

FACTUAL HISTORY

Appellant, a 39-year-old supervisory transportation security screener, injured herself in the performance of duty on May 14, 2003.¹ The Office initially accepted her claim for thoracic strain, cervical strain and cervical subluxation.² The claim was subsequently expanded to include rupture of the right anterior cruciate ligament (ACL).³ The Office placed appellant on the periodic compensation rolls effective October 5, 2003. Appellant had remained off work since her May 14, 2003 injury.

On June 14, 2005 appellant was seen by her orthopedic surgeon, Dr. Dalzell, for complaints of persistent right shoulder pain and neck pain.⁴ Dr. Dalzell thought she had a right rotator cuff tear. He also noted that appellant was status post right ACL reconstruction, which he commented “appears to be improving.” While Dr. Dalzell did not comment further about her accepted right knee condition, he recommended arthroscopic evaluation of her right shoulder for possible rotator cuff repair.⁵ He also advised that appellant was capable of working light-duty desk work and answering telephones.

In a report dated September 16, 2005, Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon and Office referral physician, noted appellant’s then-current complaints of pain and stiffness in the neck, with pain radiating into the right shoulder. Appellant also reported mid and lower back pain and right knee pain. Dr. Maslow also noted complaints of right shoulder pain and restricted motion with difficulty lifting and reaching. After obtaining medical and employment histories and performing both physical and neurological examinations, Dr. Maslow found that appellant sustained a cervical sprain, right knee sprain, right knee internal derangement with ACL tear and tear of the lateral meniscus. He found that the above-noted conditions were attributable to the May 14, 2003 employment incident. As to appellant’s ongoing right shoulder complaints, Dr. Maslow noted that she clearly had problems with her rotator cuff, with impingement syndrome. However, he did not believe that appellant’s right shoulder condition was causally related to the May 14, 2003 employment incident. While appellant’s right shoulder problems limited her ability to return to full employment, Dr. Maslow

¹ As reported on her May 14, 2003 Form CA-1, the Office accepted that appellant injured herself when she picked a bag off the screening (CTX) machine and twisted her back causing throbbing pain in the upper left back area and knees.

² Appellant also claimed to have injured her right shoulder. However, the Office has repeatedly declined to accept appellant’s right shoulder condition as related to the May 14, 2003 employment injury. It last addressed this particular issue in a nonmerit decision dated November 15, 2007. Consequently, the question of whether appellant sustained a right shoulder injury on May 14, 2003 is not currently before the Board.

³ The Office also authorized a December 3, 2004 right knee arthroscopy. Dr. Frederick G. Dalzell, a Board-certified orthopedic surgeon, performed a partial lateral meniscectomy and an ACL reconstruction with allograft.

⁴ In a March 18, 2005 report, Dr. Dalzell noted that appellant had some symptoms of neck and shoulder pain, which had been aggravated by her use of crutches postoperatively.

⁵ The Office had just recently advised appellant that her claimed right shoulder condition was not accepted as employment related. By decision dated May 12, 2005, the Office also declined authorization for right shoulder arthroscopy.

imposed no work restrictions with respect to her accepted cervical and right knee conditions.⁶ Dr. Maslow explained that she had no objective evidence of permanency or disability at the cervical spine and there was no limitation in work capabilities based on the cervical sprain. He also stated that, while there was some evidence of permanency and some mild continuing disability at the right knee as a result of the injuries incurred, appellant was nonetheless “fully capable of work activity without restriction.” Dr. Maslow also stated that she had “recovered fully from the employment[-]related injury to the right knee.” Appellant’s prognosis for both her back and right knee was “good.” Dr. Maslow explained that surgical intervention at the knee had been successful in reducing anterior-posterior instability and, therefore, no bracing or protective device was required.

Over the next several months appellant continued to experience problems with her right shoulder. However, her right knee did not pose similar difficulties. In a May 30, 2006 report, Dr. Dalzell noted that appellant was “doing quite well and functioning quite well from the standpoint of her knee.” Appellant had reported “only occasional discomfort” with respect to her right knee.

By decision dated November 6, 2006, the Office terminated appellant’s wage-loss compensation and medical benefits based on Dr. Maslow’s opinion.⁷

In a decision dated June 13, 2007, the Branch of Hearings & Review affirmed the termination of wage-loss compensation, but set aside the termination of medical benefits. The hearing representative accepted Dr. Maslow’s opinion that based on the accepted injuries appellant was “fully capable of work activity without restriction.” However, the hearing representative believed that further clarification was required concerning the question of ongoing right knee residuals given Dr. Maslow’s statement that there was “evidence of permanency and some mild continuing disability at the right knee....”

