

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

VERONICA GIBSON-BILLUPS, Appellant)	
)	
and)	Docket No. 06-111
)	Issued: May 22, 2006
)	
U.S. POSTAL SERVICE, PHILADELPHIA)	
PROCESSING & DISTRIBUTION CENTER,)	
Philadelphia, PA, Employer)	

Appearances:
Thomas R. Uliase, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 19, 2005 appellant, through her attorney, filed a timely appeal of a June 6, 2005 merit decision of the Office of Workers' Compensation Programs, affirming the termination of her medical benefits and an August 22, 2005 merit decision terminating her wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this termination case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's wage-loss compensation effective November 27, 2002 on the grounds that she no longer had any residuals or disability causally related to her August 25, 1996 and March 26, 1997 employment injuries; (2) whether appellant established that she had any continuing employment-related residuals or disability after November 27, 2002; and (3) whether the Office properly terminated appellant's medical benefits effective June 28, 2004 on the grounds that she no longer had any residuals or disability causally related to her August 25, 1996 and March 26, 1997 employment injuries.

FACTUAL HISTORY

On August 25, 1996 appellant, then a 36-year-old mail processor, filed a traumatic injury claim (Form CA-1) assigned number 03-0220639 alleging that on that date she pulled a muscle in her left knee while pulling or picking up a tray of mail from a cart. By letter dated October 17, 1996, the Office accepted her claim for left knee sprain. In a decision dated March 19, 1997, the Office found that appellant failed to establish that she sustained a recurrence of disability on November 18, 1996 causally related to the August 25, 1996 employment injury. By decision dated June 10, 1997, the Office found that appellant failed to establish that she sustained a recurrence of disability on February 18, 1997 causally related to the accepted employment injury.

On March 26, 1997 appellant filed a Form CA-1 assigned number 03-0225565 alleging that on that date she sprained her left knee while picking up mail that had fallen onto the floor. The Office accepted her claim for left knee strain and authorized arthroscopic surgery which was performed on June 10, 1997. The Office subsequently expanded the acceptance of appellant's claim to include reflex sympathetic dystrophy (RSD). Appellant stopped work on March 31, 1997 and returned to part-time limited-duty work on February 1, 1999.

On June 15, 1999 the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, for a second opinion medical examination.

The Office received a July 8, 1999 treatment note from Dr. Arthur S. Huppert, a Board-certified internist, which found that appellant experienced a painful chronic knee condition which intensified in a standing position for more than 5 to 10 minutes.

In a July 8, 1999 medical report, Dr. Valentino noted appellant's left knee symptoms. He provided a history of her August 25, 1996 and March 26, 1997 employment injuries and medical treatment, and her social and employment background. Dr. Valentino reviewed the case record and reported normal findings on physical and neurological examination. He diagnosed resolved left knee strain and resolved possible RSD. Dr. Valentino stated that based on his normal findings on examination there was no evidence of any ongoing RSD. He further stated that appellant's diagnostic tests did not support a finding of permanent disability. Dr. Valentino opined that she had fully recovered from her work-related injuries and was capable of performing gainful employment without restrictions. He further opined that appellant had reached maximum medical improvement and did not require supervised medical care. Dr. Valentino concluded that the medical records indicated that appellant had a preexisting disability related to fibromyalgia which was not causally related to her employment. In a work capacity evaluation (Form OWCP-5c) dated July 8, 1999, Dr. Valentino stated that with regard to the March 26, 1997 employment injury appellant could work eight hours a day with no restrictions.

By letter dated July 21, 1999, the Office requested that Dr. Huppert review Dr. Valentino's July 8, 1999 report and state whether he agreed with his opinion. He did not respond.

