



an emergency room diagnosis of meniscus injury. According to the earliest report, appellant was completely asymptomatic prior to this trauma and had no previous history of injury to his right knee. An April 14, 2006 magnetic resonance imaging (MRI) scan showed tricompartmental degenerative joint disease with changes predominating to the medial knee compartment. There were also small tears to the posterior horns of both the medial and lateral menisci. Appellant began treatment for degenerative joint disease.

OWCP accepted appellant's claim for a right medial collateral ligament sprain and a transient aggravation of preexisting degenerative arthritis of the right knee. Appellant was able to return to limited duty. OWCP accepted a recurrence of partial disability beginning December 5, 2009, when the employer reduced his hours because there was not enough work available.

Dr. Ira C. Sachs, the attending orthopedic surgeon, found that ongoing right knee complaints were causally related to the April 1, 2006 work injury. It was his opinion that the April 1, 2006 incident caused meniscal tears. Dr. Sachs diagnosed medial and lateral meniscal tears superimposed on degenerative joint disease with traumatic exacerbation of degenerative joint disease with ongoing right knee pain. In the absence of the meniscal tears, he believed that the exacerbation of degenerative joint disease would naturally return to baseline, but, in light of the meniscal tears, he concluded that the exacerbation was necessarily ongoing. Because conservative treatment had failed, Dr. Sachs recommended knee replacement, though he wanted to wait until appellant was somewhat older. He was clear that the knee replacement would be secondary to the April 1, 2006 work injury.

Dr. Ronald Krasnick, a second opinion orthopedic surgeon, agreed that appellant continued to suffer residuals of the accepted work injury. Appellant had morning stiffness, achiness with exertion, an inability to climb stairs, kneel, squat or crawl and severe pain at the end of a day's work. His knee would swell and buckle on occasion. Dr. Krasnick diagnosed right knee sprain, medial collateral ligament sprain and transient aggravation of preexisting degenerative arthritis, right knee, all of which were medically connected to the work injury. He found that appellant's limitations prevented him from returning to full duty.

OWCP asked its medical adviser whether knee replacement surgery was medically indicated and causally related to the April 1, 2006 work injury. He noted that the nature of the injury was fairly minor and could have caused a meniscal tear, but it was not severe enough to warrant surgery. The medical adviser explained that the osteoarthritic condition would have required knee replacement in the near future regardless of whether an injury occurred. There was no evidence of permanent aggravation and no evidence of articular injury, fracture, major ligamentous injury or other structural damage that would indicate a permanent aggravation. The medical adviser concluded that the aggravation was temporary and that appellant had fully recovered, such that the required knee replacement was not causally related to the work injury.

OWCP found a conflict and referred appellant, together with the medical record and a statement of accepted facts, to Dr. Joseph A. Jelen, Jr., a Board-certified orthopedic surgery, for a resolution. Dr. Jelen reviewed appellant's history and medical record. After describing his examination findings, he diagnosed right knee strain superimposed on severe degenerative arthritis and meniscus tear. Dr. Jelen noted that appellant continued to complain of pain, which

he stated that he did not have prior to April 1, 2006. He found that appellant was currently reaching a plateau of improvement. All findings of degenerative arthritis were present prior to the accident, Dr. Jelen stated and there was no indication on examination, x-rays or MRI scan that the abnormalities and findings were a result of the accident.

Dr. Jelen described appellant's history of injury as relatively very minor and his preexisting arthritic condition as very severe. He believed, based on the history of injury and the lack of any acute findings on x-ray or MRI scan, that appellant's current symptoms were overwhelmingly the result of his degenerative arthritis, which was without a doubt present prior to any minor injuries sustained. Dr. Jelen found that knee replacement surgery was appropriately recommended for the preexisting osteoarthritis but would not be done to address any injuries or aggravation caused by the April 1, 2006 employment injury. "The injuries the patient sustained as a result of the accident have improved and resolved and any symptoms that he has at this time are from the natural progression of the osteoarthritis that would have occurred without the accident."

