United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 08-310**
	)	**Issued: June 23, 2008**
DEPARTMENT OF AGRICULTURE, CASUAL FIREFIGHTERS, San Bernardino, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2007 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated February 22 and October 9, 2007 that denied certain benefits. 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 the Office met its burden of proof to terminate of appellant's compensation benefits effective August 15, 2006; (2) whether appellant established that he had any continuing disability or residuals relating to his accepted conditions after August 15, 2006; and (3) whether appellant met his burden of proof in establishing that he was totally disabled from June 16 to December 28, 2004 and October 27, 2005 to February 18, 2006.

FACTUAL HISTORY

On August 23, 2003 appellant, then a 41-year-old casual firefighter, sustained injury when he twisted his left knee and ankle while walking to a fire. The Office accepted the claim for left knee strain and left ankle sprain and paid appropriate compensation benefits. Appellant stopped work on August 25, 2003 and his assignment ended September 1, 2003.

Appellant came under the care of Dr. Albert Simpkins, a Board-certified orthopedic surgeon, who first treated him on November 5, 2003. Dr. Simpkins diagnosed left knee and ankle sprain, rule out internal derangement. In a June 16, 2004 report, he noted that a left knee magnetic resonance imaging (MRI) scan revealed intra-meniscal degeneration of the posterior horn of the medial meniscus with no evidence of ligamentous rupture or meniscal tear. On August 25, 2004 Dr. Simpkins noted examination findings of intact reflexes in the upper and lower extremities and no sensory deficits. He indicated that appellant appeared to give less than full effort which he attributed to pain. However, Dr. Simpkins opined that appellant's complaints were disproportionate to the minimal findings on x-rays of the neck, back and shoulder and the fact that the injury occurred some time prior.

On December 7, 2004 the Office referred appellant to Dr. Laurence Meltzer, a Board-certified orthopedic surgeon, for a second opinion. In a December 28, 2004 report, Dr. Meltzer discussed appellant's work history and indicated that the physical examination revealed normal station and gait, no evidence of swelling, redness, increased heat or deformity of the lower extremities or knees, full range of motion of the knees and an intact motor and sensory examination. He opined that, although appellant had subjective complaints of his knees locking, swelling and pain, there were no objective findings upon examination. Dr. Meltzer opined that appellant did not have an orthopedic problem but might be pursuing his claim for secondary gain. He noted that appellant was partially disabled until September or October 2003 and that his accepted conditions were resolved and he had no continuing residuals. Dr. Meltzer opined that appellant could return to work full time without restrictions.

On November 3, 2005 the Office authorized a change in physicians to Dr. Daniel Kharrazi, a Board-certified orthopedic surgeon, who first treated appellant on October 27, 2005. Dr. Kharrazi noted a history of injury and diagnosed internal derangement of the left knee, possible meniscal tear, chondromalacia and synovitis and possible chronic anterolateral sprain of the left ankle. He opined that appellant was temporarily totally disabled due to his work injury. In reports dated November 30 and December 8, 2005, Dr. Kharrazi noted that the neurological examination was intact with tenderness in the peripatellar, medial and lateral meniscus and diagnosed internal derangement of the left knee and possible tear. He recommended conservative treatment and advised that appellant was temporarily totally disabled for six weeks. A January 10, 2006 left knee MRI scan revealed no abnormalities.

Appellant submitted a Form CA-7, claim for compensation for total disability, for the period June 16 to December 28, 2004 and from October 27, 2005 to February 16, 2006. On February 22, 2006 the Office requested that he submit additional medical evidence to support total disability. Appellant submitted reports from Dr. Kharrazi dated January 5 to March 30, 2006. Dr. Kharrazi diagnosed internal derangement of the left knee, possible

meniscal tear, chondromalacia and synovitis and possible chronic anterolateral sprain of the left ankle. He recommended arthroscopic surgery and advised that appellant was totally disabled.

The Office found a conflict in medical opinion between Dr. Kharrazi, for appellant, and Dr. Meltzer, for the Office, regarding whether appellant had on going disability or residuals of his work-related injuries. To resolve the conflict the Office referred appellant to Dr. Gary L. Painter, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.

In a May 15, 2006 report, Dr. Painter reviewed the record, noted a history of appellant's work-related injury and set forth findings of examination. He stated that appellant presented wearing a locking brace for the left knee that prevented full flexion. Dr. Painter advised that appellant reported having constant severe pain in his left knee that was aggravated by walking. Examination of the left knee revealed tenderness to palpation, no effusion, no increased skin temperature or redness, range of motion was restricted due to pain, no crepitation and no gross ligamentous instability or unusual alignment. The anterior drawer test was negative but caused pain. Dr. Painter said that appellant was too sensitive to touch to perform Lachman's test and that MacMurray's test could not be performed due to restricted range of motion. With regard to the left ankle, he noted tenderness on palpation, no effusion, limited range of motion due to pain, no gross instability or swelling and no circulatory abnormalities. Dr. Painter diagnosed left knee strain and left ankle sprain and opined that these injuries had resolved. He stated that there was no objective physical evidence to support ongoing disability related to appellant's left ankle or knee and opined that appellant did not have residuals of the August 23, 2003 work injury. Dr. Painter explained that the "lack of any residual disability would be consistent with the relatively mild nature of his injury as reflected in the initial medical records."

