

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

A.M., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL SEA
SYSTEMS COMMAND, Philadelphia, PA,
Employer**

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**Docket No. 07-1130
Issued: February 15, 2008**

Appearances:
Thomas R. Uliase, 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 March 20, 2007 appellant filed a timely appeal from a October 19, 2006 merit decision of the Office of Workers' Compensation Programs denying modification of a decision terminating his compensation benefits and denying his request for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant established that he had any continuing employment-related disability after March 24, 2002; and (2) whether the Office properly denied his claim for a schedule award.

FACTUAL HISTORY

This is the second appeal in the present case. In a November 29, 2004 decision, the Board found that the Office met its burden of proof to terminate benefits effective March 24, 2002 and that appellant failed to establish that he had any continuing

employment-related disability after March 24, 2002.¹ The Board found that the January 15, 2002 report of Dr. Edward J. Resnick, a Board-certified orthopedic surgeon and an impartial medical specialist, represented the weight of the medical evidence and supported the termination of benefits. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

On May 13, 2005 appellant requested a schedule award and submitted a report from Dr. Nicholas Diamond, an osteopath, dated February 17, 2005, who noted that appellant reached maximum medical improvement on February 17, 2005. Dr. Diamond reviewed a history of injury of June 17, 1991 and noted that appellant's history was significant for motor vehicle accidents in 1989 and 1990 in which he sustained a left knee injury and a shoulder and back injury, respectively. He diagnosed post-traumatic internal derangement of the left knee, aggravation of preexisting chondromalacia patella, status post left knee arthroscopic surgery with partial medial meniscectomy and synovectomy, status post arthroscopic chondroplasty repair of the patella, lateral and femoral condyles and partial lateral meniscectomy, post-traumatic degenerative joint disease to the medial and lateral compartments, the patella and the femoral trochleas of the left knee and derivative right knee injury. Dr. Diamond noted that the physical examination of the left knee revealed gastrocnemius circumferences measuring 43.5 centimeters (cm) of the right versus 41 cm on the left, quadriceps circumferences measuring 10 cm above the patella revealed 49 cm on the right versus 47.5 cm on the left. He noted that sensory examination of the bilateral extremities revealed no abnormalities and neurological testing revealed normal tonus; however, atrophy was noted involving the quadriceps and gastrocnemius musculature on the left. Dr. Diamond stated that, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ (A.M.A., *Guides*) appellant sustained a 23 percent impairment of the left lower extremity. He opined that the cause of appellant's disability as well as his subjective and objective findings was the work injury of June 17, 1991.

By letter dated June 15, 2005, appellant requested reconsideration of the Office's November 26, 2003 decision. He referenced Dr. Diamond's report and asserted that it established that he had residuals of his work-related injury and permanent impairment to both legs.

In an October 23, 2006 decision, the Office denied modification of the prior decision. It found that appellant was not entitled to a schedule award as his benefits were terminated on March 24, 2002 and he no longer had residuals of his work-related injury.

¹ The Office accepted the claim for aggravation of a preexisting left knee condition and paid appropriate compensation. It authorized arthroscopy and meniscectomy of the left knee on September 20, 1991. Appellant worked intermittently until June 22, 1992 when he stopped completely. The record reveals that he sustained several nonwork-related injuries to his left knee. On May 16, 1989 appellant was involved in a motor vehicle accident and sustained a tear of the posterior horn of the medial meniscus and underwent arthroscopic surgery; and on September 19, 1989 he injured his left knee while exiting a bus.

² Docket No. 04-1040 (issued November 29, 2004).

³ A.M.A., *Guides* (5th ed. 2001).

LEGAL PRECEDENT -- ISSUE 1

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injuries.⁴ 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.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ 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 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.⁷

ANALYSIS -- ISSUE 1

The medical evidence submitted by appellant after termination of benefits did not specifically address how any continuing condition was due to the June 17, 1991 work injury or other incidents.

