

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

---

**T.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mercer Island, WA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 06-1046  
Issued: August 1, 2006**

*Appearances:*  
*John E. Goodwin, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge

**JURISDICTION**

On March 31, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 4, 2005 merit decision concerning the termination of his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective June 29, 2004 on the grounds that he no longer had residuals of his January 8, 2002 employment injury after that date.

**FACTUAL HISTORY**

On January 8, 2002 appellant, then a 51-year-old window clerk, filed a traumatic injury claim alleging that he sustained injury when he banged his right knee on a counter drawer on that date.

The Office accepted that appellant sustained a right knee sprain and medial meniscus tear of the right knee and authorized the performance of a partial medial meniscectomy and chondroplasty of the medial femoral condyle and patellafemoral compartment of the right knee

on April 30, 2002. He stopped work on January 10, 2002 and returned to limited-duty work six hours per day on February 27, 2002.

Appellant stopped work in connection with his surgery and returned to limited-duty work four hours per day on June 6, 2002. He then stopped work again on June 29, 2002 and retired on disability retirement effective August 19, 2002. Appellant received appropriate compensation for his various periods of disability.

In November 2003, the Office referred appellant for further evaluation of his right knee condition to Dr. Patrick N. Bay, an osteopath.

In a report dated December 16, 2003, Dr. Bay discussed appellant's January 8, 2002 right knee injury and his April 30, 2002 surgery. He noted that appellant had numerous nonwork-related conditions affecting his upper and lower extremities, right shoulder and jaw including a preexisting right knee condition that required four surgeries.<sup>1</sup> Dr. Bay indicated that on examination he was unable to fully extend his right knee and that his right knee exhibited mild effusion and positive medial and lateral joint line tenderness and pain to patellafemoral compression. With respect to the right knee, he diagnosed degenerative arthritis, preexisting and unrelated to the January 8, 2002 employment injury; extensive chondromalacia, status post four surgeries unrelated to the January 8, 2002 employment injury; and medial meniscus tear, status post partial medial meniscectomy "related on a more probable than not basis to the work injury of January 8, 2002." Dr. Bay stated, "The diagnosed condition related to the work injury has resolved; no further treatment is recommended" and noted that there was no aggravation of a preexisting condition. He stated:

"Based on my physical examination, restrictions secondary to the work injury of a medial meniscus tear, right knee, status post partial medial meniscectomy would be minimal. I believe [appellant] would have no restrictions relative to that one specific injury. Relative to his other sundry conditions, including degenerative changes to the right and left knees, which were preexisting, I feel he would best fit a light or sedentary category of work."

The Office requested that Dr. Phillip A. Medina, an attending Board-certified orthopedic surgeon, review Dr. Bay's report and indicate whether he agreed with it. On April 15, 2004 he provided a brief notation indicating that he agreed with Dr. Bay.

By notice dated May 12, 2004, the Office advised appellant that it proposed to terminate his compensation. The Office indicated that the termination was based on the opinion of Dr. Bay and informed him that he had 30 days to submit additional evidence or argument.

Appellant submitted a June 10, 2004 report in which Dr. Medina indicated that his arthroscopic sites were well healed, but that, he had slight effusion in the right knee. He noted that appellant's right knee problem was medically fixed and stable, that he could return to his regular work and that he had a two percent impairment due the partial medial meniscectomy of his right knee.

---

<sup>1</sup> Dr. Bay indicated that x-ray testing from January 9, 2002 showed degenerative spurring of the right knee.

By decision dated June 29, 2004, the Office finalized its proposed termination of appellant's compensation. The Office based its termination, effective June 29, 2004, on the opinion of Dr. Bay.

Appellant requested a hearing before an Office hearing representative which was held on February 23, 2005. His attorney argued that the opinion of Dr. Bay was not sufficiently well rationalized to support the termination of his compensation. Counsel asserted that Dr. Bay should be subpoenaed to explain what he meant when he stated that appellant needed "minimal restrictions" due to his meniscus tear.

