

FACTUAL HISTORY

On June 28, 1999 appellant, then a 54-year-old health technician, filed a traumatic injury claim alleging that she injured her right foot and knee on June 25, 1999 in the performance of duty. OWCP accepted her claim for right internal derangement of the knee on July 16, 1999. It entered appellant on the periodic rolls on September 3, 1999. OWCP expanded her claim to include contusion of the right foot and aggravation of phlebitis of the right foot. On June 15, 2000 it authorized right knee arthroscopy to repair a tear in the lateral meniscus. Appellant underwent right knee arthroscopy for a partial tear of the lateral meniscus, chondroplasty and microfracture of the lateral femoral condyle on September 18, 2000.

Appellant's attending physician, Dr. Jeffrey Passick, a Board-certified orthopedic surgeon, completed a report on February 2, 2006 and noted her history of injury. He found a moderate right knee effusion and significant loss of range of motion. Dr. Passick diagnosed severe arthritis of the knee and opined that appellant was permanently and totally disabled. He noted that she required a cane or walker to ambulate and would eventually require a total knee replacement.

OWCP referred appellant for a second opinion evaluation with Dr. Louis D. Nunez, a Board-certified orthopedic surgeon. In his September 6, 2007 report, Dr. Nunez noted her accepted conditions as well as her concurrent conditions of diabetes and sickle cell disease. He examined appellant and found flexion contracture of the right knee with an active ongoing osteoarthritic condition of the right knee joint. Dr. Nunez opined that she had residuals of her accepted fracture of the right tibial shaft, osteoarthritis. He noted that appellant could not perform her date-of-injury position, but could perform sedentary work eight hours a day. Appellant could walk and stand for one hour each and could not bend or stoop. Dr. Nunez also stated that she could not climb, kneel, squat or lift. He indicated that appellant could push and pull up to 10 pounds one hour each.

Dr. Barry I. Krosser, a Board-certified orthopedic surgeon, completed a work capacity evaluation on October 25, 2007 and found that appellant was totally disabled due to her need for a total knee replacement.

OWCP found a conflict of medical opinion evidence between Dr. Krosser and Dr. Nunez and referred appellant to Dr. Harvey Seigel, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a January 17, 2008 report, Dr. Seigel reviewed the medical records and noted that the accepted conditions were right knee internal derangement, right foot contusion and thrombophlebitis migrans. He opined that there was no active thrombophlebitis. Dr. Seigel stated, "While there are objective findings of osteoarthritis of both knees, this cannot be attributed to the [work-related] injury." He noted that there was evidence of osteoarthritis of both knees complicated by fractures of the right knee. Dr. Seigel stated that this condition was not related to appellant's June 25, 1999 employment injury and opined that her accepted conditions had resolved. He stated that she was able to perform a sedentary job and that none of her disability was causally related to her June 25, 1999 employment injury. Dr. Seigel found that there were

no objective findings that the right knee injury on June 25, 1999 caused a permanent aggravation of appellant's preexisting condition of osteoarthritis of the right knee.

Dr. Seigel provided work restrictions indicating that appellant could work eight hours a day with limited walking, standing, bending, stooping, squatting, kneeling and climbing.

The employing establishment offered appellant a limited-duty position on February 12, 2008. Appellant returned to full-time work with restrictions on March 31, 2008.

OWCP requested a supplemental report from Dr. Seigel on September 9, 2008 and requested that he opine whether appellant had reached maximum medical improvement in regards to the accepted conditions. It requested an additional report on October 5, 2008 addressing whether right knee internal derangement, right foot contusion and thrombophlebitis migrans had resolved. OWCP requested medical rationale. Dr. Seigel responded on November 14, 2008 and stated that appellant had reached maximum medical improvement. He stated that, while there were objective findings of osteoarthritis of both knee, these findings could not be attributed to the work injury. Dr. Seigel concluded, "No medical treatment is recommended since the accepted conditions have already resolved completely."

In a letter dated December 10, 2008, OWCP notified appellant of the proposed termination of medical and compensation benefits based on Dr. Seigel's reports. Counsel responded on January 6 and 18, 2009 and stated that it failed to provide a copy of Dr. Nunez' report and Dr. Seigel's January 17, 2008 report as stated in the notice. By decision dated February 13, 2009, OWCP terminated appellant's compensation and medical benefits effective February 15, 2009 relying on Dr. Seigel's reports. Counsel requested reconsideration on February 6, 2010.

By decision dated May 18, 2010, OWCP reviewed the merits of appellant's claim and denied modification of the prior decisions.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.⁶ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁷

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

Appellant's physician supported that appellant was totally disabled for work due to osteoarthritis of the knee which was caused or contributed to by her accepted employment injury. The second opinion physician, Dr. Nunez, found that, while appellant continued to experience employment residuals in the form of osteoarthritis, she was capable of performing sedentary work. The Board notes that there was a conflict of medical opinion evidence between appellant's physicians and those of OWCP on the issues of medical residuals and disability. OWCP properly referred appellant to Dr. Seigel to resolve these issues.

The Board finds that Dr. Seigel's reports are not sufficiently detailed or well rationalized to constitute the special weight of the medical opinion evidence and establish that appellant has no medical residuals due to her accepted employment injuries of right internal derangement of the knee and right knee arthroscopy. In a January 17, 2008 report, Dr. Seigel stated, "While there are objective findings of osteoarthritis of both knees, this cannot be attributed to the work-related injury." He opined that appellant's knee arthritis preexisted her 1999 employment injury and stated that there was no objective evidence to establish a permanent aggravation as a result of the accepted internal derangement and surgery.

OWCP has the burden of proof to terminate appellant's compensation and medical benefits and relied on Dr. Seigel's reports to meet this burden, who did not explain why he felt that an accepted knee injury including a meniscal tear as well as arthroscopy to repair this tear, chondroplasty and microfracture of the lateral femoral condyle did not contribute to appellant's right knee osteoarthritis. Without adequate explanation of how Dr. Seigel reached the conclusion that there was no permanent aggravation of appellant's arthritic condition due to the invasive procedures and diagnosed microfracture, his report cannot constitute the special weight of the medical evidence, resolve the conflict and establish that she had no medical residuals or disability as a result of her accepted knee injuries. He failed to provide any medical reasoning,

⁶ 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

⁷ *R.C.*, 58 ECAB 238 (2006).

⁸ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

explain the significance of his findings on physical examination or relate specific aspects of appellant's medical history in support of his conclusions. Due to these defects, OWCP failed to meet its burden of proof and the termination effective February 15, 2009 is reversed.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's compensation and medical benefits effective February 15, 2009.⁹

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 17, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

⁹ Due to the disposition of this issue, it is not necessary for the Board to address whether appellant has met her burden of proof to establish any continuing disability on or after February 15, 2009.