

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

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**T.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Miami, FL, Employer**

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**Docket No. 06-1896  
Issued: April 10, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 14, 2006 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated July 13, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation for wage loss effective August 8, 2005.

**FACTUAL HISTORY**

The Office accepted that appellant sustained the following conditions as a result of an April 24, 2002 motor vehicle accident: left calf and hamstring strain, lumbosacral strain, torn medial meniscus left knee, anterior cruciate ligament (ACL) sprain and joint effusion with baker's cyst. Appellant underwent left knee surgery on June 24, 2004. He returned to work in a light-duty position at four hours per day on October 18, 2004. Appellant's compensation was offset by his actual earnings.

Appellant's attending physician, Dr. Stephen Wender, continued to indicate that he could work in a sedentary position on a part-time basis. The Office referred appellant to Dr. Ismael Montane, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 11, 2005, Dr. Montane provided a history and results on examination. He reported a normal examination and indicated that appellant did not have any objective findings. Dr. Montane opined that appellant could return to work at his regular letter carrier position without restriction.

The Office determined that a conflict existed in the medical evidence and referred appellant to Dr. Orestes Rosabal, a Board-certified orthopedic surgeon, for a referee examination. By report dated June 17, 2005, Dr. Rosabal provided a history and results on examination. He diagnosed resolved cervical and lumbosacral strains, status post medical and lateral meniscectomies of the left knee, status post patellar and medial compartment chondroplasties of the left knee and right knee pain unrelated to the April 24, 2002 injury. He noted that x-rays of the left knee were normal. Dr. Rosabal stated that it was not clear to him how the work accident caused meniscal tears and he noted that contemporaneous reports showed a normal knee examination. He stated that any permanent impairment to the left knee was more than 50 percent related to preexisting degenerative changes. With respect to disability for work, Dr. Rosabal stated, "Because of [appellant's] ongoing subjective complaints related to his left knee, I would suggest that he continue with his light duty with the limitations of walking and standing and climbing to his tolerance. I would suggest that these work restrictions are related to his ongoing preexisting degenerative changes in the left knee."

The record contains a job offer for appellant dated June 10, 2005 for a full-time light-duty position. Appellant accepted the position on June 13, 2005. A Form CA-3 (report of termination of disability dated June 22, 2005 indicated that appellant was working eight hours per day.

By letter dated July 7, 2005, the Office notified appellant that it proposed to terminate his compensation for wage loss on the grounds that the medical evidence demonstrated that his employment-related disability had ceased. In a decision dated August 8, 2005, the Office terminated compensation for wage-loss.

Appellant requested reconsideration by letter dated May 26, 2006. He argued that Dr. Rosabal did not represent the weight of the evidence. He submitted medical evidence that included a November 7, 2005 report from Dr. Wender who opined that appellant had a 25 percent impairment to his left knee. Dr. Wender stated that appellant could not work in any capacity beyond a light-duty sedentary job.

By decision dated July 13, 2006, the Office denied modification of the prior decision.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without

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<sup>1</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

establishing that disability ceased or that it was no longer related to the employment.<sup>2</sup> The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>3</sup>

It is well established that when a case is referred to a referee examiner for the purpose of resolving a conflict pursuant to 5 U.S.C. § 8123(a), the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>4</sup>

### ANALYSIS

The August 8, 2005 Office decision terminated compensation for wage loss on the grounds that employment-related disability had ceased. Although there is some indication in the record that appellant had returned to full-time work, he was in a light-duty position and the Office made a determination that he had no continuing employment-related disability.<sup>5</sup>

With respect to the medical evidence, there was a conflict to the nature and extent of a continuing employment-related disability. Dr. Wender indicated that appellant could work four hours light duty, while the second opinion examiner, Dr. Montane, found that he could return to regular duty. The Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.<sup>6</sup> The implementing regulation states that this is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>7</sup>

The referee examiner, Dr. Rosabal, reported that, while appellant could continue to work light duty, his work restrictions were related to preexisting degenerative changes. He provided a detailed medical report discussing results on examination and diagnostic testing. The referee examiner provided a rationalized opinion based on a complete background and, therefore, his opinion is entitled to special weight. Although appellant noted Dr. Rosabal's questions regarding the meniscal tears, Dr. Rosabal did not base his opinion on disability on refuted causal relationship of an accepted meniscal tear of the left knee. He reported no objective findings from the employment injuries and found that any subjective complaints were related to preexisting degenerative changes.

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<sup>2</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>3</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>4</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

<sup>5</sup> The term "disability" as used under the Act means the incapacity, because of injury in employment, to earn the wages which the employee was receiving at the time of injury. *Donald Johnson*, 44 ECAB 540, 548 (1993); 20 C.F.R. § 10.5(f) (1999).

<sup>6</sup> 5 U.S.C. § 8123.

<sup>7</sup> 20 C.F.R. § 10.321 (1999).

The weight of the evidence rested with Dr. Rosabal and supported a finding that there was no continuing employment-related disability. The Board finds that the Office properly terminated any entitlement to continuing compensation for wage loss.

**CONCLUSION**

The Office properly determined that appellant's employment-related disability had ceased as of August 8, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 13, 2006 is affirmed.

Issued: April 10, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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