Dr. Painter indicated that there was no medical documentation of a torn meniscus or ligament of the knee or ankle and no physical findings which would justify proceeding with arthroscopic surgery. He stated that appellant's ongoing symptomologies and complaints were "far out of proportion" to both the objective findings and to the nature of the initial injury. Dr. Painter added that, even if a ligamentous injury had occurred, appellant should have had much greater painless range of motion than what he exhibited on examination. He explained that patients with "severe" fractures and ligamentous reconstruction had better motion and less pain than exhibited by appellant. Dr. Painter advised that "not only are abnormal objective factors absent, but objective findings suggest he is using the left leg pretty much normally, since there is a lack of any atrophy of the left thigh musculature or left calf musculature" and there was "absolutely no increase in size about the knee itself or the ankle to suggest there is inflammation, compared to the opposite side." He remarked that Dr. Kharrazi's initial report of October 27, 2005 indicated that appellant had reported pain under the kneecaps, which was not the area where he had most recently complained of pain. Dr. Painter also advised that appellant's left knee range of motion, as recorded by Dr. Kharrazi was much greater than the range of motion that he recorded. He opined that appellant had no residuals of his accepted injury and that he could return to work full time without restrictions.

On June 14, 2006 the Office proposed to terminate compensation benefits for appellant's accepted left knee strain and left ankle sprain on the grounds that Dr. Painter's report dated May 15, 2006 established no residuals of the work-related employment injury.

In a letter dated June 29, 2006, appellant resubmitted a copy of Dr. Simpkins' August 25, 2004 report and Dr. Kharrazi's March 30, 2006 report. In a May 11, 2006 report, Dr. Kharrazi asserted that appellant's knee condition was employment related and required surgery.

By decision dated August 15, 2006, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his accepted employment injury. The Office further denied appellant's claim for total disability for the period June 16 to December 28, 2004 and from October 27, 2005 to February 18, 2006.

Appellant requested an oral hearing which was held on December 12, 2006. He resubmitted reports from Dr. Simpkins and also submitted reports from Dr. Kharrazi dated June 22 to August 3, 2006, who disagreed with Dr. Painter. Appellant again recommended left knee arthroscopic surgery and supported total disability. An MRI scan of the left knee dated August 28, 2006 revealed small knee joint effusion with primary consideration to an active synovitis.

On February 22, 2007 an Office hearing representative affirmed the August 15, 2006 decision.

On July 9, 2007 appellant requested reconsideration and he submitted reports from Dr. Simpkins. He also submitted a September 14, 2006 report from Dr. Kharrazi, who diagnosed left knee effusion and prescribed pain medication.

In an October 9, 2007 decision, the Office denied modification of its February 22, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] 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.[2] 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 a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[3]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for left knee strain and left ankle sprain. The Office subsequently developed the medical evidence and determined that a conflict in medical

[1] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[2] *Mary A. Lowe*, 52 ECAB 223 (2001).

[3] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

opinion arose between Dr. Kharrazi appellant's attending physician, who disagreed with Dr. Meltzer, an Office referral physician, regarding whether appellant had on going residuals of his work-related injuries and whether he could return to work full time.[4] Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[5]

The Board finds that the opinion of Dr. Painter is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related conditions have ceased. In a May 15, 2006 report, Dr. Painter reviewed appellant's history, reported findings and noted that both subjective and objective medical evidence established that his physical injuries had resolved. He noted findings upon physical examination of left knee tenderness, no effusion, no increased skin temperature or redness, range of motion was restricted due to pain, no crepitation and no gross ligamentous instability. With regard to the left ankle, Dr. Painter noted tenderness upon palpation, no effusion, limited range of motion due to pain and no gross instability or swelling. He diagnosed left knee strain and left ankle sprain and opined that these injuries were resolved. Dr. Painter noted that there was no objective physical evidence to support ongoing disability related to appellant's left ankle and knee and opined that appellant did not have residuals of the August 23, 2003 work injury. He indicated that there was no medical documentation of a torn meniscus or ligaments and no physical findings which would justify proceeding with arthroscopic surgery. Dr. Painter indicated that appellant's ongoing symptomologies and complaints were disproportionate to the objective findings and to the nature of the initial injury which suggested symptom magnification. He gave reasons for his opinion, noting, for example, that "objective findings suggest he is using the left leg pretty much normally, since there is a lack of any atrophy of the left thigh musculature or left calf musculature" and there was "absolutely no increase in size about the knee itself or the ankle to suggest there is inflammation, compared to the opposite side." Dr. Painter concluded that appellant's accepted injuries had resolved without residuals and that appellant could return to work full time without restrictions.

