

FACTUAL HISTORY

On March 24, 1998 appellant, a 43-year-old letter carrier, sustained an injury in the performance of duty when he stepped out of his truck to deliver mail and hyperextended his left knee. He did not feel any pain initially, but as he continued his route in the next development, he noticed discomfort in the posterior medial aspect.

Electrodiagnostic studies confirmed a horizontal tear of the posterior horn of the left medial meniscus.² OWCP accepted appellant's claim for left knee meniscus tear. On May 8, 1998 he underwent an arthroscopic posterior medial meniscal debridement and synovectomy with an open popliteal cyst plica excision. Appellant received a schedule award for permanent impairment to his left lower extremity.³

Appellant claimed compensation for temporary total disability beginning May 15, 2001 as a result of his March 24, 1998 employment injury. OWCP developed the claim as one of recurrence. Appellant indicated that on September 26, 2000 he fell on both knees in the performance of duty after his left knee buckled.⁴ He thought the fall "may have done some more damage to my knees and my feet." Appellant added that he also had a job-related injury to his feet. He explained that on May 15, 2001 he had a swollen left foot from excessive walking at work the day before. OWCP accepted a recurrence of disability.⁵ It paid compensation for temporary total disability on the periodic rolls commencing in 2002.

Dr. James H. Reid, the attending Board-certified orthopedic surgeon, reported that appellant had injuries to both knees in the form of torn menisci requiring arthroscopic surgery with the development of subsequent degenerative arthritis. Noting that appellant's knees were chronically painful and aching, he found that appellant was unable to work. Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon and OWCP second opinion physician, reported an extremely benign physical examination. He had "no problem with the idea" that appellant had x-rays or other diagnostic studies indicating osteoarthritis of the knees, but with no objective findings on physical examination, appellant no longer continued to have residuals of the accepted work injury. Dr. Feinstein found that appellant had no disability referable to the injury and explained that any symptomatology or progression extending more than a year after the injury was due to degenerative natural aging processes. He found appellant clearly capable of returning to work.

To resolve this conflict, OWCP referred appellant, together with his medical record and a statement of accepted facts, to Dr. Dale J. Federico, a Board-certified orthopedic surgeon. Dr. Federico related appellant's history, medical treatment and current complaints. On physical

² The study also confirmed generalized arthritis with associated loss of articular cartilage.

³ The rating was based on partial medial meniscectomy, patellofemoral pain and crepitation, quadriceps weakness and range of motion.

⁴ The record elsewhere indicates he fell on September 13, 2000.

⁵ The February 19, 2002 letter indicated that OWCP was accepting a recurrence of appellant's right knee injury, but the OWCP file number and date of injury identified the accepted March 24, 1998 left knee injury.

examination of the left knee he noted symmetrical range of motion to flexion and extension from 0 to 120 degrees, no tenderness to the articular surface of his patella, no pain with manipulation of the patella, no evidence of effusion, no laxity to varus and valgus stress or anterior and posterior translation, no evidence of palpable osteophytic formation, and no joint line tenderness medially or laterally. Dr. Federico's impression was that appellant tore a meniscus and was treated with surgery. He then had a fall on his knee, but currently he had no medical restrictions on returning to his regular job on a full-time basis. Dr. Federico states: "He is capable of working."

In a decision dated October 30, 2009, OWCP terminated appellant's compensation effective November 22, 2009. It found that Dr. Federico's opinion represented the weight of the medical opinion evidence and established that appellant no longer had any residuals or disability due to the accepted medical condition.

Dr. Reid diagnosed post-traumatic degenerative arthritis of the knees and found that appellant was disabled as a result of the work-related injuries and the development of posttraumatic arthritis. "Evidently," he stated, "an IME was recently performed which stated that he was perfectly fine and had no problems. Dr. Reid was able to return to full and normal duty immediately." He reiterated, however, that appellant's symptoms had worsened over the years, not improved. An x-ray obtained on April 16, 2010 revealed mild to moderate degenerative changes of the knees.

