United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket Nos. 10-833 & 10-1429**
	)	**Issued: April 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Portland, ME, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 27, 2010 appellant, through counsel, filed a timely appeal from an August 5, 2009 decision of the Office of Workers' Compensation Programs affirming the denial of his claim.[1] The Board assigned Docket No. 10-833. On April 20, 2010 appellant, through counsel, filed a timely appeal from an April 5, 2010 decision of the Office affirming the termination of his compensation benefits. The Board assigned Docket No. 10-1429. Pursuant to the Federal Employees' Compensation Act[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of the Office's decision. *See* 20 C.F.R. § 501.3(f)(2). As the Office's decision was issued August 5, 2009, the 180-day computation begins August 6, 2009. One hundred and eighty days from August 6, 2009 was February 1, 2010. Since using February 3, 2010, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 27, 2010 which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish left knee conditions due to the accepted March 14, 2001 employment injury; and (2) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective July 5, 2009 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries.

On appeal, counsel contends that the Office erred in terminating appellant's benefits. He also contends that the medical evidence established that appellant sustained more than a left knee sprain, as accepted by the Office.

FACTUAL HISTORY

On March 14, 2001 appellant, then a 46-year-old maintenance mechanic, filed a traumatic injury claim alleging that on that day he twisted his left knee when he slipped on a safety chain and fell. The Office accepted the claim for a left knee strain. Appellant was placed on limited-duty work following the injury and stopped work on August 7, 2002 as the employing establishment could no longer accommodate his restrictions.[3] It placed him on the periodic rolls for temporary total disability.[4]

A May 10, 2001 magnetic resonance imaging (MRI) scan noted findings suspicious for a left knee partial anterior cruciate ligament tear.

In a progress note dated May 11, 2001, Dr. George W. Stockwell, an examining osteopathic physician, opined that appellant might have a medial meniscus tear as he did not believe he had an anterior cruciate ligament tear.

Dr. Dennis J. Sullivan, a treating Board-certified orthopedic surgeon, reviewed the MRI scan and provided physical examination findings. On June 4, 2001 he stated that appellant had a partial anterior cruciate ligament tear. In a June 4, 2001 report form, Dr. Sullivan diagnosed a left anterior cruciate ligament tear, noted the injury date of March 14, 2001 and checked that the condition was employment related.

In an April 12, 2002 report, Dr. Steven G. Johnson, a treating physician, diagnosed left knee contusion and left leg sciatica in 2002. He noted an employment injury date of March 14, 2001 and checked that the conditions were employment related.

In progress notes dated May 8, 2002, Dr. Sullivan diagnosed left knee patellofemoral syndrome.

On September 16, 2002 appellant requested his claim be accepted for the diagnosed conditions of left leg and sciatic nerve pain.

[3] The Office referred appellant for rehabilitation services in August 2002. It closed the file in 2006 as unsuccessful.

[4] Appellant relocated to North Carolina effective February 9, 2007.

On February 14, 2003 Dr. Johnson diagnosed left knee patellofemoral syndrome. A January 12, 2004 MRI scan showed chondromalacia patella of the medial patellar cartilage and no definite meniscal tear or cruciate ligament injury. On March 24, 2004 Dr. Johnson diagnosed left knee patellofemoral syndrome with developing arthritis. He reported the history of injury and that an MRI scan showed a partial anterior cruciate ligament tear and fraying medial meniscus. Dr. Johnson stated that appellant continued to have left knee instability with clicking but no giveaway or locking. A physical examination revealed an antalgic gait, medial jointline tenderness, a negative drawer sign and positive patellofemoral grind.

In a March 17, 2005 report, Dr. Johnson concluded that appellant sustained left knee extreme valgus injury and prepatella subluxation as a result of his March 14, 2001 employment injury. He related that an MRI scan showed a partial anterior cruciate ligament tear and fraying medial meniscus. Physical findings had not changed from the prior March 24, 2004 report. Dr. Johnson, in a January 26, 2006 report, related that appellant's symptoms are unchanged although appellant believes his left knee has gotten worse.

