

FACTUAL HISTORY

This case has previously been before the Board. The facts and the circumstances of the case as set forth in prior decisions and orders are hereby incorporated by reference.¹ The relevant facts are summarized below.

On January 7, 1983 appellant, then a 34-year-old clerk, sustained a right knee contusion with synovitis and permanent aggravation of degenerative disease of the right knee.² On March 14, 2005 Dr. Raymond G. Shea, appellant's treating Board-certified orthopedic surgeon, advised that appellant was totally disabled. He noted that appellant had pain and discomfort in the knee. On October 31, 2005 Dr. Shea found that appellant continued to have pain and stiffness in his right knee and was scheduled for a total knee replacement in January.

On December 13, 2005 the Office referred appellant to Dr. Martyn A. Goldman, a Board-certified orthopedic surgeon, for a second opinion. Dr. Goldman was asked to address the relationship of appellant's current right knee condition to the January 7, 1983 injury and to note the extent of any remaining disability. On January 10, 2005 Dr. Goldman diagnosed degenerative joint disease and degenerative disc disease cervical spine, degenerative joint disease lumbar spine, degenerative joint disease both knees (right worse than left), status post medial meniscectomy right knee 1981, status post chondroplasty right knee 1994; and evidence of symptom magnification. He opined that appellant's right shoulder contusion had resolved and that appellant's current cervical symptoms were related to degenerative changes in the cervical spine. Dr. Goldman advised that the changes in appellant's right knee were the result of his medial meniscectomy in 1981, his excess weight and the apparent proclivity to osteoarthritis changes perhaps of a genetic nature. He did not find that appellant had any medical restrictions as a result of the January 7, 1983 injury, noting these would be due to the preexisting injury to the right knee and his osteoarthritic changes of the spine as a result of the normal aging process.

The Office found a conflict in medical opinion between Drs. Shea and Goldman with regard to the extent of appellant's disabilities. It referred appellant to Dr. Stanley William Collis, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a medical report dated March 24, 2006, Dr. Collis diagnosed post meniscectomy of the medial meniscus on the right knee due to a 1981 nonwork-related injury; temporary synovitis on the right knee due to the January 7, 1983 work injury, which had been resolved; degenerative arthritis in the lower cervical spine and minimal arthritis of the lumbar spine (not work related); normal shoulder function; obesity; and marked psychosomatic element of his subjective complaints. He noted that appellant experienced some pain "off and on" in the right knee due to the nonwork injury and surgery he had in 1981 and to surgery in 1994. However, he did not find a problem with the neck, back, or either shoulder. Dr. Collis opined that appellant's complaints were more or less psychosomatic and not work related. He advised that appellant's subjective complaints outweighed the objective findings. Dr. Collis did not find any physical restrictions as a result of

¹ Docket No. 05-1869 (issued March 17, 2006); Docket No. 03-1382 (issued November 28, 2003) (Order Dismissing Appeal); Docket No. 03-1276 (issued October 23, 2003); Docket No. 00-2068 (issued June 3, 2002).

² In a separate claim, on March 5, 1984 appellant injured his right shoulder and neck in the performance of duty. The Office accepted the claim for a cervical strain and right shoulder contusion.

the January 7, 1983 injury and stated that the “only restrictions that he has would be inability to do activities that require a lot of climbing, jumping, walking and squatting because of the nonwork-related problem with this right knee.” He noted that appellant had not worked since 1984 and was unlikely to return to work considering his obesity and the unusual exaggeration of his symptoms and complaints. Dr. Collis noted, “The only treatment I can think of now is maybe some psychiatric treatment.” He did not recommend surgical treatment. On April 7, 2006 the Office requested clarification from Dr. Collis. In an addendum dated April 21, 2006, Dr. Collis stated that the arthritis to the medial aspect of appellant’s right knee and the chondroplasty he had were not the result of the January 7, 1983 work injury. He reiterated that appellant had no work-related impairment or restrictions.

On June 7, 2006 the Office issued a notice of proposed termination of appellant’s medical and compensation benefits. It found that the medical evidence established that he had no continuing disability as a result of the January 7, 1983 injury and that his condition had resolved.

By letter dated June 22, 2006, appellant objected to the proposed termination of benefits and to the opinion of Dr. Collis. He contended that Dr. Collis improperly referred to him as mute (appellant noted that he is deaf, but not mute) which he considered derogatory. Dr. Collis wore a hearing aide and, pursuant to appellant’s interpreter, he had a hard time hearing and understanding her speech. He requested another medical examination.

