

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

B.R., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

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**Docket No. 06-2100
Issued: August 7, 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

JURISDICTION

On September 13, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated April 6 and May 26, 2006 which terminated his wage-loss compensation and an August 2, 2006 decision which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation effective April 4, 2006 on the grounds that he was no longer disabled from work; (2) whether appellant established that he had any continuing employment-related disability after April 6, 2006; and (3) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has been before the Board on two prior occasions. By decision dated January 6, 2000, the Board found that the Office improperly failed to reopen appellant's case for

a merit review.¹ Following the Board's remand, in a February 4, 2000 decision, the Office found that the record was sufficient to establish that appellant was entitled to wage-loss compensation for total disability beginning December 19, 1996.² In a June 1, 2001 decision, the Office found that appellant had not established clear evidence of error regarding the February 4, 2000 decision.³

A functional capacity evaluation completed on February 10 and 11, 2005 advised that appellant was capable of performing medium work with lifting of no more than 50 pounds and frequently lifting up to 25 pounds. He should have the opportunity to sit, stand and walk as needed, and a work conditioning program was recommended. On June 15, 2005 appellant filed an appeal with the Board. In a work capacity evaluation dated July 25, 2005, appellant's attending orthopedic surgeon, Dr. Abraham Abdo, advised that maximum medical improvement had been reached and that appellant was capable of performing his usual job with no restrictions.

By order dated January 17, 2006, the Board dismissed the appeal on the grounds that the record did not contain a final decision over which it had jurisdiction.⁴ The law and the facts of the previous Board decisions and orders are incorporated herein by reference.

On March 6, 2006 the Office informed appellant that it proposed to terminate his wage-loss compensation on the grounds that Dr. Abdo found that he was no longer disabled from work.⁵ Appellant disagreed with the proposed termination. By decision dated April 6, 2006, the Office terminated appellant's wage-loss compensation, effective April 4, 2006. On April 18, 2006 appellant requested reconsideration and submitted medical evidence previously of record. He also submitted a report dated April 19, 2006 in which Dr. Frank Sifuentes, Board-certified in family medicine, noted appellant's complaint of right knee pain. Examination of the right knee demonstrated crepitus and decreased range of motion on flexion and extension. Dr. Sifuentes diagnosed right knee pain, status post meniscal and anterior cruciate ligament (ACL) repair, osteoarthritis and hypertension. He referred appellant to Dr. Doan Khac Nguyen, a Board-certified orthopedic surgeon. In a report dated April 19, 2006, Dr. Nguyen noted the history of injury, past medical treatment and appellant's complaints. Examination of the right knee demonstrated mild valgus alignment and mild effusion with no vascular impairment or patellofemoral crepitus. Dr. Nguyen diagnosed arthritis of the lateral compartment of the knee.

By decision dated May 26, 2006, the Office reviewed the reports from Dr. Sifuentes and Dr. Doan and denied modification of the April 6, 2006 decision. In a letter dated June 2, 2006,

¹ Docket No. 98-336 (issued January 6, 2000).

² On April 4, 1988 appellant, then a 31-year-old aircraft mechanic, sustained an employment-related internal derangement of the right knee. He stopped work on September 27, 1988, returned briefly in 1989 and was placed on the periodic rolls. In 1994 he was referred for vocational rehabilitation and was retrained as an automobile mechanic technician.

³ Appellant was seeking compensation from June 23, 1996, when a wage-earning capacity decision was put in place, and the resumption of total disability compensation on December 19, 1996.

⁴ Docket No. 05-1385 (issued January 17, 2006).

⁵ The Office advised that he was still entitled to medical benefits.

appellant requested reconsideration and submitted a June 6, 2006 report in which Dr. Abdo advised that “the work capacity evaluation that was filled out on July 25, 2005 is for tune-up mechanic, which the job descriptions are attached. I have not done a wage-earning capacity for an aircraft mechanic.” Appellant also submitted a Texas workers’ compensation form dated April 19, 2006 in which Dr. Nguyen provided work injury diagnoses of right meniscal tear, right knee arthritis and old disruption of the ACL on the right. He advised that appellant could return to work without restrictions. By decision dated August 2, 2006, the Office denied appellant’s reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ The Office’s burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant’s wage-loss compensation on effective April 4, 2006. In a July 25, 2005 work capacity evaluation, appellant’s attending orthopedic surgeon, Dr. Abdo, advised that maximum medical improvement had been reached and that appellant was capable of performing his usual job with no restrictions. The medical evidence of record at that time therefore established that the Office met its burden of proof to terminate appellant’s wage-loss compensation on April 6, 2006.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant’s wage-loss compensation on April 6, 2006, the burden shifted to him to establish that he had any continuing disability causally related to his accepted injuries.⁸ 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.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ 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

⁶ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *Id.*

⁸ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁹ *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹⁰ *Id.*

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.¹¹

Under the Federal Employees' Compensation Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.¹² Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence with his April 18, 2006 reconsideration request to establish that he continued to be disabled from the accepted knee condition after April 4, 2006. The May 26, 2006 Office decision must therefore be affirmed. With his April 18, 2006 reconsideration request appellant submitted evidence previously of record, and the Board has long held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.¹⁴ Appellant also submitted reports dated April 19, 2006 in which Drs. Sifuentes and Nguyen noted his complaint of knee pain, made examination findings and diagnosed arthritis of the knee. Neither physician, however, provided an opinion regarding appellant's ability to work. The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹⁵ The Office therefore properly found in its May 26, 2006 decision that appellant had not submitted the necessary rationalized medical evidence to substantiate that any claimed disability on or after April 4, 2006 was causally related to the April 4, 1988 employment injury.¹⁶

LEGAL PRECEDENT -- -ISSUE 3

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹³ *Tammy L. Medley*, 55 ECAB 182 (2003).

¹⁴ *See Arlesa Gibbs*, 53 ECAB 204 (2001).

¹⁵ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁶ *See Mary A. Ceglia*, 55 ECAB 626 (2004).

application by a claimant.¹⁷ Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹⁸ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁹ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.²⁰ Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²¹

ANALYSIS -- ISSUE 3

The Board finds that the Office improperly denied appellant's June 2, 2006 request for review. In support of this reconsideration request, appellant submitted a report dated June 6, 2006 in which Dr. Abdo advised that the work capacity evaluation he filled out on July 25, 2005 was for the position of tune-up mechanic and not for his date-of-injury job of aircraft mechanic. As this report is relevant to the merit issue of whether appellant continued to be disabled from his usual job of aircraft mechanic such that he was entitled to wage-loss compensation based on total disability, the Board finds it relevant and pertinent new evidence not previously considered by the Office. The case will therefore be remanded to the Office for a decision on the merits of appellant's claim. On remand, the Office should consider this report, together with the previously submitted evidence of record, to determine if appellant has established that he is entitled to continuing disability compensation for his accepted conditions.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 4, 2006 and that appellant failed to meet his burden of proof to establish that he had any disability after April 4, 2006 causally related to his accepted conditions. The Board, however, finds that the Office improperly denied appellant's request for a merit review pursuant to section 8128(a) of the Act.

¹⁷ 5 U.S.C. § 8128(a).

¹⁸ 20 C.F.R. § 10.606(b)(2).

¹⁹ 20 C.F.R. § 10.608(b).

²⁰ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

²¹ *Joseph A. Brown, Jr.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 26 and April 6, 2006 be affirmed. The decision dated August 2, 2006 is vacated and the case remanded to the Office for proceedings consistent with this decision of the Board.

Issued: August 7, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board