

**United States Department of Labor
Employees' Compensation Appeals Board**

FE L. AURELLADO, Appellant)	
)	
and)	Docket No. 05-505
)	Issued: June 7, 2005
DEPARTMENT OF VETERANS AFFAIRS,)	
NEW JERSEY HEALTH CARE SYSTEM,)	
Lyons, NJ, Employer)	

<i>Appearances:</i> <i>Thomas R. Uliase, Esq., for the appellant</i> <i>Office of Solicitor, for the Director</i>		<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 22, 2004 appellant, through her attorney, filed an appeal from the February 5, 2004 merit decision of the Office of Workers' Compensation Programs terminating her compensation and medical benefits on the grounds that her accepted condition had resolved. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's medical and wage-loss benefits, effective June 18, 2003, on the grounds that she had no further disability or residuals due to her accepted February 14, 2002 employment injury.

FACTUAL HISTORY

On February 14, 2002 appellant, a 61-year-old nurse, filed a claim for traumatic injury Form CA-1 alleging that she fractured her right knee when her chair rolled away from under her,

causing her to fall. Her claim was accepted for a right knee fracture. Appellant stopped work on the date of the injury.

Notes dated February 14, 2002 bearing an illegible signature indicate “[x]-ray -- osteoarthritis and small chip fx.” On March 1, 2002 Dr. Davonnie Dunn, a Board-certified family practitioner, provided a diagnosis of right knee fracture.

In a report dated March 6, 2002, Dr. Paul J. Hirsch, a Board-certified orthopedic surgeon, diagnosed medial compartment narrowing and arthritis; tricompartmental osteoarthritis; genu varum; and degenerative lumbar disc with sciatica. He described appellant’s range of motion to both knees as diminished; her gait altered; and her ability to change position limited. He reported her history of severe degenerative joint disease of both knees, arthroscopic surgery of the right knee and ineffective treatment with anti-inflammatory medications and injections. Dr. Hirsch further indicated that x-rays obtained prior to the accepted work-related injury revealed significant architectural changes in both knees and lower spine to the degree that he recommended joint replacement surgery, initially for the right knee. He opined that appellant was capable of only sedentary activity, *i.e.*, deskwork.

In a report dated March 8, 2003, Dr. Hirsch noted a history of right knee sprain and severe osteoarthritis with a small chip fracture, but indicated that appellant’s current condition was osteoarthritis. In a March 20, 2002 report, Dr. Hirsch stated that review of appellant’s February 14, 2002 x-rays demonstrated some altered bony architecture consistent with the initial diagnosis of chip fracture. In this report, as well as in a report dated April 22, 2002, he rendered a diagnosis of tricompartmental osteoarthritis and his recommendation for right total knee replacement. In a work capacity evaluation dated April 25, 2002, Dr. Hirsch indicated that appellant was able to resume a light-duty work assignment. In a report dated May 9, 2002, he provided diagnoses of osteoarthritis and genu varum, right knee; osteoarthritis, left knee; and lumbosacral strain and sciatica and in a June 17, 2002 report indicated tricompartmental osteoarthritis -- end stage, right knee greater than left.

Dr. Hirsch approved a temporary-duty assignment for appellant dated June 14, 2002, based upon his recommendations for work restrictions. By letter dated May 21, 2002, the employing establishment notified appellant that she had been given a limited-duty assignment and was expected to report for duty on May 28, 2002.

In reports dated July 12 and 29, 2002, Dr. Hirsch indicated that x-rays demonstrated advanced bone-on-bone tricompartmental osteoarthritis; that her symptoms had been progressively increasing; and that his recommended restrictions had changed. On August 13, 2002 the employing establishment provided appellant with an amended limited-duty assignment in accordance with Dr. Hirsch’s updated recommendations. On September 14, 2002 the Office notified appellant that it had determined the offer of employment to be suitable and advised her that she had 30 days from the date of its letter to either accept the job or provide a reasonable, acceptable explanation for refusing the offer.