The Office found a conflict in the medical opinion evidence between Dr. Huppert and Dr. Valentino with regard to whether appellant had any continuing employment-related residuals or disability. By letter dated August 11, 1999, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions, to Dr. Menachem M. Meller, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an October 26, 1999 medical report, Dr. Meller provided a history of injury that on March 26, 1997 appellant fell at work when her left knee gave out. He also provided a history of her medical and employment background. Dr. Meller reported essentially normal findings on physical examination and diagnosed an arthritic left knee, arthrosis of the right knee and painful depressed personality. He found that appellant did not sustain a work-related injury from an orthopedic standpoint. Dr. Meller provided a treatment plan for her orthopedic and emotional conditions and concluded that she could return to medium-type work immediately with restrictions specified by him. In a Form OWCP-5c dated July 2, 2000, Dr. Meller stated that appellant could work eight hours a day with limited walking, standing, pushing, pulling, lifting, squatting, kneeling and climbing. He recommended that she take five-minute breaks during the workday.

In a supplemental report dated June 15, 2000, Dr. Meller stated that based on his review of additional medical evidence there were no objective findings of RSD or any other chronic pain syndrome. He diagnosed osteoarthritis of the left knee and opined that this condition was aggravated by the March 26, 1997 employment injury. However, appellant's ongoing complaints were related to her preexisting osteoarthritis and not to the accepted employment injury. He opined that she had no residuals of the employment injury and that the prognosis for her arthritis was good. Dr. Meller attributed her physical limitations to the preexisting condition and not to the work-related injury.

By letter dated April 20, 2001, the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Meller's medical reports. The Office found that the evidence submitted by appellant which included a recommendation to undergo surgery on her left knee from Dr. Victor R. Frankel, a Board-certified orthopedic surgeon, and Dr. Earl R. Brown, a Board-certified family practitioner, failed to address a causal relationship between the proposed surgery and the March 26, 1997 employment injury. The Office provided appellant 30 days to respond. She did not respond within the allotted time period.

On May 21, 2001 the Office issued a decision terminating appellant's wage-loss compensation and medical benefits. It found the evidence of record insufficient to establish that she had any continuing residuals or disability causally related to the March 26, 1997 employment injury. The Office accorded special weight to Dr. Meller's impartial medical opinion. By letter dated June 2, 2001, appellant requested an oral hearing before an Office hearing representative.

In a decision dated February 25, 2002, an Office hearing representative set aside the May 21, 2001 termination decision and remanded the case to the Office for further development. It found that Dr. Meller's reports were of diminished probative value because he failed to address whether appellant had any continuing residuals or disability causally related to the August 25, 1996 employment injury. On remand, the hearing representative instructed the Office to double

the case files for the August 25, 1996 and March 26, 1997 employment injuries into one case file. She further instructed the Office to obtain a supplemental report from Dr. Meller summarizing the history of these employment-related injuries and clarifying whether appellant had any continuing residuals of either injury based on his findings on examination in 1999 and the medical evidence of record. Appellant's compensation was restored retroactively to the termination date.

By letter dated June 11, 2002, the Office again referred appellant to Dr. Meller for an impartial medical examination. In a July 21, 2002 medical report, he noted a review of the case record and provided a history of the August 26, 1996 and March 26, 1997 employment injuries and appellant's work status. He also noted her left knee symptoms and reported normal findings on physical examination. Dr. Meller stated that appellant's complaints of pain were poorly described in the absence of any objective findings. He found that she had a history of fibromyalgia and osteoarthritis in the left knee. Dr. Meller determined that appellant had a zero percent impairment of the left lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). He stated that appellant was experiencing a fairly extreme, dramatic and pathological response to a normal aging process related to medial compartment arthritis. He further stated that there was no evidence of any nerve damage. In addition, Dr. Meller stated that there was no evidence of internal derangement, complex regional pain syndrome or any pathologic condition. Dr. Meller concluded that the work-related injury had fully and completely resolved without any residuals.

By letter dated September 19, 2002, the Office issued a notice of proposed termination of appellant's wage-loss compensation based on Dr. Meller's July 21, 2002 medical report. The Office provided appellant 30 days to respond.