In a decision dated August 13, 2010, an OWCP hearing representative affirmed the termination of appellant's disability compensation. She found that the weight of the medical opinion evidence rested with Dr. Federico, the impartial medical specialist, who established that appellant was capable of returning to the date-of-injury position with no restrictions. The hearing representative set aside the termination of medical benefits for the accepted meniscal tear and surgery and remanded the case for further development on that issue.

On appeal, appellant's representative argued that Dr. Federico based his opinion on an inaccurate medical history, as he referred to a psychological report not relating to appellant but to appellant's son, a record that became associated with appellant's case file when he was attempting to obtain health insurance for his son. Appellant's representative also argued that Dr. Federico's opinion was not well reasoned, as he did not have the x-rays taken in March 2008 that could confirm osteoarthritis. Further, he argued that Dr. Federico did not discuss whether osteoarthritis was in any way related to the work injury or approved surgery. He also argued that Dr. Federico demonstrated no awareness of appellant's duties as a letter carrier.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.⁶ "Disability" means the incapacity,

⁶ 5 U.S.C. § 8102(a).

because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁷

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁸ 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.⁹

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.¹⁰ When 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.¹¹

ANALYSIS

OWCP accepted that appellant sustained a left knee meniscus tear in the performance of duty on March 24, 1998. It has the burden of proof to justify the termination of disability compensation for the accepted employment injury.

To resolve a conflict on whether the accepted employment injury continued to disable appellant for work, OWCP properly referred appellant to Dr. Federico, a Board-certified orthopedic surgeon. OWCP provided him with appellant's medical record and a statement of accepted facts so he could base his opinion on a proper medical and factual history. Dr. Federico noted that appellant tore a meniscus and was treated with surgery, then had a fall on his knee. Currently he had no medical restrictions on returning to his regular job. Dr. Federico's conclusion was well supported by his findings on physical examination, which were normal with respect to tenderness, effusion, palpation, range of motion, patellar manipulation and laxity. Appellant had complaints of some stiffness during the day, and stiffness and pain with long episodes of standing, squatting and kneeling. Dr. Federico found no clinical reason the accepted meniscal tear was preventing him from returning to full duty.

The Board finds that Dr. Federico's opinion is based on an accurate history and is sufficiently well reasoned that it must be accorded special weight in resolving the conflict on appellant's disability status. As the weight of the medical opinion evidence establishes that the accepted left knee meniscus tear no longer disabled appellant for work, the Board finds that

⁷ 20 C.F.R. § 10.5(f).

⁸ *Harold S. McGough*, 36 ECAB 332 (1984).

⁹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

OWCP has met its burden of proof to terminate disability compensation for the accepted medical condition. The Board will affirm OWCP's August 13, 2010 decision.

Appellant's representative argues that Dr. Federico based his opinion on an inaccurate medical history, but there is no evidence the doctor based his opinion on the psychological report to which the representative refers. Dr. Federico made no mention of the report when he addressed the issue to be resolved. He referred instead to the mechanism of injury, the accepted medical condition and, most importantly it seems, the absence of related clinical findings.

Appellant's representative argues that Dr. Federico's opinion was not well reasoned because he did not have x-rays obtained in March 2008. It must be remembered that osteoarthritis is not an accepted medical condition. OWCP accepted that appellant tore the medial meniscus in his left knee, for which he underwent a partial meniscectomy. X-rays in 2008 that might confirm the presence of osteoarthritis are not germane to whether appellant should continue to receive wage-loss compensation for the accepted meniscal tear. The burden of proof to establish a causal relationship between the March 24, 1998 employment injury and any diagnosis of osteoarthritis is appellant's. OWCP's burden to justify the termination of disability compensation relates solely to the accepted meniscal tear.

As for whether Dr. Federico was aware of appellant's duties as a letter carrier, OWCP described those duties in the statement of accepted facts and provided that statement to Dr. Federico so he could base his opinion on a proper history.

CONCLUSION

The Board finds that OWCP properly terminated appellant's disability compensation on the grounds that the accepted meniscal tear in his left knee no longer disabled him for work.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 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