

meniscus tear of the left knee and authorized arthroscopic surgery which was performed on March 29, 2004.¹ Appellant received appropriate compensation.

The Office received a September 14, 2004 medical report of Dr. Jose A. Alicea, appellant's treating Board-certified orthopedic surgeon, in which he indicated that his accepted employment injury allowed him to return to work as of September 16, 2004 with no restrictions. An unsigned treatment note of the same date contained his typed name and indicated that appellant had finished a work conditioning program and that he was being released to return to work.

In an October 8, 2004 letter, the Office issued a notice of proposed termination of appellant's compensation benefits based on Dr. Alicea's September 14, 2004 medical report. The Office provided 30 days in which he could respond to this notice and noted that his medical benefits would remain unaffected.

Appellant submitted duplicate copies of a March 29, 2003 operative report which contained Dr. Alicea's typed name and described his left knee surgery, treatment notes from his physical therapists covering intermittent dates during the period April 15 through August 27, 2004 and unsigned treatment notes covering intermittent dates during the period April 6 through July 27, 2004 which contained Dr. Alicea's typed name and addressed his employment-related injury and left leg and back conditions.

Appellant also submitted Dr. Alicea's October 26, 2004 report in which he released him to return to work on that date. An unsigned treatment note of the same date contained his typed name and indicated appellant's complaint of knee pain, a diagnosis of a medial meniscus tear of the knee, lumbago and sprain of the knee and leg.

In a letter dated October 28, 2004, appellant disagreed with the Office's proposed action. He stated that the Office had ignored his request for a second opinion medical examination to evaluate his left leg and back conditions that he alleged were caused by his August 21, 2003 employment injury. Appellant contended that he was forced to resign from his position at the employing establishment after he sustained the work-related injury and that he was entitled to exercise job restoration rights, vocational rehabilitation services and assisted reemployment pursuant to the Federal Employees' Compensation Act.

By decision dated December 21, 2004, the Office finalized its proposed termination of appellant's compensation benefits effective December 26, 2004. The Office found that the evidence submitted by him was insufficient to establish that he had any disability causally related to his August 21, 2003 employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without

¹ Appellant resigned from the employing establishment as of March 30, 2004.

establishing that the disability had ceased or that it was 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 If the Office, however, meets its burden of proof and properly terminates compensation, the burden for reinstating compensation benefits properly shifts to appellant.⁴

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. In a September 14, 2004 medical report, Dr. Alicea, appellant's own treating physician, released him to return to work with no restrictions as of September 16, 2004. Thus, the Board finds that the Office properly relied on his report which establishes that appellant's employment-related left knee injury had resolved as of December 26, 2004, the date the Office's termination of his compensation benefits became effective.

Subsequent to Dr. Alicea's opinion and the Office's October 8, 2004 notice of proposed termination, appellant submitted duplicate copies of an unsigned March 29, 2003 operative report regarding his left knee surgery which contained Dr. Alicea's typed name, treatment notes from his physical therapists which covered intermittent dates from April 15 through August 27, 2004 and unsigned treatment notes that contained Dr. Alicea's typed name which covered intermittent dates from April 6 through July 27, 2004 and addressed his employment-related left knee injury, back and left leg conditions which were previously of record. The operative report dated March 29, 2003 and unsigned treatment notes which contained his typed name are insufficient to establish that appellant has any continuing disability causally related to his August 21, 2003 employment injury because it is not clear that they are from a physician.⁵ Therefore, the Board finds that as the operative report and treatment notes lack proper identification, they do not constitute probative medical evidence sufficient to establish his continuing employment-related disability. Further, the treatment notes from appellant's physical therapists do not constitute probative medical evidence and cannot establish that he continues to be disabled due to his August 21, 2003 employment injury because a physical therapist is not considered to be a 'physician' under the Act.⁶

In an October 26, 2004 report, Dr. Alicea again indicated that appellant was released to return to work on that date. The Board finds that this evidence establishes that he was discharged to return to duty two months prior to the effective date of the termination, December 26, 2004 and the report does not address continuing disability. As such, it is

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁵ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988). (Reports not signed by a physician lack probative value).

⁶ 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, *supra* note 5.

insufficient to establish appellant's claim for continuing employment-related disability resulting from the August 21, 2003 employment injury.

An unsigned treatment note dated October 26, 2004 contained Dr. Alicea's typed name and provided a diagnosis of a medial meniscus tear of the knee, lumbago and a sprain of the knee and leg. Since it is not clear that the treatment note is from a physician as it lacks proper identification⁷ the Board finds that the October 26, 2004 treatment note does not constitute probative medical evidence sufficient to establish that appellant has any continuing disability causally related to his accepted employment injury.

In light of the foregoing, the Board finds that appellant has not established any continuing disability for work after December 26, 2004 causally related to his August 21, 2003 accepted medial meniscus tear of the left knee.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective December 26, 2004 on the grounds that he no longer had any disability causally related to his August 21, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁷ *Vickey C. Randall, supra* note 5.