In an October 3, 2002 letter, appellant's attorney disagreed with the proposed action. He argued that Dr. Meller's report did not provide an accurate medical history as it did not mention that appellant sustained a new employment injury on September 17, 2001 while getting off her stool at work. Counsel further argued that Dr. Meller failed to acknowledge her left knee surgeries and to specifically identify which work injury had resolved. Lastly, counsel contended that Dr. Meller neither addressed appellant's post surgery status nor arthritis in her right knee.

Counsel submitted an October 14, 2002 report of Dr. Deepak Mehrotra, a Board-certified anesthesiologist. He provided a history of appellant's pain treatment and diagnosis of regional pain syndrome with neuropathy. Dr. Mehrotra described what occurred when acute pain was improperly or inadequately treated. He noted that appellant continued to be treated for a chronic pain condition that could be difficult to manage and that her treatment would continue indefinitely.

On November 27, 2002 the Office issued a decision terminating appellant's wage-loss compensation and medical benefits effective that date. It found the evidence of record insufficient to establish that she had any continuing residuals or total disability causally related to the August 25, 1996 and March 26, 1997 employment injuries. The Office accorded special weight to Dr. Meller's July 21, 2002 medical report as an impartial medical specialist. In a letter dated December 10, 2002, appellant, through her attorney, requested an oral hearing.

By decision dated January 20, 2004, an Office hearing representative found that the Office met its burden of proof to terminate appellant's wage-loss compensation on November 27, 2002 based on Dr. Meller's July 22, 2002 medical report. The hearing representative noted that his opinion was supported by Dr. Valentino's normal findings on physical and neurological examination and finding that appellant had completely recovered from her work injury and was capable of working with no restrictions. The hearing representative, however, found that the Office failed to meet its burden of proof in terminating appellant's medical benefits. She indicated that the September 19, 2002 letter proposed to terminate appellant's wage-loss compensation but failed to mention the proposed termination of her medical benefits. The hearing representative found that since the Office failed to issue a pretermination notice in accordance with its procedures before terminating appellant's medical benefits, the termination was improper. She further found that Dr. Meller's July 22, 2002 report did not clearly address the Office's questions regarding clarification on whether the 1996 or 1997 employment injury aggravated or otherwise contributed to appellant's preexisting arthritis of the left knee. The hearing representative also found that he failed to address whether appellant continued to have any residuals of both work-related injuries. She stated that Dr. Meller did not indicate which work-related injury had resolved without residuals or whether the effects of both injuries including the arthroscopic left knee surgery had also resolved. Accordingly, the hearing representative affirmed in part the November 27, 2002 decision with regard to the termination of appellant's wage-loss compensation and reversed in part the decision with regard to the termination of appellant's medical benefits.

In a February 27, 2004 letter, the Office requested that Dr. Meller submit a supplemental report which addressed the issues of whether appellant continued to experience residuals of the August 25, 1996 and March 26, 1997 employment injuries and whether the August 25, 1996 work-related injury aggravated or otherwise contributed to her preexisting left knee arthritis.

Dr. Meller submitted a March 24, 2004 medical report in which he reviewed appellant's medical records and provided a history of her employment injury and medical treatment. He asked her several questions which related to, among other things, her left knee symptoms, to determine whether she was being objective. He reported his findings on physical examination and opined that appellant had subjective complaints of pain of 8 to 10/10 which was the most extreme in the absence of any treatment or diagnostic workup in years other than recently, which was apparently in response to her workers' compensation claim. Dr. Meller stated that appellant's examination was completely normal with the exception of self-limitation behavior, symptom exaggeration, nonphysiologic complaints and malingering behavior. He related that she denied that the August 25, 1996 employment injury occurred although it had been accepted as compensable and was no longer present. Dr. Meller further related that, in regard to the March 26, 1997 work-related injury, the clinical findings and treatment undertaken were simply not to the degree where they could explain seven years of doing nothing. He opined that there was no evidence of an ongoing left knee sprain as appellant's complaints were no where near the collateral or cruciate ligaments as they were completely stable and fully functional. In addition, there was no evidence of any dysfunction and appellant's complaints were entirely subjective. Dr. Meller opined that there was no evidence of RSD or complex regional pain syndrome. He noted that appellant had undergone a bone scan but she was not receiving treatment and there was nothing to substantiate an ongoing issue or clinical condition. Dr. Meller stated that the left knee surgery made her better rather than worse. He opined that the accepted employment

injuries had completely resolved without any ongoing residuals. There was evidence of malingering, inappropriate illness behavior, expansile symptoms, poorly localized symptoms and symptoms that developed in response to prompting and were completely beyond belief. Dr. Meller stated that appellant did not require any further treatment and that she could return to her preinjury occupation with no restrictions.

