

sprain/strain of the left knee. He underwent arthroscopic knee surgery at Hackensack University Medical Center on May 3, 2005. The surgery was performed by Dr. Michael Meese, a Board-certified orthopedic surgeon.

On July 8, 2005 Dr. Meese's notes reflect that appellant had minimal swelling, his range of motion was 0 to 120 degrees of flexion, he was neurovascularly intact and there was not any joint line tenderness. Appellant was released to return to work at limited duty. He returned to work on July 9, 2005. In a July 12, 2005 report, Dr. Meese indicated that appellant was able to resume regular work on September 1, 2005. He also stated that appellant was to work three hours walking the street and five hours total.

Dr. Meese's July 25, 2005 notes reflect that appellant's swelling in the left leg had resolved. His range of motion was 0 to 120 degrees. There was not any joint line tenderness. He had normal tracking of the patella. Dr. Meese continued appellant on three hours of walking and five hours total. On August 19, 2005 Dr. Meese again stated in that appellant was able to resume regular work on September 1, 2005. He remarked that appellant was to work four hours walking the street and six hours total. On August 22, 2005 he planned to allow appellant to "continue to progress with activities as tolerated, no restrictions." In an attending physician's report of August 24, 2005, Dr. Meese stated that appellant was able to resume regular work on September 1, 2005. He stated that appellant was to work four hours walking the street and six hours total. On September 26, 2005 Dr. Meese found that appellant's left knee was not swollen, had a range of motion from 0 to 120 degrees of flexion, was neurovascularly intact, did not exhibit joint line tenderness and did not exhibit motor or sensory deficit. Dr. Meese noted that appellant was anxious to return to work "full duty" he released appellant to return to full duties. Appellant was advised to progress with activities as tolerated. Dr. Meese stated that appellant was able to resume regular work on September 1, 2005. He further stated that appellant "may return to full[-]time duty."

By decision dated March 9, 2006, the Office terminated appellant's wage-loss and medical benefits effective September 1, 2005. The Office found that Dr. Meese released appellant to return to work full time on September 1, 2005.¹

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate

¹ Additional evidence was received by the Office after the decision on July 5, 2006. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, n.5 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a written request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606.

² *Paul L. Stewart*, 54 ECAB 824 (2003).

compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

ANALYSIS

The Office accepted that appellant sustained a tear of the left medial meniscus and a sprain/strain of the left knee. It based its decision to terminate appellant's compensation on medical evidence from the treating physician, Dr. Meese. He released appellant "to return to work in a full-duty capacity on September 1, 2005." However, based upon the evidence in the record, the Board finds that appellant was released to return to work without restriction on September 26, 2005, not September 1, 2005.

Dr. Meese reported in attending physician's reports, signed on July 12, August 19 and 24, 2005, as well as in reports dated August 19 and 24, 2005, that appellant was able to resume regular work on September 1, 2005. However, Dr. Meese first limited appellant's activity level to three to four hours of walking and then to five to six hours of work, thus indicating that appellant had residuals due to his accepted left knee condition. It was not until his September 26, 2005 report that Dr. Meese stated that appellant was able to return to work full time. While it is true that Dr. Meese again stated in box 20 that appellant was able to resume regular work on September 1, 2005, the residual reports from the physician do not indicate that appellant was released to full duty without restriction until September 26, 2005.

Dr. Meese's July 8, 2005 notes reflect that appellant was released to return to limited duty work in early July 2005. His July 25, 2005 notes indicated that appellant was limited to three hours of walking and five hours of total work in a day. Dr. Meese's August 22, 2005 notes state that appellant would be allowed to "continue to progress with activities as tolerated." These reports anticipated appellant's return to regular duty on or about September 1, 2005. According to Dr. Meese's September 26, 2005 notes, appellant was anxious to return to "work full duty." He noted that appellant was released to "return to full duties with no restrictions." This is the first report reviewing the physical restrictions previously noted.

While the attending physician's reports do state that appellant was able to resume regular work on September 1, 2005, Dr. Meese did not find that appellant could resume work without restrictions until September 26, 2005. This is when both his attending physician report and his office notes state that the physical restrictions were lifted. Appellant worked limited duty through

³ *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *James F. Weikel*, 54 ECAB 660 (2003).

September 2005, indicating that his belief that the restrictions were still in place in September. Finally, there is no medical evidence demonstrating that appellant was able to perform his regular duties as of September 1, 2005 when the termination became effective. There is evidence that he was able to perform his duties as of September 26, 2005 because Dr. Meese released him to return to work on that day. Therefore, the Board finds that the Office failed to meet its burden of proof to terminate appellant's wage-loss compensation as of September 1, 2005. The Board finds that appellant was released to return to work without restrictions on September 26, 2005.

CONCLUSION

The Board finds that the Office improperly terminated appellant's wage-loss compensation and medical benefits effective September 1, 2005 as the record establishes that appellant's physician Dr. Meese did not return him to full duty without restriction until September 26, 2005. The Board will modify the Office's September 12, 2005 decision to find that appellant's wage-loss compensation and medical benefits are terminated effective September 26, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated March 9, 2006 is affirmed as modified.

Issued: November 27, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board