

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

S.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hamilton, OH, Employer**

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**Docket No. 08-50
Issued: April 9, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2007 appellant, through counsel, filed a timely appeal from a decision of the Office of Workers' Compensation Programs' hearing representative dated September 11, 2007, which affirmed a decision dated April 9, 2007 terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective April 7, 2007; and (2) whether she has established any continuing disability or residuals subsequent to April 7, 2007.

FACTUAL HISTORY

On October 10, 2003 appellant, then a 35-year-old full-time regular carrier, sustained a sprained left ankle and a left knee contusion when she fell while delivering mail. The Office accepted the claim for left knee contusion, left ankle sprain and left knee strain and abrasion, and

left knee torn lateral meniscus. The Office authorized left knee arthroscopic surgery which was performed on December 23, 2005. Appellant returned to limited-duty work on January 3, 2006.

On April 18, 2006 Dr. Steven J. Goldfarb, a treating Board-certified orthopedic surgeon, diagnosed persistent leg pain of unknown etiology. A physical examination revealed no effusion, no ligamentous instability, no edema in either lower extremity, bilateral knee diffuse tenderness and “neurologically intake in both lower extremities. Dr. Goldfarb recommended that electromyography (EMG) be performed to determine the source of appellant’s leg pain.

In a June 6, 2006 report, Dr. Goldfarb diagnosed persistent leg pain of unknown etiology. A physical examination revealed no effusion, no ligamentous instability, no edema in either lower extremity, bilateral knee diffuse tenderness and “neurologically intake in both lower extremities.” Dr. Goldfarb stated “[appellant’s] EMG was repeated and had resolved to normal.” He indicated his concern that appellant’s leg pain was indicative of a neurological rather than orthopedic problem. Dr. Goldfarb attributed appellant’s leg pain to her employment injury as she had no symptoms prior to the 2003 employment injury, “and therefore I feel the majority of her symptoms are most likely related to the work injury of 2003.” He concluded “the work restrictions that we are providing should be related to her work injury of 2003.”

On October 24, 2006 the Office referred appellant to Dr. E. Gregory Fisher, Board-certified in orthopedic surgery, for a second opinion evaluation.

In a November 2, 2006 report, Dr. Goldfarb diagnosed persistent ankle and leg pain of unknown etiology. He related that a repeat magnetic resonance imaging (MRI) scan showed a lateral meniscal tear and subsequent arthroscopy revealed no significant pathology. In addition, Dr. Goldfarb stated “[re]peat EMG studies have shown complete resolution of the peroneal nerve function.” He noted that appellant “has persistent knee and ankle pain despite all normal studies” and believed she had a chronic pain syndrome/reflex sympathetic dystrophy of her left lower extremity.

On November 15, 2006 Dr. Fisher diagnosed left ankle sprain, left knee sprain, left knee contusion, left knee contusion, all resolved. A physical examination revealed no knee effusion, tenderness and over patella, negative Apley test, negative McMurray test and no decreased sensation or sensory loss over the left foot or calf area. Dr. Fisher reported that appellant was able to fully extend the knee and able to flex the knee to 130 degrees. He noted that there was no objective evidence supporting any residuals of the accepted conditions or that a left lateral meniscal tear was present following her December 23, 2005 surgery. Dr. Fisher attributed appellant’s left knee pain to her patella chondromalacia and left ankle findings, which he opined were strictly subjective. He opined that appellant was capable of performing her date-of-injury position without any physical restrictions.

On March 8, 2007 the Office issued a notice of proposed termination of compensation benefits. In an April 9, 2007 decision, the Office terminated her benefits effective April 7, 2007.

On April 13, 2007 appellant’s counsel requested an oral hearing before an Office hearing representative, which was held on August 8, 2007.

On May 11, 2007 the Office received Dr. Goldfarb's April 9, 2007 response to its request that he review Dr. Fisher's findings. Dr. Goldfarb opined that appellant's patella chondromalacia was aggravated by her employment injury as it did not preexist her October 10, 2003 employment injury. He stated that appellant continued to have persistent left knee pain complaints, which he attributed to her 2004 industrial injury. Dr. Goldfarb advised that she could not perform all of her regular job duties.

By decision dated September 11, 2007, an Office hearing representative affirmed the termination of appellant's compensation benefits.¹

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.² After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate 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 -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. In reports dated June 6 and November 2, 2006, Dr. Goldfarb, appellant's attending Board-certified surgeon, diagnosed persistent left leg pain of unknown etiology. He noted that all the objective evidence was normal. Dr. Goldfarb stated that the most recent MRI scan showed a lateral meniscal tear with subsequent arthroscopy revealing no significant pathology and a repeat EMG showed "complete resolution of the peroneal nerve function."

The Office referred appellant to Dr. Fisher for a second opinion evaluation. In a report dated November 15, 2006, Dr. Fisher discussed appellant's history of injury and the results of MRI scans and EMG study. The Board has carefully reviewed Dr. Fisher's opinion and finds

¹ The Board notes that appellant had filed an appeal with the Board from an Office hearing representative's decision dated June 25, 2007 affirming the denial of her claim for wage-loss compensation for the period April 15 to June 9, 2006. The Board docketed the appeal as 07-1980. The Board issued a decision on this claim on March 3, 2008. See Docket No. 07-1980 (issued March 3, 2008).

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

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).

that it has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant has any further disability due to her accepted employment injuries of left knee contusion, left ankle sprain, left knee strain and abrasion and torn lateral left knee meniscus. Dr. Fisher related that there was no objective evidence supporting any residuals of the accepted conditions or that a left lateral meniscal tear was still present following her December 23, 2005 surgery. He noted that appellant exhibited a full range of motion of the left knee. Dr. Fisher attributed appellant's left knee pain to her patella chondromalacia and left ankle findings, which he opined were "strictly subjective ones without any objective findings." He concluded that appellant was capable of performing her date-of-injury position without any physical restrictions. Dr. Fisher provided a thorough review of the factual and medical background of appellant's claim and accurately summarized the relevant medical evidence. He provided a proper analysis of the factual and medical evidence and findings on examination and reached conclusions regarding his condition which comported with this analysis.⁶ Dr. Fisher's report represents the weight of medical opinion.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.⁷ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁹

ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of compensation, appellant submitted a report dated April 9, 2007 from Dr. Goldfarb, who opined that appellant's patella chondromalacia had been aggravated by her employment injury. Dr. Goldfarb also concluded that appellant was unable to perform the duties of her date-of-injury job due to her employment injury. He provided no rationale beyond noting that the patella chondromalacia condition had not been

⁶ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁷ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁸ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

present prior to the employment injury. Dr. Goldfarb's opinion is of diminished probative value as he did not adequately explain how appellant's condition was caused or contributed to by the accepted injury. Thus, his report is insufficient to support payment of compensation. Appellant has not met his burden of proof to establish any continuing employment-related disability.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and authorization for medical treatment effective April 7, 2007 on the grounds that she had no further disability or residuals causally related to her October 10, 2003 employment injury. The Board further finds that appellant has not established that she had any continuing employment-related disability after April 7, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 11, 2007 is affirmed.

Issued: April 9, 2008
Washington, DC

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

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

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