By decision dated July 18, 2006, the Office terminated appellant’s wage-loss compensation and medical benefits effective that date.

In an August 15, 2006 progress note, Dr. Shea advised that appellant still had difficulties with his right knee and that he was trying to have appellant approved for a total right knee replacement. He disagreed with the opinion of Dr. Collis. Dr. Shea stated that he had followed appellant since 1993 and would not recommend a total knee replacement unless he felt strongly that appellant was a candidate. He attributed appellant’s need for surgery to the work-related injury.

On October 12, 2006 appellant requested that the Office reconsider its decision terminating his benefits.

On December 10, 2006 appellant underwent a right total knee replacement. On May 21, 2007 Dr. Stacie L. Grossfeld, a Board-certified orthopedic surgeon, opined that appellant was still recovering from his surgery and was unable to work.

By decision dated June 19, 2007, the Office denied modification of the July 18, 2006 decision.³

By letter dated July 22, 2007, appellant again requested reconsideration.

³ In a decision dated June 19, 2007, the Office noted that the medical evidence did not support that appellant remained disabled as a result of the work-related injuries of January 7, 1983 or March 5, 1984. The Board notes that benefits were only terminated with regard to the January 7, 1983 employment injury.

In a September 28, 2007 report, Dr. George H. Raque, a Board-certified neurosurgeon, noted that appellant was seen for neck problems related to an old work injury and had recently undergone a cervical discectomy and fusion. Although, appellant appeared to be doing well postoperatively, he could not return to work because of the recent surgery and due to knee problems which were being treated by Dr. Shea. Dr. Raque concluded that appellant was disabled from work and would remain so for the foreseeable future.

On August 13, 2007 Dr. Grossfeld indicated that appellant was a patient treated for work-related injuries in 1983 and 1984 that resulted in end-stage osteoarthritis and the need for right knee replacement surgery. He advised that appellant's knee condition was directly related to his work-related injuries. Dr. Grossfeld opined that appellant was unable to work and had a complete medical disability. Appellant submitted an August 22, 2007 medical consultation report concerning an abnormal electrocardiogram (EKG) and an August 30, 2007 report with regard to his hypertension.

By decision dated September 5, 2007, the Office denied appellant's request for reconsideration without merit review.

In an October 2, 2007 note, Dr. John R. Dimar, II, a Board-certified family practitioner, stated that appellant was disabled from employment and was still in the recovery phase following major neck surgery. He concluded that the arthritic changes throughout appellant's body, as noted by Dr. Shea would probably preclude him from any gainful employment now or in the future.

In a progress note dated December 5, 2007, Dr. Madhusudhan R. Yakkanti, a colleague of Dr. Shea, indicated that appellant had severe osteoarthritis of the left knee and that he would like to proceed with a left total knee arthroplasty.

On December 11, 2007 appellant requested reconsideration.

By decision dated December 20, 2007, the Office denied reopening appellant's case for further reconsideration of the merits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

⁵ *J.M.*, 58 ECAB ___ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁶ *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that an employee no longer has residuals of an employment-related condition which require further medical treatment.⁷

Section 8123(a) provides in pertinent part: 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 an examination.⁸ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹

ANALYSIS -- ISSUE 1

The Office accepted that on January 7, 1983 appellant sustained a right knee contusion with synovitis and permanent aggravation of degenerative disease of the right knee. Appropriate compensation and medical benefits were paid. Appellant's treating physician, Dr. Shea, attributed appellant's residuals and disability as a result of this injury. Dr. Goldman, a second opinion physician, disagreed and opined that the changes in appellant's right knee were due to a previous medial meniscectomy in 1981, his excess weight and to his apparent proclivity for osteoarthritis. In order to resolve the conflict in medical opinion, the Office properly referred appellant to Dr. Collis for an impartial medical examination. In a well-rationalized opinion, Dr. Collis found that appellant's right knee arthritis and chronoplasty were not the result of the January 7, 1983 work injury. He concluded that the temporary synovitis of the right knee due to the accepted injury had resolved and that appellant no longer had any employment-related impairment or restrictions.

