

FACTUAL HISTORY

On February 15, 2003 appellant, a 64-year-old carrier, filed an occupational disease claim alleging that walking aggravated his bilateral knee osteoarthritis. Appellant retired on December 30, 2003.

In a letter dated May 28, 2003, the Office informed appellant that the evidence was insufficient to support his claim and advised him as to the factual and medical evidence to submit.

By decision dated June 25, 2003, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury while in the performance of duty.

In a letter dated June 24, 2004, appellant requested reconsideration of the denial of his claim. He submitted a December 30, 2003 letter from the employing establishing regarding his inability to perform his letter carrier duties, an April 27, 2004 report by Dr. E. Michael Okin, a treating Board-certified orthopedic surgeon, an October 23, 2003 report by Dr. Gerald L. Shomer, a treating Board-certified osteopathic family practitioner and a December 16, 2003 fitness-for-duty report by Dr. Lawrence G. Axelrod, an employing establishment Board-certified family practitioner.

In a report dated August 4, 2004, Dr. Robert Franklin Draper, Jr., a second opinion Board-certified orthopedic surgeon, diagnosed bilateral knee osteoarthritis. He concluded that this condition was unrelated to appellant's employment duties and was solely due to the aging process.

By decision dated August 11, 2004, the Office denied modification of the June 25, 2003 decision. The Office found that the weight of the evidence rested with the opinion of Dr. Draper, the Office referral physician.

In a letter dated December 31, 2004, appellant's counsel requested reconsideration and submitted a September 22, 2004 report and a November 3, 2004 chart report by Dr. Dennis P. McHugh, appellant's treating Board-certified osteopath, who diagnosed bilateral knee osteoarthritis/degenerative disease. He noted that this condition "occurs through years of use and abuse" and opined that job duties contributed to this condition. On November 3, 2004 Dr. McHugh provided physical findings regarding appellant's range of motion in his knee, which he found unchanged and noted that appellant was seen for his bilateral knee problem.

In a report dated January 29, 2005, Dr. McHugh diagnosed bilateral knee osteoarthritis. He concluded "[t]his arthritis is directly related to his work as a letter carrier where he walks continuously [8] hours a day, [5] days a week and for over 20 years."

On June 1, 2005 the Office referred appellant to Dr. Walter W. Dearolf, III, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. McHugh, the attending physician, who concluded that appellant's osteoarthritis had been aggravated by his employment, and Dr. Draper, an Office referral physician, who concluded that appellant's knee condition was not employment related.

In a report dated June 22, 2005, Dr. Dearolf, based upon a review of the record, statement of accepted facts and physical examination, diagnosed bilateral knee osteoarthritis. A physical examination revealed “mild varus about both knees,” a negative Lachman’s test, “no effusion to either knee,” bilaterally medial joint tenderness and “mild pain with patellofemoral grinding bilaterally.” A review of an x-ray interpretation showed “some medial joint narrowing and some patellofemoral disease consistent with degenerative arthritis of both knees.” Dr. Dearolf concluded that appellant’s condition was unrelated to his employment, but that it “may be temporarily aggravated by prolonged standing or walking.” He noted that “[t]his temporary aggravation of his symptoms ceases once the activity level is reduced.”

By decision dated July 19, 2005, the Office accepted that appellant sustained a temporary aggravation of degenerative joint disease of both knees, which resolved December 30, 2003, the date he retired.

In a letter dated August 18, 2005, appellant’s counsel requested an oral hearing on the July 19, 2005 decision, with regard to the finding that appellant’s condition had resolved as of December 30, 2003. By decision dated September 1, 2005, the Office denied appellant’s request for a hearing as he had previously requested reconsideration.²

LEGAL PRECEDENT

Under the Act,³ when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁴ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁵

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.⁶ After the Office determines that, an employee has disability causally related to his employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate

² The Board notes that appellant did not appeal this decision to the Board. Thus, the Board has not addressed this issue. See 20 C.F.R. § 501.3(a).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Chris Wells*, 52 ECAB 445 (2001); *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁵ *Raymond W. Behrens*, *supra* note 4.

⁶ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁷ *Raymond W. Behrens*, *supra* note 4.

authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁸

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.⁹

ANALYSIS

The Office accepted that appellant sustained a temporary aggravation of osteoarthritis of the bilateral knees which ceased as of December 30, 2003, based on the opinion of Dr. Dearolf, an impartial medical examiner. The Office properly selected Dr. Dearolf to resolve the conflict in the medical opinion evidence between Dr. McHugh, a treating physician, who concluded that appellant's osteoarthritis had been aggravated by his employment and Dr. Draper, an Office referral physician, who concluded that appellant's knee condition was not employment related. As the Office accepted appellant's claim for a temporary aggravation of osteoarthritis, it has the burden to show that his condition has resolved.¹⁰

The Board finds that the Office properly relied on the impartial medical examiner's June 22, 2005 report in determining that appellant sustained a temporary aggravation of his bilateral knee osteoarthritis, but that the accepted employment injury had resolved as of December 30, 2003, the date appellant retired. Dr. Dearolf's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Dearolf also reported accurate medical and employment histories. The Office properly accorded determinative weight to the impartial medical examiner's findings in finding that appellant had a temporary aggravation, which ceased on December 30, 2003.¹¹ As the weight of the medical evidence establishes that appellant's accepted lumbar strain has resolved, the Office properly found that appellant's temporary aggravation of degenerative joint disease of both knees resolved on December 30, 2003, the date he retired.

CONCLUSION

The Board finds that appellant has not established that he had any further employment-related condition after December 30, 2003.

⁸ *John F. Glynn*, 53 ECAB 562 (2002); *Pamela Guesford*, 53 ECAB 726 (2002).

⁹ *Viola Stanko (Charles Stanko)*, 56 ECAB ____ (Docket No. 05-53, issued April 12, 2005); *Gloria J. Godfrey*, *supra* note 6.

¹⁰ *John F. Glynn*, *supra* note 8.

¹¹ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2005 is affirmed.

Issued: January 10, 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