In an April 11, 2004 Form OWCP-5c, Dr. Meller stated that appellant could work eight hours a day with no restrictions except as reasonable for her age and fitness level with regard to pushing, pulling, lifting, squatting, kneeling and climbing. He stated that there were no objective physical findings to support an ongoing injury.

By letter dated May 28, 2004, the Office issued a notice of proposed termination of appellant's medical benefits based on Dr. Meller's March 24, 2004 report. The Office provided appellant 30 days to respond.

In a June 10, 2004 letter, appellant's attorney disagreed with the proposed action. He contended that Dr. Meller's opinion did not constitute the weight of the medical opinion evidence. Counsel stated that his March 24, 2004 opinion varied substantially from his October 26, 1999 and June 15, 2000 reports particularly, the October 26, 1999 report which found that appellant suffered from atrophy in the left leg, calf and thigh, crepitus on motion, an arthritic left knee and swelling of the left knee, that left knee arthroscopic surgery failed to relieve her pain, and that she had work restrictions. Counsel contended that Dr. Meller only addressed a resolved left knee sprain and failed to address appellant's arthroscopic surgery and whether she had any residuals of the surgery. Lastly, he alleged that Dr. Meller did not address whether the work injury aggravated her arthritic condition as he had previously opined.

By decision dated June 28, 2004, the Office terminated appellant's medical benefits effective that date. It accorded special weight to Dr. Meller's March 24, 2004 impartial medical report in finding that appellant did not have any continuing residuals or total disability causally related to the August 25, 1996 and March 26, 1997 employment injuries. The Office also found that the record did not contain any evidence from appellant's attending physicians which established that she required further medical treatment.

In a June 29, 2004 letter, appellant, through her attorney, requested an oral hearing. At the March 28, 2005 hearing, appellant submitted numerous medical documents covering the period March 1 through December 22, 2004 which addressed pain in her left knee, thoracic spine and chest.

On June 6, 2005 an Office hearing representative issued a decision affirming the June 28, 2004 termination of appellant's medical benefits based on Dr. Meller's March 24, 2004 impartial medical report. The matter was appealed to the Board.¹ In a May 17, 2005 order, the case was remanded for reconstruction of the record. Following reconstruction and proper assemblage of the case record, the Office, on August 22, 2005, reissued the January 20, 2004 decision which terminated appellant's wage-loss compensation effective November 27, 2002.

¹ Docket No. 05-558 (issued May 16, 2005).

LEGAL PRECEDENT -- ISSUE 1

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 her employment, the Office may not terminate compensation without 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

In situations where there are 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 on a proper factual background, must be given special weight.⁴

ANALYSIS -- ISSUE 1

The Board notes that a conflict in the medical opinion evidence was created between Dr. Huppert, appellant's attending physician, and Dr. Valentino, a second opinion Office physician, on the issue of whether appellant had any continuing residuals or disability causally related to her August 25, 1996 and March 26, 1997 employment-related left knee sprains. Dr. Huppert found that appellant continued to have left leg problems. Dr. Valentino opined that appellant had fully recovered from the accepted employment-related injury and that she could return to work without restrictions.