Dr. Sachs noted that Dr. Jelen was disregarding appellant's history of being asymptomatic prior to the April 1, 2006 injury: "The [physician] cannot state within a reasonable degree of medical certainty that this arthritic condition was causing this patient any difficulties prior to his claimed injury and, in fact, the patient claims that they were not." He agreed with Dr. Jelen that appellant's current symptoms were secondary to degenerative arthritis, but found that this was exacerbated by the work injury, to include superimposed meniscal tears.

As appellant was previously asymptomatic and there was no MRI scan predating the April 1, 2006 injury demonstrating preexisting meniscal tears, Dr. Sachs explained that one had to conclude that the meniscal tears were secondary to the injury. Further, if one were to assume that the meniscal tears were preexisting, one had to take into account that appellant was asymptomatic prior to April 1, 2006 and, therefore, an exacerbation of appellant's preexisting condition would still be diagnosed.

Appellant claimed a recurrence of total disability on March 2, 2010 when, while walking from a store to his personal vehicle, he felt a sharp pain across the front of his right knee, which caused his knee to buckle. He explained that he was walking normally and carrying nothing. Dr. Sachs took appellant off work. He diagnosed ongoing right knee symptomatic degenerative joint disease secondary to the April 1, 2006 employment injury, when appellant sustained medial and lateral meniscus tears superimposed on preexisting degenerative joint disease with ongoing exacerbation of degenerative joint disease.

On May 12, 2010 OWCP denied appellant's recurrence claim. It explained that Dr. Sachs indicated no material change to support total disability; he merely provided the same diagnosis he previously provided to support work limitations.

On May 13, 2010 OWCP terminated appellant's compensation. It found that Dr. Jelen's opinion represented the weight of the medical evidence and established that the effects of the work injury had ceased and that the need for total knee replacement was not causally related to the work injury.

In a December 1, 2010 decision, an OWCP hearing representative affirmed the denial of appellant's recurrence claim and the termination of his compensation. The hearing representative found Dr. Jelen's opinion to be sufficiently reasoned to carry the weight of the medical evidence.

On appeal, appellant's representative argues that Dr. Jelen's opinion is not probative on the issue of recurrence because he did not address it. He also argues that it is not clear there was a true conflict between Dr. Sachs and Dr. Krasnick or between Dr. Sachs and the medical adviser. Counsel adds that OWCP erred in not seeking clarification from Dr. Jelen. He asks the Board to vacate OWCP's December 1, 2010 decision and remand the case for further development of the medical evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>2</sup> "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>3</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such limited duty. As part of his burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

Appellant claimed a recurrence of total disability beginning March 2, 2010. He has the burden of proof to show a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements.

Appellant did not claim the latter. Rather, he claimed that on March 2, 2010 he was walking from a store to his personal vehicle. Appellant was walking normally and carrying nothing when he felt a sharp pain across the front of his right knee. The knee buckled. The issue is whether it was a change in the nature and extent of the injury-related condition that caused him to stop work that day.

Dr. Sachs took appellant off work, but he did not mention what happened on March 2, 2010. He diagnosed ongoing symptomatic degenerative joint disease secondary to the

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> 20 C.F.R. § 10.5(f).

<sup>4</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

April 1, 2006 injury, but he did not show an objective disabling change in the nature and extent of that condition. Dr. Sachs offered almost no support for appellant's claim.

The Board finds that appellant failed to meet his burden to establish a recurrence of total disability beginning March 2, 2010. The Board will affirm OWCP's December 1, 2010 decision on the issue of recurrence.

