



However, the Office requested additional factual and medical evidence. Specifically, it asked appellant to explain the activities he was performing on April 14, 2004 when he allegedly tripped on a shoelace. The Office also requested medical opinion evidence concerning aggravation as well as development and cause for the tear on the right knee.

By letter dated January 24, 2005, appellant stated that the injury of April 14, 2004 did not occur while performing employment-related duties; rather it occurred while clearing brush at his home. Additionally, he submitted the report of Dr. Benjamin A. Williams, a Board-certified orthopedic surgeon, dated September 23, 2004, which concluded that the 2004 injury was a mild injury and not the cause of the extensive damage to appellant's knee. Rather, Dr. Williams stated that the knee condition developed slowly over time and was "intricately related" to appellant's occupation.

Appellant also submitted another medical report from Dr. Thomas P. Dolkas, a Board-certified general practitioner, dated January 15, 2005. After restating appellant's medical history, Dr. Dolkas noted finding extensive degenerative joint disease and Grade 4 articular cartilage change over a significant portion of the medial compartment. He asserted that the reason for appellant's problem is "mostly occupation related." Dr. Dolkas concluded that appellant's right knee extensive degenerative and traumatic change had developed slowly over time and seemed intricately related to his occupation: carrying mail; walking great distances on a repetitive basis; and often carrying extra weight. He concludes by restating the following: "In my final opinion, his right knee problem is mainly caused by repetitive weight-bearing occupation over the years."

The Office submitted appellant's claim for review by the district medical director. By memorandum dated June 6, 2005, Dr. Leonard Simpson, medical consultant, concluded that the principal etiology and cause of appellant's subsequent degenerative knee condition was the knee injury he incurred in 1979. Dr. Simpson reasoned that this injury produced underlying instability of the knee, which after factoring in the passage of time with appellant performing normal activities, be they employment related or otherwise, would produce degenerative changes over a period of 20 years. Furthermore, he stated that the need for subsequent surgery, including but not limited to a total knee replacement, was directly traceable to the injury in 1979, not the cumulative effects of working as a postal worker for 25 years.

Appellant thereafter submitted the medical report of Dr. Kevin Hilton, a Board-certified orthopedic surgeon, dated August 31, 2005. Dr. Hilton stated that review of appellant's prior medical treatment and arthroscopic pictures revealed he has chondromalacia, Grade 5, bone-on-bone osteoarthritic changes within his knee. He reported that x-rays revealed severe osteoarthritic changes in the right knee with joint space narrowing, squaring of the femoral condyles and osteophyte production. Dr. Hilton recommended that appellant undergo injections to relieve his symptoms within his knee and should consider a total knee arthroplasty in the future. Moreover, after reviewing the records from Dr. Dolkas and Dr. Williams, as well as the medical report of Dr. Simpson and Dr. Hilton opined that appellant's tricompartmental osteoarthritic changes were more likely than not secondary to his long-term walking with a load over 27 years. Dr. Hilton concluded that it is medically improbable that appellant's diagnosed partial anterior ligament tear, which was treated and subsequently asymptomatic for 25+ years, would not lead to osteoarthritic change.

Commencing on March 15, 2006 appellant underwent treatment for right knee pain. Between March and May 2006, he had five Supartz injections. Supartz is injected directly into the knee joint to restore the cushioning and lubricating properties of normal joint fluid.

By report dated April 19, 2006, Dr. Hilton stated that appellant reported his right knee was doing well. On this particular date, appellant saw Dr. Hilton for his fifth Supartz injection. Dr. Hilton noted that, due to the chronic nature of appellant's osteoarthritis, he would most likely continue to require anti-inflammatory medications, perhaps further Supartz injections and, eventually, a total knee replacement. Regardless, he opined that appellant should return to full duty without restriction. In a report dated November 1, 2006, Dr. Hilton stated that appellant was planning to have a left knee total knee replacement operation in December 2006.

On July 23, 2007 the Office identified a conflict in medical opinion between Dr. Simpson, the Office's second opinion examiner, and Dr. Hilton, appellant's treating physician, as to whether appellant's current right knee condition was causally related to his accepted work-related injury and if so whether the work-related condition required further right knee surgical treatment. It referred appellant and his file, together with an addendum of accepted facts dated July 18, 2007 and a list of questions to Dr. Aubrey Swartz, a Board-certified orthopedic surgeon.

