

**United States Department of Labor
Employees' Compensation Appeals Board**

P.B., Appellant)	
)	
and)	Docket No. 11-615
)	Issued: October 20, 2011
U.S. POSTAL SERVICE, POST OFFICE, Islandia, NY, Employer)	
)	
)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2011 appellant filed a timely appeal from the November 26, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation and denying her request for authorization for surgery. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation effective August 17, 2010 on the grounds that she had no residuals of her August 26, 2006 employment injury after that date; and (2) whether OWCP properly denied appellant's request for authorization for bilateral knee surgery.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on August 26, 2006 appellant, then a 47-year-old letter carrier, sustained injury when she was chased by a dog at work and twisted her left knee. It initially accepted that she sustained internal derangement of her left knee, aggravation of preexisting chondromalacia of her left patella and acute sprain and strain of the medial collateral ligament of her left knee. Appellant received wage-loss compensation for periods of disability.² On October 9, 2007 Dr. Sanford A. Ratzan, an attending Board-certified orthopedic surgeon, performed arthroscopic surgery on the left knee, including partial medial and lateral meniscectomy, intra-articular shaving, partial chondroplasty of the medial condyle, medial plateau and lateral plateau, partial abrasion arthroplasty of the medial condyle and partial synovectomy. The procedures were authorized by OWCP.

In an April 9, 2008 report, Dr. Ratzan determined that appellant's right knee symptoms were consequential to her left knee derangement and therefore causally related to the August 26, 2006 injury. He based his opinion on her history, no intervening injury to the right knee, a negative history of specific right knee injury and the present difficulty with her left knee. Dr. Ratzan stated that it was not uncommon for a patient to develop post-traumatic chondromalacia and meniscal changes secondary to increasing stress on a knee when the opposite lower extremity was involved. He requested that OWCP accept appellant's claim for her right knee.

On May 17, 2008 Dr. Andrew A. Merola, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed appellant's medical records. He agreed with Dr. Ratzan that additional conditions should be accepted. On June 30, 2008 OWCP accepted derangement of the anterior horn of the medial meniscus of the right knee and unspecified internal derangement of both knees.

On August 19, 2008 Dr. Ratzan performed arthroscopic surgery on appellant's right knee, including partial medial and lateral meniscectomy, intra-articular shaving, partial chondroplasty of the medial condyle, medial plateau and lateral condyle, partial abrasion arthroplasty of the medial condyle, anterior and cruciate ligament debridement and partial synovectomy. The procedures were authorized by OWCP.

In an October 20, 2008 report, Dr. Ratzan stated that appellant reported having difficulty in her right knee "only mildly" but still had decreased extension, tenderness along the anteromedial condyle with evidence of post-traumatic changes. Examination of appellant's left knee showed effusion, loss of 10 degrees of extension and increasing varus deformity and pain. Standing x-rays of both knees taken on October 20, 2008 showed severe loss of medial compartments with early varus deformity consistent with post-traumatic degenerative change. Dr. Ratzan posited that appellant was a candidate for joint replacement of her left knee. He recommended that she receive an intra-articular steroid shot in her left knee for severe pain and, if her condition did not improve on follow-up examination, that a request be made for authorization for joint replacement of her left knee. Dr. Ratzan stated that appellant had severe disability in both knees and was not able to perform the usual duties of her regular job as a letter

² Appellant had prior left knee surgery in 2005 at which time there was evidence of meniscal tears and chondromalacia.

carrier. Appellant could perform sedentary work which only required standing for short periods with no significant bending, stooping or carrying.

In December 2008 appellant requested authorization for total replacement surgery for her left knee. In reports dated between November 2008 and March 2009, Dr. Ratzan advised that she exhibited pain and stiffness in both knees and required total replacement surgery for her left knee due to post-traumatic degenerative changes. He determined that appellant was totally disabled from work due to her work-related conditions. In April 2009 Dr. Ratzan also recommended total replacement for her right knee and authorization was requested for this surgery.

