

lower legs, recurrent reactive synovitis and chondromalacia of the right and left patellae. Appellant stopped working on March 17, 1990 and did not return to work.

The Office referred appellant for a second opinion examination with Dr. Surendrapal Mac, Board-certified in orthopedic surgery. In a September 1, 2006 report, Dr. Mac stated that appellant's lumbar strain had resolved. He stated that appellant had no work restrictions due to her March 18, 1988 work injury. Dr. Mac advised that her subjective complaints outweighed the objective findings, which were related to severe degenerative arthritis and morbid obesity.

On January 31, 2007 the Office issued a notice of proposed termination of compensation. It found that the weight of the medical evidence, as represented by Dr. Mac, established that her accepted, employment-related conditions had resolved. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

In a report dated February 12, 2007, Dr. Riza N. Azer, Board-certified in orthopedic surgery, noted that appellant still had pain in both knees with crepitus on flexion and extension, patellofemoral compression and synovial thickening. Appellant exhibited crepitus on patellofemoral compression on the right knee and the left knee and tenderness over the lateral border of the right and left patellae. Dr. Azer recommended that x-rays be taken of both knees with patellar views, weight-bearing views and tunnel view. He noted that appellant wanted to be evaluated for a permanent impairment rating.

By decision dated March 7, 2007, the Office terminated appellant's compensation benefits, finding that Dr. Mac represented the weight of medical opinion.

On March 23, 2007 appellant requested reconsideration.

In a December 27, 2005 report, Dr. Azer reiterated that appellant had pain in both knees with crepitus on flexion and extension, patellofemoral compression and synovial thickening. He stated:

“[Appellant's] knees are symptomatic and she needs further investigations. She should have a CBC, sed rate, rheumatoid factor, blood uric acid, calcium, phosphorus, alkaline phosphatase and plasma protein electrophoresis. [Appellant] should have x-rays of the right and left knees with patellar views, tunnel views and weight[-]bearing views. I shall see her again afterwards.

“[Appellant] does have residuals from her injury of March 18, 1988 and these residuals incur permanent limitations. On a permanent basis, [appellant] should avoid activities that involve bending, stooping, kneeling, squatting, prolonged walking, prolonged standing and unprotected heights. The patient discussed with me being evaluated for a permanent impairment.”

In a February 13, 2007 report, Dr. Hampton Jackson, a Board-certified orthopedic surgeon, and Dr. Azer's associate, stated:

“[Appellant] returns today complaining of progressive pain, swelling and giving way of both knees. She was seen here just recently, yesterday, by Dr. Azer who

referred her here for evaluation by committee. We have reviewed her chart carefully. We have notes and evaluation of this patient dating back to February 28, 1990, which is a period for almost two years since her injury on March 18, 1988. Again she explained that her knees had been struck directly by a heavy panel. The panel was made of metal. She is quite concerned that over the last year, she has had tremendous worsening pain, giving way and decreasing mobility. Her previous examinations have given this patient a permanent impairment of her knees since September 1990 with a reading of 20 percent impairment of the right lower extremity coming from the knee as early as September 17, 1999.”

Dr. Jackson noted obvious weakness in flexion and extension, especially extension, of both knees, with synovial thickening and crepitus in both knees. He stated that x-rays showed significant progression with loss of cartilage interval in both patellofemoral joints and in the knee joints. Dr. Jackson advised that appellant had impairments from loss of cartilage, arthritis progression and weakness in her legs.¹

In a report dated April 6, 2007, Dr. Jackson advised that appellant was totally disabled in light of the impairment to her lower extremities which severely affected her ability to stand or walk. He stated that she was unable to stoop or squat and opined that she was unfit for any gainful employment because of the ratings determined on February 13, 2007.

By decision dated June 21, 2007, the Office denied modification of the March 7, 2007 decision.