On April 5, 2007 Dr. H.L. Clinton, Jr., a treating physician, noted that appellant sustained a knee injury on March 14, 2001 while at work and that objective testing was necessary to determine the extent of his knee injury. A physical examination revealed no localized tenderness or swelling of the left knee, no ligamentous instablility normal range of motion and moderate patellofemoral crepitus.

In a February 5, 2008 report, Dr. Surendrapal S. Mac, a second opinion Board-certified orthopedic surgeon, diagnosed a left knee strain. On physical examination of the left knee, there was full range of motion, tenderness over the medial and anterior aspect of the knee and no instability. Dr. Mac related that x-rays taken at the time of his examination showed mild degenerative knee changes with a mild medial space diminution and no bony injury. He stated that a review of the prior MRI scans showed no evidence of any significant meniscus or ligament tear which supported the diagnosis of left knee sprain. Dr. Mac reported that a January 12, 2004 MRI scan showed chondromalacia patella of the medial patellar cartilage. He advised that the left knee sprain would normally resolve in a few months and that appellant was capable of performing his date-of-injury job. Dr. Mac concluded that appellant had no permanent impairment of his left knee as a result of the accepted employment injury.

In a March 13, 2008 supplemental report, Dr. Mac concluded that appellant's left knee sprain had resolved. He was unable to determine the exact date the condition had resolved due to seeing appellant seven years after the injury. Dr. Mac related that the left knee sprain would have healed and resolved within a few months of the injury. With respect to the diagnosis of chondromalacia patella, he was unable to determine whether the condition was preexisting or caused by the injury because his examination of appellant was seven years after the injury.

On April 14, 2008 the Office issued a notice proposing to terminate appellant's compensation based upon Dr. Mac's opinion that his accepted left knee strain had resolved without continuing disability or residuals.

An April 22, 2008 report from Dr. Brian Rosenberg, a treating physician, was received. Dr. Rosenberg diagnosed possible internal derangement of the knee. He recommended further

testing as appellant might have a new injury or a subtle injury which did not show on his prior MRI scan.

In a letter dated May 13, 2008, appellant's counsel contended that Dr. Mac's report was insufficient to support the termination of benefits. In addition, he contended that the Office failed to properly code the accepted conditions as appellant sustained more than a left knee strain. Also the statement of accepted facts the Office provided Dr. Mac was inaccurate.

On May 21, 2008 Dr. Rosenberg diagnosed a possible subluxation of the patella based on a review of an MRI scan. He reported the scan showed no acute knee or meniscus injuries. Dr. Rosenberg attributed appellant's knee going out to either patella subluxation or "ACL" laxity.

By decision dated August 1, 2008, the Office finalized the termination of appellant's compensation benefits effective August 2, 2008.

On August 12, 2008 appellant's counsel requested a review of the written record by an Office hearing representative.

By decision dated January 9, 2009, an Office hearing representative vacated the August 1, 2008 decision as Dr. Mac's opinion was insufficiently reasoned. The Office hearing representative found that further development of the medical record was required on the issue of whether appellant's chondromalacia was employment related.

On January 21, 2009 an Office medical adviser reviewed the medical record and concluded that the continued care by appellant's treating physician was insufficient to establish that he sustained a structural defect as a result of the accepted employment injury. He noted that the complaints of intermittent pain on a 10 out 10 pain scale were inconsistent with the generally negative imaging studies and physical findings. The Office medical adviser found the medical evidence insufficient to warrant accepting any additional left leg conditions.

In an April 7, 2009 report, Dr. Robert Miller, a second opinion Board-certified orthopedic surgeon, reviewed the statement of accepted facts, employment injury history and medical records and performed a physical examination. The examination revealed normal ambulation, no noticeable limp, full bilateral knee range of motion, mild bilateral knee patellofemoral crepitus and no tenderness on medial or lateral patellar facets palpitation. Dr. Miller related that appellant's knee examination was essentially normal other than the Grade 1 patellofemoral crepitus and subjective tenderness on medial palpation. He found no objective evidence of any current employment-related disability or of the accepted left knee strain. Dr. Miller concluded that no ligament injury occurred, as there was an absence of any findings on the MRI scans of a high-grade ligament injury. Repeated findings of a stable knee ligament were documented in the medical record. With respect to the diagnosis of chondromalacia patella, he stated that this was dependent on direct surgical or arthroscopic observation of the cartilage, which was not done in the current case. Dr. Miller noted that it could be inferred by an MRI scan or findings of crepitus during a physical examination. While a January 12, 2005 MRI scan revealed some medial patellar facet cartilage intrinsic abnormality and crepitus on examination, he concluded the "finding is of questionable significance at best." Dr. Miller explained that the finding of crepitus

