

because he clearly had residuals of his accepted conditions and the Office continued to develop the claim.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated March 27, 2007, the Board found that the Office properly denied authorization for a recommended surgical procedure to appellant's right knee.² The law and facts of the previous Board decision are incorporated herein by reference.

On June 12, 2007 appellant, through his attorney, requested reconsideration and submitted a May 29, 2007 report in which Dr. Allegra advised that appellant sustained employment-related injuries to both knees and had since developed post-traumatic arthritis in both knees as a result. Dr. Allegra recommended total knee arthroscopic (TKA) replacements due to appellant's intractable pain. The Office referred appellant to Dr. David Rubinfeld, a Board-certified orthopedist, for a second opinion evaluation, and in a September 29, 2007 report, Dr. Rubinfeld reviewed the history of injury and appellant's current complaints of bilateral knee pain, and right hip and leg pain. He noted that appellant was 5 feet 11 inches tall and weighed 360 pounds and provided physical examination findings. Dr. Rubinfeld advised that the accepted condition had resolved and appellant could perform his usual job without restrictions but noted that his weight was a concern.

In reports dated June 26 to July 28, 2008, Dr. Allegra reiterated his diagnoses and conclusion that appellant needed bilateral TKAs. He advised that appellant was permanently totally disabled due to severe knee pain.

The Office determined that a conflict in medical evidence had been created between the opinions of Dr. Rubinfeld and Dr. Allegra and referred appellant to Dr. Alexander P. Russoniello, a Board-certified orthopedic surgeon, for an impartial evaluation. Dr. Russoniello

² Docket No. 06-2106 (issued March 27, 2007). On August 31, 2001 appellant, then a 52-year-old distribution, window and mark-up clerk, filed a traumatic injury claim, alleging that on that day he injured his left knee when he fell. He did not stop work. The Office accepted that appellant sustained a left knee sprain, and on June 19, 2002, Dr. Marshall P. Allegra, a Board-certified orthopedic surgeon, performed left knee arthroscopic repair. Appellant stopped work that day and was placed on the periodic compensation rolls. A July 26, 2002 duty status report indicated that at that time his job required seven hours of sitting, one hour of standing and one half hour of walking with a 20-pound weight restriction. The Office determined that a conflict had been created between the opinions of Dr. Allegra and Dr. Norman M. Heyman, a Board-certified orthopedic surgeon and Office referral physician, regarding whether appellant was totally disabled, whether a right knee condition was a consequence of the August 31, 2001 employment injury, and whether right knee surgery should be authorized, and referred him to Dr. Robert Dennis, also a Board-certified orthopedic surgeon. By decision dated September 17, 2003, it credited an August 28, 2003 referee opinion of Dr. Dennis and denied authorization for right knee surgery. In a July 13, 2004 decision, an Office hearing representative found that the medical evidence established that the injury to appellant's left knee on August 31, 2001 caused him to put increased weight on his right knee which precipitated or accelerated patellofemoral syndrome of the right knee which preexisted the August 31, 2001 fall. Dr. Dennis submitted a supplementary report dated October 15, 2004, advising that right knee surgery was not indicated, and if it ever were to become indicated, it would not be due to the August 31, 2001 employment injury. By decision dated November 24, 2004, the Office denied authorization for right knee surgery, and on November 14, 2005 an Office hearing representative affirmed the November 24, 2005 decision.

was provided a statement of accepted facts and the complete record and asked to provide an opinion on the issues of whether appellant had additional work injuries, whether his accepted condition had resolved, and if he was currently disabled from work due to residuals of the accepted condition.

In a January 30, 2009 report, Dr. Russoniello noted his review of comprehensive records. He reported the history of injury and appellant's complaints that his knees locked, buckled and gave way and that he had constant knee pain that kept him awake and limited his activities. Dr. Russoniello advised that appellant had an antalgic gait of the right lower extremity. He indicated that, on knee examination, range of motion was monitored both actively and passively in flexion and extension, palpation at the patella facets, patella tendon, tibial tubercle and medial and lateral joint line was performed and that he examined for temperature changes swelling, tenderness and crepitus, provocative testing was done to demonstrate a response to Lachman's test, posterior drawer test, McMurray's sign, Apley's compression test, and varus and valgus stress test.

Dr. Russoniello noted that on the right there was no warmth or effusion and negative patellar inhibition, negative apprehension test, and negative lateral joint line tenderness, medial collateral and lateral collateral ligaments were intact, extension was full and there was 30 degrees of flexion. Pertinent positive findings on the right were medial joint line tenderness. Examination of the left knee demonstrated no warmth or effusion, negative patellar inhibition, negative apprehension test and negative lateral joint line tenderness, medial and collateral ligaments were intact, extension was full and there was 30 degrees of flexion. Pertinent findings on the left were medial joint line tenderness and swelling. Dr. Russoniello advised that there were no positive findings on neurologic examination. He personally reviewed x-rays and magnetic resonance imaging (MRI) scans and advised that appellant sustained a torn medial meniscus of the left knee that developed into degenerative changes, secondary to the meniscectomy, and had symptomatology of a torn posterior horn of the medial meniscus in the right knee. Dr. Russoniello opined that, even with appellant's continuing symptomatology, due to the employment injury, he was capable of performing his usual work.

On February 4, 2009 the Office accepted that appellant sustained an employment-related posterior horn tear of the right knee medial meniscus. Dr. Russoniello completed a work capacity evaluation on March 5, 2009 in which he advised that appellant was capable of performing his usual job without restrictions except a 50-pound lifting restriction.