In a report dated September 30, 2002, Dr. Hirsch opined that appellant was not capable of performing her work functions, due to increased symptoms of pain. In a work capacity evaluation dated October 8, 2002, Dr. Hirsch indicated that appellant was not able to work.

In order to ascertain whether the accepted employment injury had resolved and whether the requested knee replacement was related to the injury, the Office referred appellant together with a statement of accepted facts and a copy of the medical record to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion examination.

In a November 8, 2002 work capacity evaluation, Dr. Rubinfeld opined that appellant had no restrictions resulting from her accepted condition and that she was capable of working eight hours per day. In a report dated November 19, 2002, Dr. Rubinfeld stated that there were no objective findings related to a fracture of the right patella; that the accepted condition had resolved and did not require additional treatment; that there was no medical evidence that appellant suffered additional injuries; and that her current disability was not due to the work-related injury or its residuals. He further explained that x-rays taken at the time of injury revealed severe degenerative arthritis of both knees “clearly unrelated to any recent trauma” and that there were no objective findings that her current disability was a result of a work-related aggravation. Dr. Rubinfeld indicated that examination of appellant’s right knee revealed a range of motion of 10 to 135 degrees, with no instability and the McMurray sign was negative. He further explained that appellant’s knees were both severely arthritic and that, although a total knee replacement was indicated, her condition was not a result of the accepted injury. He stated that her accepted injury involved minimal trauma and that a chip fracture of the patella is not a major injury. He concluded by stating that appellant’s obesity was hindering improvement of unrelated osteoarthritis of both knees and that recovery was not anticipated.

In order to resolve the perceived conflict between Dr. Hirsch and Dr. Rubinfeld, the Office referred appellant to Dr. Philip Keats, a Board-certified orthopedic surgeon, for an impartial medical examination. In his report dated March 24, 2003, Dr. Keats stated that there was no evidence that appellant sustained a fracture of the right patella and that, if she had sustained such a fracture, the condition had resolved and was no longer active. His report was based upon an examination of appellant and review of the entire medical file and statement of accepted facts. Examination of the right knee showed a range of motion of 30 to 110 degrees of flexion; crepitus on range of motion with pain expressed; no ligament instability; tenderness over the medial joint line; and a varus alignment. Dr. Keats opined that appellant was not capable of performing her date-of-injury job due to her advanced osteoarthritis of both knees as well as the degenerative condition of her lumbosacral spine. He further concluded that knee replacement surgery was indicated, but that appellant’s disability was not due to the February 14, 2002 work-related injury and that her work-related condition had resolved.

By letter dated April 14, 2003, the Office proposed to terminate appellant’s compensation payments on the grounds that her disability was not related to the February 14, 2002 work-related incident. Appellant was given 30 days to submit additional evidence or argument in support of her case.

By letter dated April 29, 2003, appellant’s representative opposed the proposed termination, contending that Dr. Keats’ opinion was not fully rationalized in that it failed to adequately explain why appellant could no longer perform the functions of her former job if she had recovered from her injury or why her condition was not related to her work-related accident.

By letter dated May 27, 2003, the Office asked Dr. Keats to provide an addendum addressing the concerns of appellant's representative. In an addendum dated June 6, 2003, Dr. Keats stated that appellant's condition was not related to a fracture of the patella of the right knee but rather was due to the natural progression of her degenerative osteoarthritic condition of her knees and spine. He opined that there had been a temporary aggravation of her preexisting conditions but that the temporary aggravation had resolved.

By decision dated June 18, 2003, the Office finalized the termination of appellant's compensation and medical benefits, effective June 18, 2003, finding that the weight of the medical evidence established that her injury-related disability and symptomology ceased no later than that date.

