United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 10-2239**
	)	**Issued: July 25, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Nashville, TN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 1, 2010 appellant filed a timely appeal from the July 22, 2010 Office of Workers' Compensation Programs' (OWCP) decision which affirmed the termination of her compensation. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether OWCP properly terminated appellant's compensation benefits effective February 14, 2010.

FACTUAL HISTORY

On September 3, 2008 appellant, then a 46-year-old mail handler, injured her left knee when it popped while she was pushing a container onto a trailer. She stopped work on September 4, 2008. OWCP accepted the claim for left knee sprain. Appellant received compensation benefits.

[1] 5 U.S.C. § 8101 *et seq.*

On September 8, 2008 Dr. John F. Clardy, a Board-certified family practitioner, diagnosed left knee sprain and recommended a magnetic resonance imaging (MRI) scan. A September 12, 2008 MRI scan of the left knee revealed bone marrow edema suggestive of a bone contusion in the posterior lateral aspect of the tibia and intrameniscal degenerative changes with no definite evidence of meniscal tear in posterior horns of the medial and lateral menisci. In an October 31, 2008 report, Dr. Clardy noted treating appellant for an injury that occurred on September 3, 2008. He opined that appellant could return to work after she saw an orthopedist.

In a November 6, 2008 report, Dr. David R. Moore, a Board-certified orthopedic surgeon, and treating physician, noted appellant's history of injury and treatment and reviewed her MRI scan. He determined that appellant's menisci were intact. Dr. Moore advised that appellant tolerated her corticosteroid injection without difficulty and recommended placing appellant on an anti-inflammatory and formal therapy regimen. He indicated that appellant could return to work with "no repetitive stooping, squatting or bending." In a February 12, 2009 report, Dr. Moore noted that appellant's left knee pain continued to slowly improve. He advised that, while appellant complained of medial joint line discomfort, radiographic studies revealed no significant intra-articular pathology. Dr. Moore opined that appellant could return to work without restrictions. He noted that appellant related that she had discomfort when working outside in cold weather which "significantly aggravates her discomfort." Dr. Moore explained that working indoors as opposed to outdoors in the cold weather would improve her discomfort. In a separate February 12, 2009 report, responding to an inquiry from the employer, he stated that appellant's condition had resolved and that she had returned to baseline without residuals. Dr. Moore also completed a duty status form advising that appellant could return to work but filled in "no working outside in cold weather."

Dr. Clardy completed work capacity evaluation forms dated May 4 and 15, 2009, advising that appellant could work eight hours per day with permanent restrictions which included no walking, standing, twisting, bending, stooping, operating a motor vehicle, pushing, pulling, lifting, squatting, kneeling or climbing. He indicated that appellant had problems with pain and discomfort when exposed to extremes of weather, especially cold weather, and prolonged standing.

Appellant returned to work as a modified mail handler on May 12, 2009.

Dr. Clardy continued to treat appellant. He placed her off work for the period June 2 to 3, 2009 and again placed her off work for the period prior to June 8, 2009.

On June 17, 2009 OWCP referred appellant for a second opinion examination to Dr. Charles Barlow, a Board-certified orthopedic surgeon, to determine the extent of appellant's work-related condition. In a report dated July 9, 2009, Dr. Barlow noted appellant's history of injury and treatment and examined her. Examination revealed tenderness over the proximal medial tibia with no synovitis or effusion. Range of motion was full and stable while joint lines were nontender. There was some softening of the hamstring and quadriceps muscles. Patellar compression test was positive. Dr. Barlow diagnosed patellofemoral chondromalacia and opined that the work-related condition of left knee sprain had resolved. He advised that the only objective findings at the time of his examination included mild atrophy of the quadriceps and hamstring muscles. Dr. Barlow explained that appellant's subjective complaints of pain

outweighed any objective findings, as the knee was stable and there was no evidence of any intra-articular pathology other than the chondromalacia, which was a normal degenerative process. He noted that the plain films and MRI scan were normal and opined that appellant had no medical restrictions as a result of the work-related injury. Dr. Barlow further noted that he concurred with Dr. Moore, who found in his February 12, 2009 report that appellant had a normal examination, normal films, a normal MRI scan and advised that appellant could return to work without restrictions. He recommended quadriceps and hamstring exercises. Dr. Barlow completed a work restriction form indicating that appellant could return to her usual job for eight hours per day. He noted that she should not perform more than two hours of squatting or climbing.

In a report dated August 12, 2009, Dr. Clardy noted that he had treated appellant since her September 3, 2008 injury. He advised that she continued to have left knee pain that flared up and which necessitated medical attention with prolonged use. Dr. Clardy indicated that appellant had been given documentation to support being off work as her condition was persistent. He recommended treating appellant for her unforeseeable medical flare ups and requested that his medical excuses be honored.