On June 9, 2009 the Office proposed to terminate appellant's monetary compensation benefits on the grounds that the medical evidence, as characterized by Dr. Russoniello's opinion, established that appellant had no work-related disability. It noted that his medical benefits would not be terminated. Appellant, through his attorney, disagreed with the proposed termination and submitted a June 25, 2009 report in which Dr. Allegra described his treatment of appellant since 2001. Dr. Allegra stated that appellant was moderately obese, walked with a limp, had varus deformity of both knees and decreased range of motion. He diagnosed significant arthritis in both knees and advised that appellant needed bilateral TKAs. On July 28, 2009 the Office accepted osteoarthritis of the left knee.

By decision dated August 3, 2009, the Office finalized the termination of wage-loss compensation and informed appellant that he was still entitled to medical benefits for the accepted conditions. Appellant timely requested a hearing and submitted reports dated July 28, 2009 which Dr. Allegra reiterated his findings and conclusions. In a September 17, 2009 report, Dr. Allegra advised that he had reviewed Dr. Russoniello's report, stating that appellant had developed progressive varus deformity of both knees, medial joint tenderness and a limp since seen by Dr. Russoniello. He advised that appellant needed TKAs on both knees and was totally disabled until his knee surgery could be done. On November 4, 2009 the Office authorized bilateral TKA surgery.

At the hearing, held on November 18, 2009, appellant described his job duties at the time of the August 31, 2001 injury. He testified that he had accepted claims for right and left carpal tunnel syndrome, and was working in a limited-duty capacity, mostly performing desk duties after the carpal tunnel claims were accepted. Appellant stated that his left knee was unstable and very painful and that he could not perform his date-of-injury job because he would be on his feet the entire time and could not sit and case mail because his knees hurt.

On February 9, 2010 appellant filed a recurrence claim, noting that he was scheduled for bilateral knee replacement surgery on January 11, 2010. He submitted medical evidence regarding his hospitalization and rehabilitation.³ By decision dated February 17, 2010, an Office hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Russoniello and affirmed the August 3, 2009 decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

Section 8123(a) of the Act 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.⁶ When 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.⁷

³ The Board notes that this recurrence claim is not currently before the Board, as a final decision has been issued by the Office. The Board does not have jurisdiction over interlocutory matters. 20 C.F.R. § 501.2(c)(2) (2008).

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *Id.*

⁶ 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's monetary compensation on August 3, 2009. Appellant has accepted bilateral knee conditions caused by a fall at work on August 31, 2001. The Office determined that a conflict in medical evidence had been created between the opinions of appellant's treating physician, Dr. Allegra and Dr. Rubinfeld, an Office referral physician, regarding the extent of appellant's work-related injuries and physical restrictions. It then properly referred appellant to Dr. Russoniello, Board-certified in orthopedic surgery, for an impartial evaluation. In a thorough January 30, 2009 report, Dr. Russoniello noted the history of injury, his review of the case record and appellant's complaints. He provided physical examination findings and advised that, while appellant had continuing residuals regarding both knees, he could return to his regular job.

The Board finds that, as Dr. Russoniello provided a comprehensive, well-rationalized opinion in which he clearly advised that appellant had no disability from work, Dr. Russoniello opinion is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.⁸

The medical evidence appellant subsequently submitted is insufficient to overcome the weight accorded Dr. Russoniello regarding whether appellant continued to be disabled. Dr. Allegra submitted several reports in which he reiterated his prior opinion that appellant was totally disabled and needed bilateral knee surgery and advised that his knee conditions worsened after being seen by Dr. Russoniello. Reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.⁹ Furthermore, the record contains a July 26, 2002 duty status report indicating that the duties appellant was performing when he stopped work were essentially sedentary in that he sat for seven hours a day. Moreover, appellant testified at the November 18, 2009 hearing that he was doing mostly desk work on the date of injury when he tripped and fell. Dr. Allegra generally stated that appellant was disabled due to his bilateral knee conditions and pain. He did not provide a rationalized opinion as to why appellant could not perform the duties of his sedentary position.¹⁰

As Dr. Russoniello provided a comprehensive, well-rationalized opinion in which he clearly advised that, while appellant had continuing residuals of both knees, he had no disability from work due to his knee conditions, Dr. Russoniello opinion is entitled to the special weight

⁸ See *Sharyn D. Bannick*, 54 ECAB 537 (2003).

⁹ *I.J.*, 59 ECAB 408 (2008).

¹⁰ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

accorded an impartial medical examiner.¹¹ The Board concludes that Dr. Allegra's medical opinion is insufficient to overcome the weight accorded Dr. Russoniello as an impartial medical specialist regarding whether appellant had work-related disability. The Office therefore properly terminated appellant's monetary compensation on August 3, 2009.¹²

Lastly, the Board finds appellant's arguments on appeal without merit. Dr. Russoniello clearly advised that appellant had work-related injuries to both knees and continued to have residuals of his knee conditions. Any error in the statement of accepted facts or the lack of a job description in the record are harmless as Dr. Russoniello reviewed the complete record. Appellant has not argued that he could not return to work due to his accepted bilateral carpal tunnel syndrome and Dr. Russoniello provided a very clear opinion that the residuals of appellant's knee conditions, whether accepted or not at the time of his examination, would not prevent him from returning to work. His monetary compensation was terminated on August 3, 2009, not his entitlement to medical benefits. As stated above, the well-rationalized report of Dr. Russoniello established that appellant could return to work, and thus the Office properly terminated his wage-loss compensation on August 3, 2009.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's monetary compensation on the grounds that he was no longer disabled from work due to his accepted conditions.

¹¹ See *Sharyn D. Bannick*, *supra* note 8.

¹² *Manuel Gill*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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