Appellant requested an oral hearing, which was held on November 18, 2003. Appellant's representative argued that her work-related injury was the "straw that broke the camel's back," in that she went from working in a staff nurse position to needing a total knee replacement within three weeks of the injury. He contended that Dr. Keats' report was speculative and that he failed to give reasons why the injury did not aggravate appellant's arthritic knee. He further argued that Dr. Keats should have reviewed the February 14, 2002 x-ray rather than the x-ray report. Appellant testified that she underwent right knee replacement surgery on July 28, 2003.

In a December 10, 2003 memorandum, the employing establishment contended that the diagnosis of fractured knee was erroneous and that the injury sustained was not severe enough to cause need for a total knee replacement.

By letter dated January 25, 2004, appellant alleged that the evaluations of Drs. Rubinfeld and Keats were "false and full of lies," in her opinion.

By decision dated February 5, 2004, the Office hearing representative affirmed the June 18, 2003 decision terminating appellant's compensation 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.¹ The Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ Furthermore, the right to medical benefits for an accepted

¹ See *Beverly Grimes*, 54 ECAB ____ (Docket No. 03-42, issued April 18, 2003).

² *Id.*

³ *James M. Frasher*, 53 ECAB 794 (2002).

condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.⁶ 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 medical and factual background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is 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.⁹ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

Section 8123(a) of the Federal Employees' Compensation Act¹¹ provides, "If there is 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."¹² 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

⁴ See *Beverly Grimes*, *supra* note 1. See also *Franklin D. Haislah*, 52 ECAB 457 (2001).

⁵ See *Beverly Grimes*, *supra* note 1.

⁶ *Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Id.*

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² 5 U.S.C. § 8123(a).

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.¹³

ANALYSIS

Having accepted appellant's claim for a right knee fracture on March 19, 2002, the Office terminated her compensation benefits effective June 18, 2003 on the grounds that the condition had resolved and related residuals had ceased. The Office, therefore, bears the burden of proof to justify a termination of benefits.¹⁴ The Board finds that the Office has met its burden of proof.

Although Dr. Hirsch indicated in his March 8, 2003 report that appellant had suffered a small chip fracture in her right knee, his current diagnosis was severe osteoarthritis. His reports reflect a history of severe degenerative joint disease of both knees, a diagnosis of tricompartmental osteoarthritis and his recommendation for right total knee replacement. In reports dated July 12 and 29, 2002, Dr. Hirsch indicated that x-rays demonstrated advanced bone-on-bone tricompartmental osteoarthritis and that her symptoms had been progressively increasing. However, the only condition the Office accepted was right knee fracture. Therefore, appellant had the burden of proof to establish a causal relationship between the newly diagnosed condition and the original condition. Although Dr. Hirsch opined without reservation that appellant was totally disabled and in need of a right knee replacement, he did not provide an explanation as to how her accepted employment injury caused or aggravated her newly diagnosed condition. It was incumbent upon appellant's physician to explain how her newly diagnosed condition was physiologically related to the February 14, 2002 employment injury and to provide medical evidence of bridging symptoms between appellant's current condition and the accepted injury which support the conclusion of a causal relationship. Dr. Hirsch failed to do so.

Dr. Rubinfeld, the orthopedic surgeon, to whom the Office referred appellant for a second opinion examination, stated that there were no objective findings related to a fracture of the right patella; that the accepted condition had resolved and did not require additional treatment; that there was no medical evidence that appellant suffered additional injuries; and that her current disability was not due to the work-related injury or its residuals. Explaining that her accepted injury involved minimal trauma and that a chip fracture of the patella is not a major injury, he stated that x-rays taken at the time of injury revealed severe degenerative arthritis of both knees "clearly unrelated to any recent trauma." He opined that, although a total knee replacement was indicated, appellant's condition was not a result of the accepted injury. He concluded by stating that appellant's obesity was hindering improvement of unrelated osteoarthritis of both knees and that recovery was not anticipated.