The employing establishment provided OWCP with a November 23, 2009 investigative report from the Office of Inspector General (OIG). OIG conducted surveillance of appellant for the period June 3 through November 17, 2009. The report noted that appellant performed various activities in excess of her medical restrictions.

On December 15, 2009 OWCP proposed to terminate appellant's compensation benefits on the basis that the weight of the medical evidence, as represented by Dr. Barlow, established that the residuals of the work injury of September 3, 2008 had ceased. No response was received.

By decision dated January 22, 2010, OWCP terminated appellant's compensation benefits effective February 14, 2010, on the grounds that she had no continuing residuals of her employment injury.

On February 1, 2010 OWCP received an undated letter from appellant. Appellant noted that she had received a letter from OWCP and questioned why her pay was "being held for no reason." On February 16, 2010 OWCP received a January 18, 2010 statement in which appellant disagreed with OWCP's decision. Appellant alleged that the employer did not comply with her restrictions. Further, she indicated that working outside activated her knee problems and was outside her restrictions. Appellant also noted that Dr. Barlow indicated that she had no restrictions but he filled in "two hours and two hour."

Appellant's representative requested a telephonic hearing, which was on May 11, 2010. During the hearing, appellant noted that the activities she was observed performing in the OIG report did not exceed her medical restrictions.

In a June 7, 2010 letter, Brad S. Lukacic, a health resource management specialist with the employing establishment, noted that appellant's physician, Dr. Moore and the second opinion physician, Dr. Barlow, agreed that the work-related injury had resolved.

On July 9, 2010 OWCP received an undated letter from appellant. Appellant noted that she should not be out for nine months without pay due to a difference in opinions between the physicians. She also questioned Dr. Moore's reports.

In a July 22, 2010 decision, OWCP's hearing representative affirmed the termination of appellant's compensation benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[2] Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[3]

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective February 14, 2010. To determine the extent and degree of any employment-related disability or residuals, OWCP referred appellant to Dr. Barlow for a second opinion examination.

In a July 9, 2009 report, Dr. Barlow noted appellant's history and examined appellant. He determined that there were no objective findings other than mild atrophy of the quadriceps and hamstring muscles. Dr. Barlow diagnosed patellofemoral chondromalacia and opined that the work-related condition of left knee sprain had resolved. He advised that appellant's subjective complaints of pain outweighed any objective findings, as the knee was stable and there was no evidence of any intra-articular pathology other than chondromalacia, which was a normal degenerative process. Dr. Barlow also indicated that diagnostic testing was normal and there were no medical restrictions as a result of the work-related injury. He also concurred with Dr. Moore who reported a normal examination in his February 12, 2009 report and also indicated that appellant could return to work without restrictions. Dr. Barlow indicated that appellant could return to her usual job for eight hours per day. He stated that she had no restrictions due to the accepted condition. Dr. Barlow completed a work restriction form noting that she could perform her usual duties. He advised that she should not perform more than two hours of stooping, squatting or climbing.

The record contains the February 12, 2009 report from Dr. Moore, a Board-certified orthopedic surgeon and a treating physician, who also indicated that appellant's condition had resolved and she could return to work without restrictions. Dr. Moore's only recommendation was to avoid "working outside in cold weather." He did not attribute any work restrictions to the accepted condition.

[2] *Curtis Hall*, 45 ECAB 316 (1994).

[3] *Jason C. Armstrong*, 40 ECAB 907 (1989).

The Board finds that Dr. Barlow's report represents the weight of the medical evidence and establishes that residuals of appellant's work-related left knee sprain have resolved. He noted that reviewing the record, provided findings on examination, and found no basis on which to attribute any continuing condition or disability to the September 3, 2008 incident that was accepted for a left knee sprain.

Dr. Clardy continued to treat appellant, recommended restrictions, and later placed her off work due to continued work-related residuals of her employment injury. The Board finds that the reports of Dr. Clardy are not well rationalized as they do not specifically address how a condition accepted for a left knee sprain would remain symptomatic and why her continuing condition would not be attributable to her patellofemoral chondromalacia.[4] For example, in his August 12, 2009 report, Dr. Clardy noted that appellant continued to have pain in her left knee that flared up with continuous use but he did not specifically address how this was related to the accepted left knee sprain and he did not provide any objective findings to support his opinion of a continuing work-related condition. Other reports of Dr. Clardy do not provide reasoning to support why residuals of the accepted left knee sprain had not resolved. Thus, his reports are not of equal weight with that of Dr. Barlow and are insufficient to create a medical conflict.[5]

Appellant may submit new evidence or argument with a written request for reconsideration to the Office 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.

CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's compensation benefits effective February 14, 2010.

[4] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[5] *See* 5 U.S.C. § 8123(a). A simple disagreement between two physicians does not, of itself, establish a conflict. To constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale. *John D. Jackson*, 55 ECAB 465 (2004).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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