By report dated August 8, 2007, Dr. Swartz reviewed appellant's medical history and reported findings of his review and physical examination. He stated that appellant's right knee condition, though temporarily aggravated by his work activities with the postal service, was not caused by his employment. Rather, Dr. Swartz asserted that appellant's right knee condition was solely attributable to his nonindustrial injury in 1979, when he tore his anterior cruciate ligament (ACL). He opined that appellant's ACL tear led to degenerative changes in his right knee and also to the complex degenerative tearing of the medial meniscus of his right knee. Moreover, Dr. Swartz maintained that the precipitating event necessitating his most recent surgery was when appellant tripped over his own shoelaces rather than an employment-related event. Furthermore, he opined that a strain would not be expected to last more than a temporary period of time and, therefore, appellant's right knee condition was not a residual of the accepted injury, right knee strain, but of the 1979 nonindustrial softball injury.

By letter dated September 5, 2007, the Office proposed to terminate appellant's medical benefits and wage-loss compensation. The basis of termination was its conclusion that Dr. Swartz' impartial medical report, established that appellant's accepted condition of right knee strain had ceased.

By decision dated October 23, 2007, the Office terminated appellant's claim for medical and wage-loss benefits.

By request dated January 15, 2008, appellant requested reconsideration. In support of his request for reconsideration, he submitted a report from Dr. Hilton dated December 17, 2007. Dr. Hilton did not indicate that he reexamined appellant prior to issuing this particular report. Responding to Dr. Swartz' findings, he reiterated that appellant had long-term damage, chronic pain and joint stiffness due to severe and progressive osteoarthritis of the right knee. Dr. Hilton argued that this conclusion was consistent with appellant's lifting/carrying activities as a

letter/mail carrier for 29 years. He opined that appellant's current symptoms are "more likely than not to have been caused by his chronic repetitive industrial injury and duties."

By decision dated April 21, 2008, the Office denied modification of its October 23, 2007 decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. 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 appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>2</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary of Labor shall appoint a third physician who shall make an examination.<sup>3</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>4</sup>

### **ANALYSIS**

The Office accepted appellant's claim on December 28, 2004 for a right knee strain. It subsequently developed the medical evidence and determined that a conflict in medical opinion arose between Dr. Hilton, appellant's treating physician, and Dr. Simpson, an Office referral physician, as to whether appellant still had residuals due to his accepted condition, knee strain, and whether the accepted condition required further surgical treatment. To resolve this conflict, the Office referred appellant to Dr. Swartz for an impartial medical opinion.

The Board finds the opinion of Dr. Swartz sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. On August 8, 2007 Dr. Swartz conducted a physical examination and review of appellant's medical history. He stated that although appellant's right knee condition had been temporarily aggravated by his work activities with the postal service, his current conditions were not causally related to the knee strain because a strain would not be expected to last for more than a temporary period of time.

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<sup>1</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>2</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>3</sup> 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>4</sup> *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

Dr. Swartz explained that appellant's right knee condition was causally related to his nonindustrial softball injury which was diagnosed as an ACL tear in 1979. The root of appellant's right knee condition was that torn ACL, which was not surgically treated and allowed to deteriorate over the years. Dr. Swartz stated that this nonindustrial injury led to degenerative changes in the meniscus of appellant's right knee as well as the complex degenerative tearing of the medial meniscus. According to Dr. Swartz, the initial ACL injury in 1979 "set the stage" for: degenerative arthritis; degeneration of the menisci; and rendered appellant susceptible to the nonindustrial tear of the medial meniscus when he tripped over his shoe lace at home in 2004. Appellant's fall was not precipitated by skeletal instability; rather it was appellant's own shoe laces and gravity.

As Dr. Schwartz explained his conclusion that appellant's accepted condition of right knee strain had resolved and explained with medical rationale why his current right knee condition was causally related to his nonemployment-related injury of 1979, the Board finds that his report is entitled to special weight.

With his request for reconsideration appellant submitted an additional report from Dr. Hilton, dated October 30, 2007, responding to Dr. Swartz' evaluation. Dr. Hilton did not reexamine appellant but rather merely restated his earlier conclusions which were the basis for the Office's finding of a conflict in the medical opinion evidence. Therefore, the Board finds this rationale insufficient to create a new conflict. The Board finds that this report was insufficient to overcome the weight accorded Dr. Swartz, the impartial medical specialist, whose opinion was well rationalized and established that appellant's employment-related residuals had ceased.<sup>5</sup> The Office, therefore, met its burden of proof to terminate appellant's compensation benefits effective October 23, 2007.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective October 23, 2007.

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<sup>5</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005) (the reports from appellant's physician reiterated his opinion on disability and, as he was one side of the conflict resolved by the impartial medical specialist, the additional reports were insufficient to create a new conflict as he essentially repeated his opinion).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 21, 2008 and October 23, 2007 are affirmed.

Issued: January 22, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board