OWCP referred appellant to Dr. Sanford Wert, a Board-certified orthopedic surgeon, for a second opinion examination on the extent and nature of her disability. In a July 20, 2009 report, Dr. Wert noted that appellant complained of left knee pain associated with cracking and buckling but did not complain of pain with respect to her right knee. Physical examination revealed tenderness in the medial and lateral aspects and a positive McMurray test in the left knee. Dr. Wert diagnosed aggravation of the preexisting left knee injury and surgery, aggravation of preexisting degenerative changes of the left knee, status post arthroscopy of the left knee and derangement of the left knee. He stated “no” in response to the question, “Has the injury-related condition resolved and has the claimant reached status quo ante in regard to the accepted conditions?” Dr. Wert found that appellant was able to work in a sedentary, light-duty position for eight hours per day.

OWCP determined that a conflict in medical opinion arose between Dr. Ratzan, and Dr. Wert regarding the extent and nature of appellant’s disability. In order to resolve the conflict, it referred appellant, pursuant to section 8123(a) of FECA, to Dr. William Healy, a Board-certified orthopedic surgeon, for an impartial medical examination. The September 21, 2009 statement of accepted facts provided to Dr. Healy advised that appellant’s accepted conditions were unspecified internal derangement of her left knee, chondromalacia of her left patella and sprain and strain of the medial collateral ligament of her left knee.

In a December 2, 2009 report, Dr. Healy described appellant’s factual and medical history and indicated that the accepted conditions due to her August 26, 2006 employment injury were unspecified internal derangement of her left knee, chondromalacia of her left patella and sprain and strain of the medial collateral ligament of her left knee. On physical examination of both knees, Dr. Healy noted that there was moderate effusion in both knees without evidence of instability in the anteroposterior plane or varus or valgus stress. The Lachman, McMurray and Apley tests were negative and there was no medial or lateral joint line tenderness bilaterally. Dr. Healy indicated that there was positive tenderness over the medial and lateral facets of both patellae and positive patellofemoral crepitations in both knees. There was positive crepitation in the medial and lateral femoral condyles bilaterally. Dr. Healy stated that, if the history as taken was correct, appellant may have sustained a twisting injury to her left knee as a result of being chased by the dog while working as a letter carrier. Appellant may have sustained a strain to the knee that should have gone on to a full and maximal recovery. She may have aggravated a significant preexistent arthritic process to the left knee. Dr. Healy did not find that her injury was a direct cause of the arthritic changes. Appellant had significant preexisting Grade 4 degenerative changes which were treated with arthroscopic intervention to her left knee. Dr. Healy stated, “As far as the right knee is concerned, the patient as well has significant degenerative changes. I do not feel that this was caused by the accident in question.”

Dr. Healy stated that appellant had preexisting significant arthritic changes to both knees and had prior nonoperative and operative management for arthritic process to her left knee. He indicated that he felt that the August 26, 2006 injury caused a strain to appellant's left knee that aggravated her preexisting arthritic changes. Dr. Healy noted that appellant did not show any evidence of a sprain or medial collateral ligament injury to the knee and that her diagnosis was not unspecified internal derangement and/or chondromalacia of the patella. He indicated that appellant did have osteoarthritis of the left knee that preexisted the August 26, 2006 accident. Dr. Healy noted that appellant was disabled, but stated that this disability was not "directly related" to the accident of August 26, 2006. He stated, "I do not find her findings to the right knee at all related to the accident on August 26, 2006." Dr. Healy indicated that appellant's suffered a temporary aggravation of the preexisting arthritic process in her left knee and she now was left with her preexisting arthritic process that had progressed over the years. He stated:

"I do believe that the patient would benefit from bilateral total knee arthroplasties. I do find that this treatment is necessary and appropriate at this time. I do not find that right total knee replacement is at all related to the August 26, 2006 work accident.... [T]he patient had a temporary aggravation from her preexistent arthritic process caused by this strain/sprain of her left knee. At this point, I think the patient, regardless of the accident on August 26, 2006, would have gone on to a total knee replacement."

In a March 8, 2010 decision, OWCP denied appellant's request for authorization for bilateral total knee replacement surgery finding it was not necessary for treatment of a work-related condition. It found that the weight of the medical evidence with respect to appellant's need for surgery for a work-related condition rested with the well-rationalized opinion of Dr. Healy, the impartial medical specialist.