was present in both appellant's knees and could be found in a random examination of half the population. As to the diagnosis of patellofemoral syndrome, he related that, while appellant's complaints of mild crepitus, pain and instability were consistent with this diagnosis, his other complaints of pain on passive knee extension and tenderness at the medial joint line were not characteristic of chronic retropatellar pain syndrome. Dr. Miller noted that appellant tolerated long automobile rides with his knee flexed with no difficulty, which patients with retropatellar pain syndrome were unable to do. He opined that appellant's accepted left knee strain had completely resolved without residuals or disability. Dr. Miller noted the diagnosis of mild chondromalacia patella was possible bilaterally, but there was no medical evidence to support that it was due to the accepted employment injury.

By decision dated May 11, 2009, the Office denied appellant's request to expand his claim to include left chondromalacia patella. It found the report of Dr. Miller to be well rationalized and constituted the weight of the evidence establishing that his claim should not be expanded.

On May 11, 2009 the Office issued a notice proposing to terminate appellant's compensation benefits. It found the weight of the evidence rested with Dr. Miller's April 7, 2009 report that his accepted employment injury had resolved with no residuals or disability.

In a letter dated May 18, 2009, appellant's counsel requested a written review of the record by an Office hearing representative.

By decision dated July 1, 2009, the Office finalized the termination of appellant's compensation effective July 5, 2009.

In a July 8, 2009 letter, appellant's counsel requested a review of the written record by an Office hearing representative on the July 1, 2009 termination of his compensation.

By decision dated August 5, 2009, an Office hearing representative affirmed the May 11, 2009 decision denying appellant's request to accept left chondromalacia patella.

By decision dated April 5, 2010, the Office hearing representative affirmed the termination of appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[5] To establish a causal relationship between the condition was well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a casual relationship.[6] Causal relationship is a medical issue and the medical

[5] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

evidence required to establish a causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8] Neither the mere 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.[9]

ANALYSIS -- ISSUE 1

The Office accepted that on March 14, 2001 appellant sustained a left knee strain in the performance of duty. On appeal, appellant's attorney contends that the Office accept left chondromalacia patella as a result of the March 14, 2001 employment injury. The Board finds that appellant did not submit sufficient reasoned medical opinion on causal relationship establishing additional employment-related conditions.

In a May 11, 2001 progress note, Dr. Stockwell opined that appellant might have a medical meniscus tear while on July 4, 2001 and May 8, 2002 Dr. Sullivan diagnosed anterior cruciate ligament and left knee patellofemoral syndrome. Dr. Johnson diagnosed left leg sciatica in a series of progress notes from 2002 to 2006. On April 5, 2007 Dr. Clinton reported that additional testing was required to determine the extent of appellant's left knee injury. On April 22, 2008 Dr. Rosenberg diagnosed possible left knee derangement. None of the physicians provided sufficient explanation for how the listed diagnoses of the left knee were due to the March 14, 2001 left knee sprain. They did not offer any explanation as to how the mechanism of the March 14, 2001 employment injury, *i.e.*, slipping on a safety chain and falling, was competent to result in the various diagnoses or resultant disability. The Board has held that medical opinions not containing rationale on causal relation are of diminished probative value and are insufficient to meet appellant's burden of proof.[10]

The Office referred appellant to Dr. Miller, a second opinion Board-certified orthopedic surgeon. On April 7, 2010 Dr. Miller concluded that the diagnosis chondromalacia patella was not appropriate. He noted that no surgery was performed and the objective evidence of record was not supportive of this diagnosis. While a January 12, 2005 MRI scan implicitly diagnosed some medial patellar facet cartilage intrinsic abnormality and crepitus on examination, there was no evidence that a high-grade ligament injury occurred and there were repeated findings of a stable knee ligament test, as reported by various physicians. Additionally, Dr. Miller pointed out that chondromalacia of the patella was directly dependent on surgery or arthroscopic intervention, which had not occurred. He noted that crepitus, which was found in both knees, was present in approximately half the general population. Dr. Miller concluded that the condition was not employment related. While appellant had possible bilateral mild

