

Office. The surgery was performed by Dr. Wagdi Faris, an attending Board-certified orthopedic surgeon. Appellant worked in light-duty positions for the employing establishment and received appropriate Office compensation.¹

Dr. Faris continued to treat appellant over an extended period for her back and knee conditions. Most of appellant's treatment focused on her right lower extremity problems and included periodic physical therapy visits. In a report dated March 19, 2002, Dr. Faris indicated that appellant continued to complain of back pain radiating into her right thigh and leg and anterior right knee pain.

The Office referred appellant to Dr. Vydialinga G. Raghavan, a Board-certified orthopedic surgeon, for an examination and opinion regarding whether she continued to have residuals of the April 10, 2001 employment injury.

In a report dated June 19, 2003, Dr. Raghavan stated that his examination of her back and right lower extremity revealed mild crepitus on flexion and extension of the right knee but otherwise showed limited positive findings. He indicated that any work restrictions appellant required would be based on her nonwork-related degenerative disease on the low back. Dr. Raghavan concluded that appellant did not have any residuals of her April 10, 2001 employment injury, a lumbosacral strain and a torn medial meniscus of the right knee. In a supplemental report dated September 12, 2003, Dr. Raghavan reiterated his opinion that appellant's employment-related lumbosacral strain and torn medial meniscus of the right knee had resolved and no longer necessitated work restrictions.

In a report dated December 2, 2003, Dr. Faris stated that he disagreed with the opinion of Dr. Raghavan that appellant no longer had residuals of her April 10, 2001 employment injury. He noted that appellant continued to have right knee pain and low back pain radiating into the right leg and indicated that diagnostic testing confirmed the existence of employment-related residuals.

In January 2004 the Office determined that there was a conflict in the medical opinion between Dr. Faris and Dr. Raghavan regarding whether appellant continued to have residuals of the April 10, 2001 employment injury. In order to resolve the conflict, the Office referred appellant, pursuant to section 8123(a) of the Act, to Dr. Walter I. Choung, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

In a report dated February 17, 2004, Dr. Choung detailed appellant's April 10, 2001 employment injury and described the medical treatment she received. He noted that examination of the back and lower extremities showed minimal tenderness of the lumbar spine, good lumbar motion without apparent discomfort, ability to toe and heel walk without difficulty, bilateral negative straight leg raising, and no sensory loss or weakness in either leg. Dr. Choung indicated that the right knee showed no effusion, focal tenderness on palpation, or loss of range of motion, but that it did show some crepitus with range of motion. He concluded that appellant's lumbar strain had resolved by June 2002 and that her continued lumbar pain was due to nonwork-related

¹ On January 24, 2003 appellant voluntarily separated from the employing establishment.

degenerative disease. Regarding appellant's right knee condition and her April 10, 2001 injury, Dr. Choung stated:

“Although the meniscal tear was addressed surgically, she may be experiencing some pain from degenerative changes arising from the original injury and the subsequent meniscectomy.... Right knee meniscal tear and the subsequent meniscectomy has resulted in permanent aggravation of the preexisting condition.... Right knee condition is permanent aggravation with expected intermittent pain in the right knee.”

In a supplemental report dated April 8, 2004, Dr. Choung stated that the duties of appellant's position such as climbing, kneeling and twisting might aggravate her right knee condition in the future, but that as of the time of her February 17, 2004 examination appellant would have been able to perform these activities.

By letter dated June 2, 2004, the Office advised appellant of its proposed termination of her compensation based on the opinion of the impartial medical specialist, Dr. Choung.

By decision dated July 14, 2004, the Office terminated appellant's compensation effective July 14, 2004 on the grounds that she had no residuals of her April 10, 2001 employment injury after that date.

Appellant requested a hearing before an Office hearing representative which was held on April 27, 2005. She testified that she continued to have residuals of her employment-related right knee condition. Appellant submitted a December 21, 2003 report of Dr. Faris which had previously been considered by the Office and a November 10, 2004 report in which Dr. Faris indicated that she had a 10 percent permanent impairment of the body.

By decision dated and finalized July 18, 2005, the Office hearing representative affirmed the Office's July 14, 2004 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁴ *Id.*

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

Section 8123(a) of the Act provides in pertinent part: “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.”⁶ In situations where there exist 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 upon a proper factual background, must be given special weight.⁷

ANALYSIS

The Office properly determined that there was a conflict in the medical opinion between Dr. Faris, an attending Board-certified orthopedic surgeon, and Dr. Raghavan, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant continued to have residuals of the April 10, 2001 employment injury.⁸ In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Choung, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁹

The Board finds that the opinion of Dr. Choung is not sufficiently well rationalized to constitute the weight of medical evidence with respect to the termination of appellant’s compensation because it does not clearly show that after July 14, 2004 appellant had no residuals of her April 10, 2001 employment injury, a lumbosacral strain and a torn medial meniscus of the right knee.

In his February 17 and April 8, 2004 reports, Dr. Choung noted limited findings of the lumbar spine on examination. He concluded that appellant’s lumbar strain had resolved by June 2002 and that her continued lumbar pain was due to nonwork-related degenerative disease. However, regarding appellant’s employment-related right knee condition, Dr. Choung noted that she continued to have objective findings such as crepitus with range of motion. Moreover, he made comments which suggested he felt that appellant still had right knee residuals due to her April 10, 2001 injury. For example, Dr. Choung stated that “although the meniscal tear was addressed surgically, she may be experiencing some pain from degenerative changes arising from the original injury and the subsequent meniscectomy” and the “right knee meniscal tear and

⁶ 5 U.S.C. § 8123(a).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁸ In reports dated June 19 and September 12, 2003, Dr. Raghavan concluded that appellant did not have any residuals of her April 10, 2001 employment injury, a lumbosacral strain and a torn medial meniscus of the right knee. He indicated that any work restrictions appellant required would be based on the nonwork-related degenerative disease in the low back. In contrast, Dr. Faris indicated in a report dated December 2, 2003 that he disagreed with the opinion of Dr. Raghavan that appellant no longer had residuals of her April 10, 2001 employment injury. He noted that appellant continued to have right knee pain and low back pain radiating into the right leg and indicated that diagnostic testing confirmed the existence of employment-related residuals.

⁹ See *supra* note 6 and accompanying text.

the subsequent meniscectomy has resulted in permanent aggravation of the preexisting condition.”¹⁰

For these reasons, the opinion of Dr. Choung does not constitute the weight of medical evidence with respect to the termination of appellant’s compensation and the Office improperly relied on it in terminating her compensation effective July 14, 2004. Consequently, the Office did not meet its burden of proof to terminate appellant’s compensation effective July 14, 2004.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation effective July 14, 2004 on the grounds that she had no residuals of her April 10, 2001 employment injury after that date.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers’ Compensation Programs’ July 18, 2005 decision is reversed.

Issued: November 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

David S. Gerson, Judge
Employees’ Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees’ Compensation Appeals Board

¹⁰ Dr. Choung indicated that appellant could perform her duties, but this opinion would not show that she no longer had residuals of her employment injury. Moreover, Dr. Choung did not adequately explain his opinion on appellant’s ability to work.