Finding a conflict between the opinions of Dr. Hirsch and Dr. Rubinfeld, the Office referred appellant to Dr. Keats, a Board-certified orthopedic surgeon, for an impartial medical

¹³ See *Beverly Grimes*, *supra* note 1. See also *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁴ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

examination in order to resolve the conflict. The Board finds that the opinions of appellant's treating physician and the second opinion physician are not in conflict. Neither physician found that appellant had a current diagnosis of knee fracture, the accepted condition. While Dr. Rubinfeld opined that appellant's current osteoarthritis was not causally related to the accepted employment injury, Dr. Hirsch expressed no opinion on that issue. He merely stated factually that appellant, who had a history of severe degenerative joint disease of both knees, arthroscopic surgery of the right knee and ineffective treatment with anti-inflammatory medications and injections, was disabled. The Board finds that Dr. Hirsch's opinion lacks probative value in that it fails to address the existence or lack of a causal relationship between the accepted employment injury and appellant's current condition.

In his well-reasoned report dated March 24, 2003, the independent medical examiner stated that there was no evidence that appellant sustained a fracture of the right patella and that if she had sustained such a fracture, the condition had resolved and was no longer active. Dr. Keats' report was based upon an examination of appellant and review of the entire medical file and statement of accepted facts. He opined that appellant was not capable of performing her date-of-injury job due to her advanced osteoarthritis of both knees as well as the degenerative condition of her lumbosacral spine. He concluded that knee replacement surgery was indicated, but that appellant's disability was not due to the February 14, 2002 work-related injury and that her work-related condition had resolved. In an addendum dated June 6, 2003, Dr. Keats stated that appellant's condition was not related to a fracture of the patella of the right knee but rather was due to the natural progression of her degenerative osteoarthritic condition of her knees and spine. He opined that there had been a temporary aggravation of her preexisting conditions but that the temporary aggravation had resolved.

Since the Board finds that a conflict did not exist between Dr. Hirsch and Dr. Rubinfeld, Dr. Keats' opinion is not entitled to the special weight accorded an impartial medical examiner.¹⁵ However, the Board finds that the weight of the medical opinion evidence, which is contained in the reports of Drs. Rubinfeld and Keats, establishes that appellant does not have any continuing disability or medical residuals as a result of her accepted employment injury of right patella fracture. Dr. Hirsch's medical reports do not offer a rationalized medical opinion regarding a causal relationship between the accepted employment injury and appellant's current condition and, therefore, are of limited probative value. In fact, there is no evidence of record that Dr. Hirsch believes that appellant's accepted right patella fracture caused or exacerbated her current condition. On the other hand, the opinions of Drs. Rubinfeld and Keats were well rationalized, based on a proper factual background and supported by physical findings. Dr. Rubinfeld explained that the chip fracture of appellant's patella was not a major injury, involved minimal trauma and was clearly unrelated to appellant's severe degenerative arthritis of both knees, which existed prior to the accepted injury. He opined that the accepted condition had resolved and did not require additional treatment. Due to the perceived conflict in medical opinion, the case was referred to Dr. Keats for the purpose of resolving the conflict.¹⁶ Although not entitled to

¹⁵ See *Roger Dingess*, 47 ECAB 123, 126 (1995).

¹⁶ *Supra* note 12.

special weight, his opinion, which is based on a proper factual and medical history, is well rationalized and supports the determination that appellant's accepted condition of right knee fracture had ceased by June 18, 2002, the date the Office terminated her benefits. Dr. Keats accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding appellant's condition which comported with his findings. He opined that there had been a temporary aggravation of her preexisting conditions but that the temporary aggravation had resolved. Thus, the weight of the medical evidence establishes that residuals from appellant's accepted condition have ceased.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation, effective June 18, 2003, on the grounds that she had no further disability due to her accepted employment injury. The Board further finds that the Office properly terminated authorization for medical benefits and that appellant has not established that she had continuing employment-related residuals subsequent to June 18, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2004 is affirmed.

Issued: June 7, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member