[7] *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[8] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[10] *Richard A. Neidert*, 57 ECAB 474 (2006); *D.U.*, Docket No. 10-144 (issued July 27, 2010).

chondromalacia patella, there was no medical evidence to support causal relationship to the accepted March 14, 2001 employment injury. Dr. Miller found that the accepted left knee sprain had completely resolved without residuals or disability.

As noted, it is appellant's burden to establish a causal relationship between a condition not accepted by the Office and the accepted employment injury. Appellant failed to provide the necessary evidence to support his claim.

On appeal, counsel contends that the evidence is sufficient to support the diagnosis of chondromalacia patella. While Dr. Mac made this diagnosis, he reported that he was unable to determine whether it was a preexisting condition or resulted from the March 14, 2010 employment injury. The case ultimately resulted in referral to Dr. Miller. Dr. Mac's report was insufficient to support appellant's request for an expansion of his claim.

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[11] After it has determined that an employee has disability causally related to 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.[12] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[13]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[14] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[15]

ANALYSIS -- ISSUE 2

The Office terminated appellant's compensation benefits effective July 5, 2009 based on the report from Dr. Miller.

In an April 7, 2009 report, Dr. Miller, a second opinion Board-certified orthopedic surgeon, provided a detailed summary of appellant's history and advised that his left knee strain from the March 14, 2001 injury at work had resolved. He explained that appellant's knee

[11] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[12] *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[13] *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988); *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

[14] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

[15] *Kathryn E. Demarsh*, *supra* note 14; *James F. Weikel*, 54 ECAB 660 (2003); *B.K.*, Docket No. 08-2002 (issued June 16, 2009).

examination was essentially normal except for the subjective finding of tenderness on palpitation and patellofemoral crepitus was caused by a low impact event and that the knees were stable and there were no fractures. Dr. Miller opined that there was no ligament injury due to the March 14, 2001 injury based on the absence of any high-grade ligament injury from a review of medical record. After reviewing appellant's records and conducting his own examination, Dr. Miller determined that his accepted left knee strain had resolved without residuals and without continued disability due to the work injury. He also advised that there was a possibility of a diagnosis of chondromalacia patella, which was bilateral. As the condition was bilateral Dr. Miller concluded that there was no evidence of any causal connection between this condition and the accepted employment injury.

The Board finds that Dr. Miller's report represents the weight of the medical evidence and that the Office properly relied on his report in terminating appellant's benefits. Dr. Miller's opinion is based on proper factual and medical history and his report contained a detailed summary of this history. He addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.[16] Dr. Miller found no basis on which to attribute any residuals or continued disability to appellant's accepted injury. He also found no basis on which to attribute appellant's nonaccepted condition of chondromalacia patella to the March 14, 2001 employment injury.[17]

There is no other medical evidence contemporaneous with the termination of appellant's compensation benefits which supports that he had any continuing employment-related condition. Consequently, the weight of the medical evidence rests with Dr. Miller and establishes that appellant had no residuals due to his accepted left knee strain.

On appeal, appellant's counsel asserts that Dr. Miller's report is unrationalized and based on an inaccurate statement of accepted facts. Contrary to appellant's contentions, Dr. Miller provided a rationalized medical report and explained his conclusion. He found there was no evidence that the chondromalacia patella condition had been caused or aggravated by the March 14, 2001 employment injury. Dr. Miller represents the weight of the medical evidence as he provided a rationalized medical opinion explaining the reasons for his findings.

CONCLUSION

The Board finds appellant did not meet his burden of proof to establish the expansion of his claim. The Board further finds that the Office met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits effective July 5, 2009.

[16] *See Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

[17] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted by the Office, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 5, 2009, in Docket No. 10-833, and April 5, 2010, in Docket No. 10-1429, are affirmed.

Issued: April 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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