The Office referred appellant to Dr. Meller, selected as the impartial medical specialist. In a detailed report dated July 21, 2002, he reviewed the evidence of record and presented normal findings upon physical examination. Dr. Meller opined that appellant did not have any impairment of the left lower extremity based on the A.M.A., *Guides*. He further opined that her employment injury had fully and completely resolved without any residuals. Dr. Meller explained that there was no objective evidence to substantiate appellant's complaints of pain. He opined that her complaints constituted a fairly extreme, dramatic and pathological response to the normal aging process related to medial compartment arthritis. Dr. Meller stated that there was no evidence of any nerve damage, internal derangement, complex regional pain syndrome or any pathologic condition.

On March 24, 2004 Dr. Meller reviewed appellant's medical records. He reported a completely normal physical examination with the exception of self-limitation behavior, symptom exaggeration, nonphysiologic complaints and malingering behavior. Dr. Meller explained that appellant's complaints of pain were subjective in the absence of any treatment or diagnostic workup in years. He opined that she had no residuals of the August 25, 1996 and March 26, 1997 employment injuries. Dr. Meller found that appellant's complaints were no where near the

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

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

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

collateral or cruciate ligaments, the ligaments were completely stable and fully functional, there was no evidence of any dysfunction, RSD or complex regional pain syndrome and appellant's complaints were entirely subjective. Appellant had a bone scan but no condition was identified for which she was receiving medical treatment. Dr. Meller stated that her left knee surgery made her better rather than worse. He opined that the accepted employment injuries had completely resolved without any residuals. Dr. Meller noted that appellant exhibited malingering, inappropriate illness behavior, expansile symptoms, poorly localized symptoms and symptoms that developed in response to prompting and were completely beyond belief. He found that she did not require any further medical treatment and that she could return to her preinjury occupation with no restrictions. He completed a Form OWCP-5c which indicated that appellant could work eight hours per day with no limitations except as reasonable for her age and fitness level with regard to pushing, pulling, lifting, squatting, kneeling and climbing. Dr. Meller stated that there were no objective physical findings to support an ongoing injury.

As the reports from the impartial medical examiner, Dr. Meller, were based on an accurate factual and medical background, and were comprehensive, complete and well rationalized, they are entitled to special weight in finding that appellant no longer had any residuals or disability causally related to her August 25, 1996 and March 26, 1997 employment injuries.⁵ Thus, the Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation based on the impartial medical report from Dr. Meller.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injuries after termination of compensation benefits.⁶ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

⁵ *Id.*

⁶ *See Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Id.*

⁸ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding any continuing employment-related residuals or disability after November 27, 2002 includes medical records submitted by appellant which covered the period March 1 through December 22, 2004. Although this evidence indicates that she experienced pain in the left knee, thoracic spine and chest, it does not address whether her ongoing symptoms are causally related to the August 25, 1996 and March 26, 1997 employment injuries and, thus, it is insufficient to outweigh the probative value of Dr. Meller's impartial medical opinion.

As appellant has not submitted rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her accepted employment-related conditions, she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 3

To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹⁰

ANALYSIS -- ISSUE 3

As noted, Dr. Meller conducted a thorough medical examination which revealed completely normal results with the exception of appellant's subjective complaints that he determined could not be substantiated by objective findings. Based on his findings, Dr. Meller opined that appellant no longer had any residuals of the accepted employment-related left knee sprain and that she no longer required further medical treatment for this injury. As Dr. Meller provided a well-rationalized medical opinion, it is entitled to special weight accorded an impartial medical specialist in finding that appellant no longer required medical treatment for her August 25, 1996 and March 26, 1997 employment-related left knee sprains. Therefore, the Board finds that the Office met its burden of proof to terminate appellant's medical benefits based on Dr. Meller's report.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss compensation effective November 27, 2002 on the grounds that she no longer had any residuals or disability causally related to her August 25, 1996 and March 26, 1997 employment injuries. The Board further finds that appellant failed to establish that she had any continuing employment-related residuals or disability after November 27, 2002. Lastly, the Board finds that the Office properly terminated appellant's medical benefits effective June 28, 2004 on the grounds that she no longer had any residuals or disability causally related to her August 25, 1996 and March 26, 1997 employment injuries.

¹⁰ *Calvin S. Mays*, 39 ECAB 993 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 22 and June 6, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 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