

In a September 17, 2004 report, Dr. Terry L. Thompson, a Board-certified orthopedic surgeon, listed a history of left knee pain of several months' duration with no history of injury. Examination revealed an effusion, flexion to 90 degrees and no laxity. In an October 25, 2004 report, Dr. Thompson stated that a magnetic resonance imaging (MRI) scan of appellant's left knee revealed early degenerative changes. He diagnosed early arthritis and stated that arthrocentesis produced 65 cubic centimeters of synovial fluid. In a December 27, 2004 report, Dr. Thompson stated that appellant was totally incapacitated by a left knee injury.

In response to a January 10, 2005 Office letter advising her of the evidence needed to establish her claim, appellant stated in a February 28, 2005 letter that she had filed the incorrect form, as her injury was caused by a traumatic incident, namely a fall into a bumper. She submitted additional medical evidence. A May 21, 2004 report from Dr. E.S. Williams, a Board-certified family practitioner, noted a history of knee pain and difficulty walking for one month with no direct injury and diagnosed left knee strain. X-rays of her left knee on July 1 and October 7, 2004 and an MRI scan on October 9, 2004 showed a joint effusion and mild degenerative joint disease. In a February 11, 2005 report, Dr. Easton L. Manderson, a Board-certified orthopedic surgeon, noted a history that appellant bumped her knee on the bumper of her mail truck on August 9, 2004 and that Dr. Thompson had given her several injections and aspirated fluid from her knee, but she was not getting better. He diagnosed contusion and aggravation of arthritis of the knees with the left being more sensitive and post-traumatic chondromalacia of the medial femoral condyle and the patella. In reports dated February 28, 2005, Dr. Manderson diagnosed aggravation of preexisting mild degenerative arthritis of both knees and traumatic chondromalacia and indicated, by checking a box on an Office form, that these conditions were causally related to an August 9, 2004 injury where she bumped both knees on the rear bumper of a truck. He stated that her knee problems had become chronic, resulting in lost work time and dependence on analgesic medications for pain relief. Dr. Manderson noted that physical therapy was not helping and that she was a candidate for arthroscopic surgery. A March 9, 2005 MRI scan of the left knee showed moderate chondromalacia and pathology in the medial compartment that probably represented small tears or fraying of the medial meniscus.

On March 21, 2005 appellant filed a claim for compensation for a traumatic injury to her knees sustained on August 9, 2004, when she bumped them on a bumper. In a March 30, 2005 report, Dr. Manderson diagnosed contusion and post-trauma chondromalacia of both knees. In an April 13, 2005 report, Dr. Manderson stated that the form clearly stated the day of injury and the mechanism of injury that caused the injury and disability requiring treatment.

On June 1, 2005 the Office advised appellant that it had accepted "contusion of knee" related to an August 9, 2004 injury. On June 2, 2005 the Office advised appellant that it had accepted "contusion of knee" and "chondromalacia of knee" related to an August 9, 2004 injury.

On April 26, 2005 Dr. Manderson performed arthroscopic surgery on appellant's left knee, consisting of a patellar realignment and chondroplasty. His postoperative diagnosis was a torn medial meniscus and chondromalacia. In a June 23, 2005 report, Dr. Manderson diagnosed traumatic chondromalacia and listed mild, asymptomatic arthritis as a concurrent or preexisting condition.

In a July 14, 2005 decision, the Office found that appellant was not entitled to continuation of pay for her August 9, 2004 injury for the reason that her claim was not filed within 30 days of the injury. By another July 14, 2005 decision, the Office amended its acceptance of appellant's claim to accept only left knee contusion. The Office stated that its June 2, 2005 acceptance letter was issued in error.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim.¹ The Office does not meet its burden of proof to rescind by merely showing its acceptance may have been erroneous or by second guessing the original adjudicator.² While the Office is not required to obtain new evidence to justify rescission,³ it is required to provide a clear explanation of its rationale for finding that its prior acceptance was erroneous.⁴

ANALYSIS

On June 2, 2005 the Office advised appellant that it had accepted that her chondromalacia of the knee was related to her August 9, 2004 employment injury. In a July 14, 2005 decision, the Office amended its acceptance to accept only a left knee contusion. The only explanation the Office provided was that its June 2, 2005 acceptance letter was issued in error. This does not meet the requirement for a clear explanation of the Office's rationale for finding the prior acceptance was erroneous. At the time of the Office's rescission of its acceptance of chondromalacia,⁵ the only evidence addressing the cause of this condition was Dr. Manderson's opinion that it was related to the trauma to her knee in the August 9, 2004 injury. The Office has not met its burden of proving that appellant's chondromalacia was not causally related to her employment.⁶

CONCLUSION

The Office improperly rescinded its acceptance of chondromalacia as an employment-related condition.

¹ *Alfonso Martinisi*, 33 ECAB 841 (1982); *Jack W. West*, 30 ECAB 909 (1979).

² *George E. Reilly*, 44 ECAB 458 (1993).

³ 20 C.F.R. § 10.610.

⁴ *Belinda R. Darville*, 54 ECAB 656 (2003); *John W. Graves*, 52 ECAB 160 (2000).

⁵ After this decision, the Office obtained additional medical evidence, but this evidence cannot be considered on appeal by the Board, as its review is limited by 20 C.F.R. § 501.2(c) to the evidence before the Office at the time it issued its final decision.

⁶ See *Rosa Davis Sanders*, 30 ECAB 939 (1979).

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2005 decision of the Office of Workers' Compensation Programs, insofar as it rescinded acceptance of chondromalacia as an employment-related condition, is reversed.

Issued: April 7, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board