In a July 15, 2010 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on the December 2, 2009 report of Dr. Healy, the impartial medical specialist. It informed her that she had 30 days from the date of the letter to submit evidence and argument contesting the proposed termination.

In a July 20, 2010, appellant, through counsel, requested reconsideration of her claim. She contended that the opinion of Dr. Healy was not based on a complete and accurate history because he did not acknowledge her work-related right knee injuries.

In a July 29, 2010 report, Dr. Ratzan stated that appellant's left knee showed evidence of degenerative changes with 10 degrees decreased extension, persistent effusion, swelling and pain upon motion. Appellant's right knee showed degenerative changes with 20 degrees decreased extension, effusion and pain upon motion. Dr. Ratzan indicated that appellant required joint replacements to be done in both knees and posited that the need for this surgery was due to conditions related to the August 26, 2006 employment injury. Appellant was totally disabled due to her work-related knee conditions.

In an August 17, 2010 decision, OWCP terminated appellant's compensation effective August 17, 2010 based on the December 2, 2009 report of Dr. Healy.

On August 26, 2010 appellant requested reconsideration and submitted an August 9, 2010 report in which Dr. Ratzan stated that he disagreed with Dr. Healy's stated belief that she would

have progressed to her present state and needed knee joint replacement even in the absence of her August 26, 2006 employment injury. Dr. Ratzan indicated that appellant had limited degenerative changes in her left knee and none in her right knee prior to August 26, 2006 and posited that the August 26, 2006 injury aggravated the preexisting degeneration in her left knee and started the degenerative process in her right knee.

In a November 26, 2010 decision, OWCP affirmed its March 8 and August 17, 2010 decisions thereby affirming both the surgery authorization and termination of compensation issues.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.³ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

Section 8123(a) of FECA provides in pertinent part: “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 In situations where there exist 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 upon a proper factual background, must be given special weight.⁷

ANALYSIS -- ISSUE 1

OWCP properly determined that there was a conflict in the medical opinion between Dr. Ratzan, appellant’s attending Board-certified orthopedic surgeon, and Dr. Wert, a Board-certified orthopedic surgeon acting as an OWCP referral physician, regarding the extent and nature of her disability.⁸ In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Healy, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁹ OWCP terminated appellant’s

³ *Charles E. Minmiss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁴ *Id.*

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ 5 U.S.C. § 8123(a).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁸ In periodic reports dated between late 2008 and early 2009, Dr. Ratzan determined that appellant was totally disabled from work due to her work-related conditions. In contrast, Dr. Wert indicated in a July 17, 2009 report that she was able to work in a sedentary, light-duty position for eight hours per day.

⁹ *See supra* note 5 and accompanying text.

wage-loss compensation and medical benefits effective August 17, 2010 based on the December 2, 2009 report of Dr. Healy.

The Board finds that the opinion of Dr. Healy is not sufficiently well rationalized to represent the weight of the medical evidence with respect to the question of whether appellant continued to have wage loss and a need for medical benefits due to residuals of her August 26, 2006 employment injury.

The Board finds that the December 6, 2009 report of Dr. Healy is of limited probative value regarding the termination of appellant's compensation because his opinion was not based on a complete and accurate factual and medical history. Dr. Healy noted that it had been accepted that she sustained work-related unspecified internal derangement of her left knee, chondromalacia of her left patella and sprain and strain of the medial collateral ligament of her left knee. The state of accepted facts failed to note acceptance of appellant's right knee condition and Dr. Healy failed to acknowledge that she sustained any work-related right knee injuries. OWCP accepted derangement of the anterior horn of the medial meniscus and internal derangement of the right knee.¹⁰