Appellant submitted a March 21, 2005 report in which Dr. Medina indicated that he required work restrictions for lifting, kneeling and squatting.

By decision dated and finalized May 4, 2005, the Office hearing representative affirmed the Office's June 29, 2004 decision.

### **LEGAL PRECEDENT**

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

### **ANALYSIS**

The Office accepted that on January 8, 2002 appellant sustained a right knee sprain and medial meniscus tear of the right knee and authorized the performance of a partial medial meniscectomy and chondroplasty of the medial femoral condyle and patellafemoral compartment of the right knee on April 30, 2002. The Office terminated his compensation effective June 29, 2004 based on the December 16, 2003 report of Dr. Bay, an osteopath, who served as an Office referral physician.

The Board finds that the December 16, 2003 report of Dr. Bay is not sufficiently well rationalized to constitute the weight of the medical evidence with regard to the matter of whether appellant had residuals of his January 8, 2002 employment injury after June 29, 2004.<sup>6</sup>

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.*

In his December 16, 2003 report, Dr. Bay indicated that, on examination, appellant was unable to fully extend his right knee and that his right knee exhibited mild effusion and positive medial and lateral joint line tenderness and pain to patellafemoral compression. With respect to the right knee, he diagnosed degenerative arthritis, preexisting and unrelated to the January 8, 2002 employment injury; extensive chondromalacia, status post four surgeries unrelated to the January 8, 2002 employment injury; and medial meniscus tear, status post partial medial meniscectomy “related on a more probable than not basis to the work injury of January 8, 2002.”

Although Dr. Bay stated that the “diagnosed condition related to the work injury has resolved” and that “no further treatment is recommended,” he did not adequately explain the reasoning for this apparent conclusion.<sup>7</sup> For example, he did not make reference to any recent diagnostic testing results to support his conclusion or explain when the employment-related condition had resolved, nor did Dr. Bay clearly explain why the objective right knee findings, noted above, would not be related to the January 8, 2002 injury.<sup>8</sup> Moreover, his opinion is rendered equivocal in nature and thus of lessened probative value because Dr. Bay also suggested elsewhere in his report that appellant had continuing residuals of his employment-related medial meniscus tear.<sup>9</sup> He noted, “Based on my physical examination, restrictions secondary to the work injury of a medial meniscus tear, right knee, status post partial medial meniscectomy would be minimal. I believe this patient would have no restrictions relative to that one specific injury.”<sup>10</sup> Therefore, Dr. Bay suggested that at least some part of appellant’s need for work restrictions was attributable to his employment-related medial meniscus tear. Without a clear explanation of this apparent contradiction, it cannot be said that he provided a well-rationalized opinion that appellant no longer had residuals of his January 8, 2002 employment injury.<sup>11</sup>

For these reasons, the Office did not present sufficient medical evidence to support its termination of appellant’s compensation effective June 29, 2004.

### **CONCLUSION**

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation effective June 29, 2004 on the grounds that he no longer had residuals of his January 8, 2002 employment injury after that date.

---

<sup>7</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value if it contains a medical conclusion which is unsupported by medical rationale).

<sup>8</sup> Dr. Bay noted appellant’s preexisting right knee condition but did not describe it in any detail.

<sup>9</sup> See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956)

<sup>10</sup> Dr. Bay also stated that appellant’s preexisting conditions, including degenerative changes to the right and left knees, “would best fit a light or sedentary category of work.”

<sup>11</sup> On April 15, 2004 Dr. Medina, an attending Board-certified orthopedic surgeon, provided a brief notation indicating that he agreed with Dr. Bay, but he provided not further details about this apparent agreement. In a June 10, 2004 report, he indicated that appellant’s arthroscopic sites were well healed and that his right knee problem was medically fixed and stable, but he also noted that he had slight effusion in the right knee and that he had a two percent impairment due the partial medial meniscectomy of his right knee.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' May 4, 2005 decision is reversed.

Issued: August 1, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board