerative joint disease. An Office hearing representative affirmed the termination of benefits on July 28, 1999.

On appeal,<sup>2</sup> the Board found that the Office did not meet its burden of proof to terminate appellant’s benefits as Dr. Gimbel did not address whether the work-related aggravation of the left knee degenerative joint disease had resolved. Instead, he reported that he did not agree that her work duties had temporarily aggravated or contributed to her degenerative condition. He stated that appellant’s “ongoing problems are based on her progressive degenerative change and her type of work had little if anything to do with her progressive degenerative changes found.” Noting that workers’ compensation law draws a clear distinction between “little” and “no” contribution, the Board found that Dr. Gimbel’s opinion was of little probative value and reversed the Office’s July 28, 1999 decision. As appellant submitted medical opinion evidence to support that her right knee osteoarthritis was also related to her federal employment, the Board remanded the case for further development on that issue.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Dale R. Anderson, an orthopedic surgeon. On October 10, 2002 Dr. Anderson related appellant’s history, complaints and findings on physical and x-ray examination. He diagnosed degenerative arthritis of the left knee, progressive and resulting in total knee arthroplasty. Dr. Anderson stated that appellant’s knee pains and need for arthroplasty were related to this degenerative arthritis and not related to her work injury, as follows:

“In response to question #2, a medical condition connected to the factors of employment would be a contusion and bruise to the left knee in 1997. This occurred in August of 1997 and represented a temporary aggravation in that the injury resolved but did not materially contribute to her impairment or treatment.

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<sup>1</sup> The surgeon’s office advised the Office on February 11, 1998 that it was not sure whether the aggravation was permanent or temporary. The Office accepted a temporary aggravation and further developed the evidence.

<sup>2</sup> Docket No. 00-2442 (issued March 5, 2002).

“In response to question #3, the aggravation of her left knee was temporary and in order to allow sufficient time for an aggravation or a bruise to resolve, I would estimate that it would complete its cycle and heal within three months. The contusion by its nature and diagnosis would resolve within that three-month period and there is no underlying disease or independent contribution to her knee limitation.

“In response to question #4, since her contusion and injury to the left knee was a temporary aggravation, sufficient time has passed for the injury to resolve and indeed she has had additional treatment which has included total knee arthroplasty which has treated the progressive degenerative arthritis that is unrelated to her work injury. No additional medical treatment is indicated for the contusion or for her knee arthritis.

“In response to question #5, temporary total disability due to the work-related condition would span only a period of three or four weeks. This would include the time following the bruise and contusion sustained in August of 1997. After a total of three months her symptoms would have resolve sufficiently that she could continue her regular activities. The fact that she continued to have symptoms from her arthritis resulted in a surgical procedure for knee arthroplasty.”

In a decision dated November 22, 2002, the Office terminated appellant’s compensation benefits. The Office found that the weight of medical evidence rested with Dr. Gimbel, whose opinion established that appellant no longer had residuals traceable to factors of employment and that her knee surgeries were not related to her federal work activity. The Office also found that Dr. Anderson’s opinion represented the weight of the medical evidence on when the temporary aggravation of degenerative joint disease ceased. The Office denied authorization for the February 12, 1998 left knee surgery and denied appellant’s claim that her right knee condition was causally related to her federal employment.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of the Federal Employees’ Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> Once the Office accepts a claim, it has the burden of proof to justify any termination or modification of compensation.<sup>4</sup> After it has determined that an employee has disability causally related to 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>5</sup> The Office may not terminate compensation without a

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>5</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

positive demonstration, by the weight of evidence that entitlement to benefits has ceased.<sup>6</sup> The inadequacy or absence of a report in support of continuing benefits is not sufficient to support termination, and benefits should not be suspended for that reason.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

On the prior appeal, the Board reversed the termination of appellant's compensation on the grounds that Dr. Gimbel's opinion was of little probative value. The Office had no authority to reverse this finding,<sup>8</sup> yet in its November 22, 2002 decision the Office again found that the weight of medical evidence rested with Dr. Gimbel's "well-rationalized" opinion, establishing that appellant no longer had residuals traceable to factors of employment and that her knee surgeries were not related to her federal work activity. The Board will not readjudicate the matter. The Office bears the burden of proof to justify its termination of compensation, and in attempting to do so it relied on evidence that was previously found to be wanting.