In a December 6, 2009 report, Dr. Healy found that appellant had essentially the same findings in both knees, including moderate effusion, positive tenderness over the medial and lateral facets of the patellae, positive patellofemoral crepitation and positive crepitation in the medial and lateral femoral condyles. He stated that the medical condition of her knees was sufficiently serious to recommend that she have total joint replacement surgery in both knees; however, he noted, "I do not find her findings to the right knee at all related to the accident on August 26, 2006." This opinion is premised on Dr. Healy's incorrect belief that appellant had not sustained any work-related injuries to her right knee. Therefore, Dr. Healy did not provide any detailed explanation for why he felt she had no work-related residuals in her right knee. With respect to the left knee, he provided an opinion that appellant had only sustained a temporary aggravation of a preexisting arthritic condition. OWCP accepted that she sustained internal derangement of her left knee, aggravation of preexisting chondromalacia of her left patella, and acute sprain and strain of the medial collateral ligament of her left knee. Dr. Healy provided a conclusory statement that the aggravation of appellant's chondromalacia had ceased and that there were no signs of internal derangement or a sprain and strain of the medial collateral ligament. However, he did not adequately explain what specific findings on physical examination and diagnostic testing led him to reach this conclusion.

For these reasons, the December 2, 2009 report of Dr. Healy is not sufficiently well rationalized to support the termination of appellant's compensation as of August 17, 2010.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of

¹⁰ In the September 21, 2009 statement of accepted facts provided to Dr. Healy, OWCP failed to list all of appellant's accepted employment injuries.

the monthly compensation.”¹¹ In order to be entitled to reimbursement of medical expenses, appellant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.¹² Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹³

ANALYSIS -- ISSUE 1

OWCP based its denial of appellant’s request for authorization for total joint replacement surgery in both knees on the December 2, 2009 report of Dr. Healy, the impartial medical specialist. The Board notes, however, that the December 2, 2009 report of Dr. Healy is of limited probative value with respect to her need for bilateral knee surgery. In his report, Dr. Healy stated that appellant would benefit from bilateral total knee arthroplasties, but posited that the need for a right knee replacement was not at all related to the August 26, 2006 work injury and that she would have required a left knee replacement even in the absence of the August 26, 2006 injury which only temporarily aggravated her left knee condition. For the reasons explained above, his report is of limited probative due to the fact it was not based on a complete and accurate factual and medical history. Dr. Healy failed to acknowledge all of appellant’s accepted employment injuries. In particular, with regard to the right knee, he failed to acknowledge that she sustained any work-related injury when in fact it was accepted that he sustained derangement of the anterior horn of the medial meniscus and internal derangement of the right knee. In addition, Dr. Healy did not adequately explain why appellant did not continue to have work-related conditions requiring surgery, including those related to internal derangement and to aggravation of preexisting arthritis. For these reasons, his December 2, 2009 report does not, by itself, provide an adequate basis to determine that appellant’s request for authorization for bilateral knee surgery should be denied.

The Board notes that the record also contains October 20, 2008 and July 29 and August 9, 2010 reports in which Dr. Ratzan explained that appellant needed total joint replacement surgery in both knees and that residuals of her August 26, 2006 contributed to this need for surgery.¹⁴ Because OWCP focused on the December 2, 2009 report of Dr. Healy in its determination that appellant’s request for bilateral knee surgery should not be authorized, it failed to evaluate the other relevant medical evidence of record, including the reports of Dr. Ratzan, in making its determination regarding her request for authorization for surgery.

The Board finds, therefore, that the case should be remanded to OWCP for further consideration of appellant’s request for authorization for total joint replacement surgery in both knees, to include consideration of all the relevant medical evidence. After such development as it deems necessary, OWCP should issue an appropriate decision regarding her request for authorization for bilateral knee surgery.

¹¹ 5 U.S.C. § 8103.

¹² *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

¹³ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

¹⁴ On October 9, 2007 Dr. Ratzan performed extensive left knee surgery on appellant and, on August 19, 2008, he performed extensive right knee surgery.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation effective August 17, 2010 on the grounds that she had no residuals of her August 26, 2006 employment injury after that date. The Board further finds that the case is not in posture for decision regarding whether OWCP properly denied her request for authorization for bilateral knee surgery and the case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2010 decision of the Office of Workers' Compensation Programs is reversed with respect to the termination issue. The November 26, 2010 decision is set aside with respect to appellant's request for authorization for surgery and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: October 20, 2011
Washington, DC

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

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

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