Dr. Maslow provided a supplemental report dated September 19, 2007. He reiterated his September 16, 2005 right knee physical examination findings and explained that according to his prior evaluation, appellant had recovered in full from the accepted work injury to her right knee. Dr. Maslow also noted that she had some “mild permanent partial impairment” of the knee as a result of the injury and subsequent surgery. Although perhaps confusing, he explained that this latter statement was not contradictory given that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) allowed for permanent impairment following ligamentous tear and meniscal tear. Dr. Maslow described appellant’s right knee physical examination findings as “typical and acceptable” after ACL reconstruction and indicative of a good functioning restraint to anterior/posterior motion. Thus, while appellant might be entitled to a schedule award for “mild permanent partial impairment,” Dr. Maslow

⁶ Dr. Maslow provided a September 29, 2005 work capacity evaluation (Form OWCP-5c) in which he indicated “claimant can work full duty.” He also noted that she had reached maximum medical improvement from her accepted conditions of cervical/thoracic strain and right ACL tear.

⁷ The Office issued an October 4, 2006 notice of proposed termination. Appellant did not submit any evidence or argument in response to the Office’s pretermination notification.

indicated that she had reached maximum medical improvement for her accepted right knee condition and there was no indication that additional medical treatment was required.

By decision dated November 15, 2007, the Office terminated appellant's medical benefits.⁸ Appellant requested a hearing, which was held on March 26, 2008. The hearing representative clarified that the issue was limited to whether the Office properly terminated medical benefits.⁹

On May 7, 2008 the Branch of Hearings & Review affirmed the Office's November 15, 2007 decision terminating medical benefits. The hearing representative considered additional evidence from Dr. John C. Baker dated May 4, 2007 and February 15, 2008,¹⁰ who noted that appellant had undergone arthroscopic surgery on January 16, 2007 to repair a partial tear of the right supraspinatus, which he related to her May 2003 employment injury. Dr. Baker's May 4, 2007 and February 15, 2008 reports did not otherwise address her accepted right knee and cervicothoracic conditions.

On May 22, 2008 appellant's counsel requested reconsideration of the hearing representative's May 7, 2008 decision terminating medical benefits. Counsel submitted another copy of Dr. Baker's February 15, 2008 report.

In a decision dated August 19, 2008, the Office denied modification of the May 7, 2008 decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹³ To terminate authorization for medical

⁸ Also on November 15, 2007 the Office issued a separate nonmerit decision, denying reconsideration of a March 1, 2006 merit decision finding that appellant's claimed right shoulder condition was not causally related to her May 14, 2003 employment injury.

⁹ On March 27, 2008 appellant separately requested reconsideration of the June 13, 2007 decision affirming the termination of wage-loss compensation. The Board notes that the Office has yet to issue a final decision regarding appellant's March 27, 2008 request for reconsideration.

¹⁰ Dr. Baker is a Board-certified orthopedic surgeon and a colleague of Dr. Dalzell.

¹¹ *Curtis Hall*, 45 ECAB 316 (1994).

¹² *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹³ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.¹⁴

ANALYSIS

On appeal, appellant's counsel argues that appellant continues to suffer residuals of her May 14, 2003 employment injury. He continues to emphasize the purported employment-related nature of appellant's right shoulder condition. Counsel also argues that Dr. Maslow's reports recognize that appellant continues to suffer residuals of her accepted right knee condition. In the alternative, counsel argues at a minimum there is an unresolved conflict between Dr. Maslow and Drs. Baker and Dalzell.

The Board finds that the Office has met its burden to terminate appellant's medical benefits. As previously indicated, the Office must establish that she no longer has residuals of an employment-related condition which require further medical treatment. In his September 16, 2005 report, Dr. Maslow stated that there was no objective evidence of permanency or disability at the cervical spine and appellant had "recovered fully from the employment[-]related injury to the right knee." He also noted that her prognosis for both her back and knee was "good." In his September 19, 2007 report, Dr. Maslow was unequivocal in stating that appellant had reached maximum medical improvement for her accepted right knee condition and there was no indication that additional medical treatment was required. While the May 14, 2003 right knee injury left some "mild permanent partial impairment," this would not require further medical treatment as indicated by Dr. Maslow, who merely recognized that appellant's right knee injury and subsequent surgery would likely justify a future schedule award. Appellant's counsel has not submitted any evidence that calls into question Dr. Maslow's opinion regarding the need for further medical treatment regarding her accepted cervical and right knee conditions. The opinions of Drs. Dalzell and Baker regarding appellant's right shoulder condition are not relevant to the issue of whether she has continuing residuals of her accepted cervical, thoracic and right knee injuries. Accordingly, the Board finds that the Office properly terminated medical benefits.

CONCLUSION

The Office met its burden to terminate appellant's medical benefits effective November 15, 2007.

¹⁴ *Calvin S. Mays*, 39 ECAB 993 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board