Appellant submitted a report from Dr. Simpkins dated August 25, 2004, who diagnosed left knee and ankle sprain. However, this report predated the period in which the Office terminated appellant's compensation benefits and did not otherwise not support that he would have an ongoing chronic condition due to his accepted injuries. Instead, Dr. Simpkins noted that appellant appeared to give less than full effort due to reported pain and he found appellant's complaints disproportionate to the minimal findings on the x-rays of the neck, back and shoulder and the fact that the injury occurred some time ago.

Appellant also submitted a reports from Dr. Kharrazi dated March 30 and May 11, 2006. He diagnosed left knee and ankle conditions, recommended arthroscopic surgery and advised that appellant remained totally disabled. However, Dr. Kharrazi failed to adequately address the reasons why any continuing orthopedic condition or disability was causally related to the accepted August 23, 2003 employment injury. Dr. Kharrazi was on one side of a conflict that

[4] *See* 5 U.S.C. § 8123(a).

[5] *Solomon Polen*, 51 ECAB 341 (2000).

was resolved by Dr. Painter and his report does not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability was causally related to the August 23, 2003 work injury.[6]

The Board finds that Dr. Painter had full history of the relevant facts and evaluated the course of appellant's condition. Dr. Painter is a specialist in the appropriate field. At the time benefits were terminated, he clearly opined that appellant had no residuals or disability attributable to his accepted orthopedic conditions. Dr. Painter's opinion, as set forth in his May 15, 2006 report, is found to be probative evidence and reliable. The Board finds that his opinion represents the weight of the medical evidence and is sufficient to justify the Office's termination of appellant's benefits for the accepted conditions of left knee strain and left ankle sprain effective August 15, 2006.

LEGAL PRECEDENT -- ISSUE 2

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.[7] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. 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 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals or disability causally related to his accepted employment injuries on or after August 15, 2006. Appellant submitted reports from Dr. Simpkins dated November 5, 2003 to August 25, 2004, predate the time that the Office terminated benefits. These reports are of no value in establishing that he had continuing residual of the work injuries on or after August 15, 2006 since they predate the time of the termination of benefits.

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[6] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

[7] *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

[8] *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

Reports from Dr. Kharrazi dated June 22 and September 14, 2006, diagnosed internal derangement of the left knee, possible meniscal tear, chondromalacia and synovitis and possible chronic anterolateral sprain of the left ankle. Dr. Kharrazi recommended arthroscopic surgery and advised that appellant was totally disabled. However, he, as noted above, were on one side of a conflict that was resolved by Dr. Painter[9] and his reports do not otherwise provide new findings or medical rationale sufficient to establish that any continuing condition or disability was causally related to the August 23, 2003 work injury. Thus, Dr. Kharrazi's reports are insufficient to overcome that of Dr. Painter or to create a new medical conflict.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related injury of August 23, 2003. Consequently, he did not establish that he had any employment-related condition or disability after August 15, 2006.

LEGAL PRECEDENT -- ISSUE 3

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[10] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[11] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[12] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[13]

ANALYSIS -- ISSUE 3

The Office also found that appellant had not established his claim for total disability for the period June 16 to December 28, 2004 and from October 27, 2005 to February 18, 2006. The Board finds that the medical evidence is insufficient to establish that the claimed period of total disability was caused or aggravated by the accepted employment injury.

Appellant submitted reports from Dr. Simpkins dated June 16 and August 25, 2004, who treated him for work injuries sustained on August 23, 2003 and diagnosed left knee and ankle sprain. However, Dr. Simpkins did not specifically address whether appellant had any employment-related disability beginning June 16 to December 28, 2004 causally related to his

[9] *See Michael Hughes*, *supra* note 6.

[10] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[11] *Id.*

[12] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

August 23, 2003 employment injury.[14] As noted, his August 25, 2004 report noted that appellant's symptoms and complaints were disproportionate with his minimal findings. Therefore, these reports are insufficient to meet appellant's burden of proof.[15]

Appellant also submitted reports from Dr. Kharrazi from October 27, 2005 to September 14, 2006. Dr. Kharrazi opined that appellant was temporarily totally disabled. Although he noted that appellant was still experiencing symptoms of left knee and ankle pain and was disabled, Dr. Kharrazi failed to provide a specific and reasoned opinion on causal relationship directly addressing the specific dates of disability claimed and explaining the reasons why any such disability would be due to the accepted left ankle sprain and knee strain sustained on August 23, 2003.

The remainder of the medical evidence also does not provide a specific opinion on causal relationship addressing the claimed period of disability and the accepted employment injury of August 23, 2003. Consequently, the medical evidence does not establish that appellant was disabled during the claimed period as a result of his August 23, 2003 work injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate benefits effective August 15, 2006 and that appellant failed to establish that he had any continuing disability due to his accepted condition after August 15, 2006. It further finds that the evidence does not establish that appellant was totally disabled from June 16 to December 28, 2004 and October 27, 2005 to February 18, 2006 due to his accepted employment conditions.

[14] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[15] The evidence also does not show that there was any wage loss during the period claimed which was incidental to treatment for an accepted injury. *See* 5 U.S.C. § 8103(a); *Daniel Hollars*, 51 ECAB 355 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 9 and February 22, 2007 are affirmed.

Issued: June 23, 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