Appellant's representative argues that Dr. Jelen, the impartial medical specialist, was not probative on the recurrence issue. This is true and for good reason. The recurrence issue did not arise until after Dr. Jelen's report. OWCP selected Dr. Jelen to resolve a conflict on whether the accepted employment injury had resolved, not to address a recurrence that was not yet claimed.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>5</sup> After it has determined that an employee has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>6</sup>

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.<sup>7</sup>

### **ANALYSIS -- ISSUE 2**

A conflict arose between Dr. Sachs and an OWCP medical adviser on whether appellant had recovered from the April 1, 2006 work injury. Dr. Sachs remained of the opinion that appellant continued to suffer residuals of the accepted aggravation of degenerative joint disease, disabling residuals that would require a total knee replacement. The medical adviser disagreed. His opinion was that the accepted aggravation was temporary and that appellant had fully recovered and, therefore, the required knee replacement was not causally related to the work injury. Under section 8123(a) of FECA, OWCP properly referred appellant to Dr. Jelen to resolve the conflict.

Dr. Jelen concluded that the injuries appellant sustained on April 1, 2006 had resolved. He found that any current symptoms were from the natural progression of osteoarthritis and would have arisen without the accident. Dr. Jelen offered some rationale. The history of injury

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<sup>5</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>6</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>7</sup> 5 U.S.C. § 8123(a).

was relatively very minor; the preexisting arthritis was very severe. There were no acute findings on x-ray or MRI scan. While such observations might be consistent with the theory he presented, they do not explain when the natural progression of appellant's degenerative condition was suppose to have begun or when the accepted aggravation was suppose to have ended. It may be, as Dr. Jelen postulated, that without injury appellant's knee would have become symptomatic over time, but it had not done so by April 1, 2006. Whether it would have done so over the next few years appears to be a matter of speculation.<sup>8</sup> What is not a matter of speculation is that the April 1, 2006 employment injury aggravated the underlying and, by history, asymptomatic degenerative condition, causing disability and the need for continuing medical attention. It is a well-established principle that to hasten disability is to cause it.<sup>9</sup> Dr. Jelen offered nothing to substantiate the coincidence that appellant's degenerative condition would have obtained its current state had the April 1, 2006 aggravation never occurred.

Whether and when the accepted aggravation of appellant's degenerative condition ceased is an issue of medical proof. Dr. Jelen offered his opinion on the former but did not provide sufficient rationale or evidence to support it.<sup>10</sup> The depth of the medical reasoning required to support an opinion may vary from case to case depending on the nature of the condition and the circumstances presented.<sup>11</sup> The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.<sup>12</sup> The evidence for Dr. Jelen's opinion appears lacking.

The Board finds, therefore, that Dr. Jelen's opinion has diminished probative value and is not entitled to special weight in resolving the conflict between Dr. Sachs and OWCP's medical adviser. As that conflict remains unresolved, the Board will reverse OWCP's December 1, 2010 decision on the issue of termination of compensation. The Board will remand the case for payment of appropriate compensation retroactive to the date of termination.

On appeal, appellant's representative asks the Board to vacate OWCP's December 1, 2010 decision and remand the case for further development of the medical evidence. As OWCP carries the burden of proof to justify the termination of appellant's compensation and as it failed to discharge that burden, the Board will instead reverse the termination and order the reinstatement of appellant's benefits.

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<sup>8</sup> See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal).

<sup>9</sup> *Henry L. Price*, 3 ECAB 49 (1949); *Wilred K. Granger*, 2 ECAB 190 (1949).

<sup>10</sup> Medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

<sup>11</sup> See, e.g., *Anna Strehl (William Strehl)*, 2 ECAB 74 (1948) (holding that "the common sense of the situation" called for a finding that the illness was due to conditions of employment).

<sup>12</sup> *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

**CONCLUSION**

The Board finds that appellant did not meet his burden to establish that he sustained a recurrence of total disability beginning March 2, 2010. The Board also finds that OWCP did not meet its burden to justify the termination of appellant's compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed on the issue of recurrence and is reversed on the issue of termination. The case is remanded for further action consistent with this opinion.

Issued: December 8, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board