Appellant submitted a February 17, 2005 report from Dr. Diamond, who noted his continued symptoms of swelling, pain and stiffness to both knees, with positive findings upon physical examination and opined that he had residuals in both knees as a direct result of his work injury of June 17, 1991. Dr. Diamond diagnosed post-traumatic internal derangement of the left knee, aggravation of preexisting chondromalacia patella, status post left knee arthroscopic surgery with partial medial meniscectomy and synovectomy, status post arthroscopic chondroplasty repair of the patella, lateral and femoral condyles and partial lateral meniscectomy, post-traumatic degenerative joint disease to the medial and lateral compartments, the patella and the femoral trochleas of the left knee and derivative right knee injury. He concluded that appellant was no longer able to perform his gainful employment as a sandblaster due to his inability to crawl, kneel, climb and squat as a result of his work-related injury. The Board finds that, although Dr. Diamond supported causal relationship in a conclusory statement, he did not provide a rationalized opinion specifically addressing how any continuing condition was due to the June 17, 1991 work injury.⁸ Additionally, he did not mention what effect if any appellant's prior nonwork-related injuries to the left knee would have on appellant's continuing

⁴ See *Manuel Gill*, 52 ECAB 282 (2001).

⁵ *Id.*

⁶ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

condition, specifically the May 16, 1989 motor vehicle accident where appellant sustained a tear of the posterior horn of the medial meniscus and underwent arthroscopic surgery and the September 19, 1989 injury to his left knee.

Dr. Diamond advised that appellant sustained a derivative right knee injury causally related to the accepted work injury of June 17, 1991. However, the Office never accepted that he sustained a right knee injury as a result of his June 17, 1991 work injury and there is no medical rationalized evidence to support such a conclusion.⁹

None of the evidence submitted by appellant on reconsideration included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related injury of June 17, 1991.¹⁰ Therefore, the report from Dr. Diamond is insufficient to overcome that of Dr. Resnick or to create a new medical conflict regarding whether appellant has any continuing disability or condition causally related to his June 17, 1991 work injury.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Federal Employees' Compensation Act¹¹ and its implementing regulations¹² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹³

ANALYSIS -- ISSUE 2

On appeal, appellant asserts that he is entitled to a schedule award for both legs as supported by the February 17, 2005 report of Dr. Diamond. The Office accepted an aggravation of his preexisting left knee condition and authorized arthroscopic surgery that was performed on September 20, 1991. In a November 29, 2004 decision, the Board found that the Office met its burden of proof to terminate benefits effective March 24, 2002 and that appellant failed to establish that he had any continuing employment-related disability after March 24, 2002.¹⁴ Appellant requested reconsideration and by decision dated October 23, 2006, the Office denied

⁹ See *Alice J. Tysinger*, 51 ECAB 638, 646 (2000). See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

¹⁰ See *Jimmie H. Duckett*, *supra* note 8.

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. § 10.404 (1999).

¹³ *Id.*

¹⁴ *Supra* note 2.

modification of the prior decision. It found that he was not entitled to a schedule award as his benefits were terminated on March 24, 2002.

Regarding appellant's right leg, the Office, as noted, has not accepted that his employment caused any right leg condition. A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁵ Consequently, as appellant has not established that he has an employment-related right leg condition. The Office properly denied consideration of a schedule award for the right leg.

The October 23, 2006 decision also found that appellant was not entitled to a schedule award as his benefits were terminated on March 24, 2002. The March 24, 2002 decision was not, however, a termination for refusal of suitable work under 5 U.S.C. § 8106(c).¹⁶ The Office cited no authority for the proposition that a termination of compensation based on medical evidence was a bar to seeking a schedule award for permanent impairment. A claimant may have an employment-related condition that results in a permanent impairment under the A.M.A., *Guides* without any disability for work or the need for continuing medical treatment.¹⁷

Accordingly, in this case, the Office should have issued a merit decision with respect to the claim for a schedule award for the left leg. The case will be remanded to the Office for proper adjudication of the issue of the extent of impairment to appellant's left lower extremity.

CONCLUSION

The Board finds that appellant failed to establish that he had any continuing disability after March 24, 2002. The case will be remanded to the Office for a merit decision with respect to appellant's claim for a schedule award.

¹⁵ *Veronica Williams*, 56 ECAB 367 (2005).

¹⁶ The termination of compensation pursuant to 5 U.S.C. § 8106(c) is a bar to receipt of a schedule award for an impairment related to the employment injury. See *Stephen R. Lubin*, 43 ECAB 564 (1992).

¹⁷ *B.K.*, 59 ECAB ____ (Docket No. 07-1545, issued December 3, 2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 23, 2006 is affirmed in part and remanded in part.

Issued: February 15, 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