The Office also found that Dr. Anderson's October 10, 2002 report constituted the weight of the medical evidence on when the accepted aggravation ceased. In fact, Dr. Anderson's report has little if any probative value. Throughout the report he focused on the contusion appellant sustained when a cart struck her left leg on February 7, 1997 (he misdated it to August 1997), an injury the Office considered inconsequential. He was unaware that appellant also filed a claim for a different injury, an occupational disease or illness that she believed was related to the duties she performed since 1992. It was this occupational injury, not the traumatic contusion on February 7, 1997, that the Office accepted for a temporary aggravation of left knee degenerative joint disease. Dr. Anderson erroneously noted that the Office based its acceptance of this aggravation on the contusion incident.

Dr. Anderson's report did not fully address the different injuries appellant sustained and the different medical conditions accepted by the Office. The statement of accepted facts that the Office provided him, which was to serve as his only factual framework, mentioned no occupational injury related to appellant's duties. It detailed the duties she performed through the years, and that it accepted the condition of aggravation of degenerative joint disease of the left knee, but it did not connect the two. The only injury the Office identified was the traumatic injury on February 7, 1997.

Medical conclusions based on inaccurate or incomplete histories are of little probative value.<sup>9</sup> For this reason, Dr. Anderson's report does not discharge the Office's burden of proof to

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

<sup>7</sup> *Id.* at Chapter 2.812.7(c)(1).

<sup>8</sup> The decision of the Board shall be final as to the subject matter appealed and such decision shall not be subject to review, except by the Board. 20 C.F.R. § 501.6(c).

<sup>9</sup> See *James A. Wyrick*, 31 ECAB 1805 (1980) (the physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

justify the termination of appellant's compensation. The Board will reverse the November 22, 2002 decision on the issue of termination and remand the case for payment of appropriate compensation benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.<sup>10</sup> The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

The Office denied authorization for appellant's February 12, 1998 left knee arthroscopy based on the reports of Dr. Gimbel and Dr. Anderson. Dr. Anderson reported that "the aggravation of her left knee was temporary and in order to allow sufficient time for an aggravation or a bruise to resolve, I would estimate that it would complete its cycle and heal within three months," meaning within three months of the cart striking her leg. But the question to be decided was not whether a contusion or bruise on February 7, 1997 necessitated a left knee arthroscopy one year later. The question was whether that surgery was likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation appellant was receiving for the aggravation, caused by her duties over the years, of her left knee degenerative joint disease. Dr. Anderson's report did not address this issue. The Board will set aside the November 22, 2002 decision and remand the case for further action, including a clear and understandable statement of accepted facts, further development of the medical evidence and a proper exercise of discretion under section 8103 of the Act.

### **LEGAL PRECEDENT -- ISSUE 3**

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>12</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>13</sup>

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<sup>10</sup> 5 U.S.C. § 8103(a).

<sup>11</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

<sup>12</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>13</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

### **ANALYSIS -- ISSUE 3**

Appellant has the burden of proof to establish that her right knee condition is causally related to her federal employment. On the prior appeal of this case, the Board noted the August 20, 1999 report of Dr. Janet Whirlow, an orthopedic surgeon, who opined that “the job duties described, continuous weightbearing and ambulation, repetitive stooping, squatting, carrying, pushing and pulling with repetitive axial compression loads and torque resulted in aggravation and worsening of the patient’s documented osteoarthritic changes of the knees ... resulting in serious diminution in her ability to carry out job duties.” The Board found that this report was sufficient to require the Office to further develop the record with respect to appellant’s right knee condition. The Board directed the Office to further develop the medical evidence and issue an appropriate decision with respect to the right knee.

The Office referred appellant to Dr. Anderson but did not ask him whether appellant’s duties caused or contribution to her right knee condition. The Board will set aside the November 22, 2002 decision on the issue of causal relationship with respect to the right knee and will once again direct the Office to further develop the medical evidence, specifically, to obtain a probative and well-reasoned opinion on whether appellant’s federal employment caused or contributed to the diagnosed condition in her right knee. The Office shall then issue an appropriate final decision on the matter.

### **CONCLUSION**

The Office failed to meet its burden of proof to terminate appellant’s compensation. The Office abused its discretion when it relied on Dr. Gimbel’s and Dr. Anderson’s reports to deny retroactive authorization for appellant’s February 12, 1998 left knee arthroscopy. The case remains not in posture for decision on whether appellant’s right knee condition is causally related to her federal employment.

Appellant is entitled to continuing compensation for the aggravation of her left knee degenerative joint disease. On remand, the Office must develop: (1) whether to retroactively authorize the February 12, 1998 left knee surgery; and (2) whether appellant’s right knee condition is causally related to her federal employment, and if so, whether the Office should authorize appellant’s right knee arthroplasty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' November 22, 2002 decision is reversed on the issue of termination, is set aside on the issues of retroactive authorization for left knee surgery and causal relationship with respect to the right knee and is remanded for further action consistent with this opinion.

Issued: February 3, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
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