Appellant contended that Dr. Collis treated him in an unprofessional manner. However, his allegations are unsubstantiated and insufficient to overcome the special weight given to the impartial medical examiner. Whether Dr. Collis wore a hearing aide during examination is irrelevant as it is clear from his report that he was able to obtain an accurate history of injury and medical treatment. Dr. Collis conducted a complete physical examination. There is no evidence that Dr. Collis treated appellant in an improper manner. The Board finds that Dr. Collis, the impartial medical examiner, provided a well-rationalized opinion which set forth findings on physical examination of appellant. He determined that appellant's accepted work injury had resolved and the Office properly terminated wage-loss compensation and medical benefits based on his medical opinion.¹⁰

⁷ *T.P.*, *supra* note 6; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ 5 U.S.C. § 8123(a).

⁹ *See Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁰ *Manuel Gill*, 52 ECAB 282 (2001).

LEGAL PRECEDENT -- ISSUE 2

After a termination or modification of benefits which is clearly justified on the basis of the evidence, the burden or proof to reinstate compensation benefits rests with the claimant. The claimant must establish by the weight of reliable, probative and substantial evidence that a disability related to employment continued to exist after termination of benefits.¹¹ To establish the requisite causal relationship, the claimant must submit a physician's report which contains a review of the factors of employment identified as causing the claimants condition and taking those factors into consideration, along with the results of a clinical examination and the medical history of the claimant, state whether these employment factors caused or aggravated by the claimant's condition.¹² Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing disability after July 18, 2006. To establish continuing disability and entitlement to medical benefits after that date, appellant submitted December 10, 2006 operative report related to his total right knee replacement and a May 21, 2007 note from Dr. Grossfeld who advised that appellant was still recovering from surgery and was unable to work. These reports, however, do not address the issue of whether appellant's right knee surgery was due to his January 7, 1983 work injury. They do not establish that appellant has residuals arising from this injury. Dr. Shea's August 15, 2006 progress note disagreed with the opinion of Dr. Collis. He stated that appellant's right knee surgery was required due to his work-related injury. However, Dr. Shea's opinion is repetitive of his prior reports and is not sufficient to overcome the special weight given to Dr. Collis, the impartial medical examiner. He found no continuing disability and advised that the right knee surgery was not related to the accepted work injury. Accordingly, the Board finds that appellant has failed to establish any disability or entitlement to medical benefits after July 18, 2006.

LEGAL PRECEDENT -- ISSUE 3

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁴ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

considered by the Office.¹⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁷ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁸ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁹

ANALYSIS -- ISSUE 3

The Office denied appellant's requests for reconsideration finding that he did not meet the requirements for a merit review with regard to the issue of whether there were any residuals from his January 7, 1983 injury. As the issue is medical in nature, only medical evidence is relevant to the issue on reconsideration.

In support of his reconsideration requests, appellant submitted reports by Dr. Dimar who addressed his cervical condition, a report concerning appellant's hypertension and a report of an abnormal EKG. Appellant also submitted Dr. Yakkanti's December 5, 2007 report discussing appellant's left knee condition. These medical reports do not pertain to appellant's right knee injury and are irrelevant to the issue on which his benefits were terminated. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁰ In his brief September 28, 2007 note, Dr. Raque indicates that appellant could not go back to work due to recent neck surgery and noted that his knee problems were being treated by Dr. Shea. However, he provided no opinion as to the cause of these medical conditions other than noting that the neck condition was related to "an old work injury." On August 13, 2007 Dr. Grossfeld attributed appellant's knee replacement surgery to his work injuries, but he provided no explanation for this opinion. These medical reports are duplicative of prior opinions already considered by the Office. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.²¹

Appellant has not established that the Office improperly denied his request for further review of the merits under section 8128(a) of the Act, because the evidence and argument he submitted did not show that the Office erroneously applied or interpreted a specific point of law,

¹⁵ 20 C.F.R. § 10.606(b)(2).

¹⁶ 20 C.F.R. § 10.607(a).

¹⁷ 20 C.F.R. § 10.608(b).

¹⁸ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁰ *Id.*

²¹ *See supra* note 14.

advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective July 18, 2006. The Board further finds that appellant has not met his burden of proof to establish that he has any continuing employment-related medical condition or disability after July 18, 2006. Finally, the Board finds that the Office properly denied appellant's requests for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 20, September 5 and June 19, 2007 are affirmed.

Issued: December 19, 2008
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