On July 25, 2007 appellant requested reconsideration. She submitted reports dated July 3, 2007 and August 3, 2003 from Drs. Azer and Dr. Jackson. The physicians reiterated their prior findings and conclusions.

By decision dated October 15, 2007, the Office denied appellant’s request on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or 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

¹ Dr. Jackson rated a 44 percent impairment for the left knee and a 60 percent impairment of the right knee pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for contusions of her legs with synovitis and chondromalacia of both patellae. She stopped work and received compensation benefits. The Office based its decision to terminate appellant's compensation on the September 1, 2006 report of Dr. Mac, an Office referral physician, who noted that appellant had subjective complaints of bilateral knee pain, but that her present complaints were due to severe degenerative arthritis and morbid obesity unrelated to her accepted conditions. Dr. Mac stated that appellant had no work restrictions arising from her March 1988 work injury. He concluded that her accepted bilateral knee condition had apparently resolved.

The Board finds that Dr. Mac's referral opinion negated the causal relationship between appellant's current lower extremity condition and her accepted bilateral knee condition. His September 2006 report is probative, rationalized and based upon a proper factual background. Dr. Mac advised that appellant had no restrictions or disability due to her 1988 employment injury. Rather, he noted that her present condition was due to severe degenerative disease which was due to her morbid obesity. The Office properly found that Dr. Mac's opinion represented the weight of the medical evidence. The Board will affirm the March 7, 2007 decision.

LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminated appellant's compensation in its July 19, 2007 decision, the burden of proof shifted to appellant to establish continuing disability.⁴

ANALYSIS -- ISSUE 2

Following the Office's March 7, 2007 termination decision, appellant requested reconsideration and submitted reports from Drs. Azer and Jackson. On December 27, 2005 Dr. Azer stated that appellant still had residuals from her March 1988 work injury. He noted symptoms of a bilateral knee condition and recommended additional diagnostic testing. Dr. Azer related that appellant continued to experience pain in both knees with crepitus with knee flexion and extension, patellofemoral compression and synovial thickening. He recommended that appellant avoid activities which required bending, stooping, kneeling, squatting, prolonged walking, prolonged standing and unprotected heights. In a February 13, 2007 report, Dr. Jackson, stated that appellant complained of progressive, worsening pain, swelling, decreasing mobility and giving way of both knees. He advised that appellant had obvious weakness in flexion and extension, especially extension, of both knees, with synovial thickening and crepitus in both knees. Dr. Jackson advised that x-rays showed significant arthritic progression with loss of cartilage interval in both patellofemoral joints and in the knee joints and weakness in her legs. He found that appellant was totally disabled due to her lower extremity condition, which severely affected her ability to stand or walk. Dr. Jackson further stated that appellant was unable to stoop or squat and opined that she was unfit for any gainful employment based on her February 13, 2007 examination.

⁴ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

The Board finds that the reports from Drs. Azer and Jackson created a conflict in the medical evidence with the opinion of Dr. Mac, the referral physician. The reports from Drs. Azer and Jackson attributed appellant's bilateral knee symptomatology to her accepted employment injury. Dr. Jackson advised that appellant was permanently disabled due to residuals of her accepted bilateral knee condition. This is in contrast to Dr. Mac, who stated that appellant's bilateral knee condition was due to severe degenerative arthritis and obesity, unrelated to her accepted injury. The case will be remanded to the Office to refer the case to an impartial medical specialist to resolve the conflict. Accordingly, the Board will set aside the Office's June 21, 2007 decision. The case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist to resolve the outstanding conflict in medical evidence. After such further development as it deems necessary, the Office shall issue a *de novo* decision.⁵

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. The Board finds that the case is not in posture for decision regarding the issue of whether appellant has any continuing disability due to her accepted bilateral knee condition.

⁵ As the Board has set aside the June 21, 2007 Office decision, it need not consider the October 21, 2007 nonmerit decision, which has been rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed. The June 21, 2007 decision is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: December 5, 2008
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