

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

M.H., Appellant

and

**U.S. POSTAL SERVICE, TIMES PLAZA
STATION, Brooklyn, NY, Employer**

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**Docket No. 11-1294
Issued: July 23, 2012**

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 May 2, 2011 appellant, through her attorney, filed a timely appeal from a March 8, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's compensation and medical benefits effective August 18, 2010.

On appeal appellant contends that OWCP's decision was contrary to fact and law.

FACTUAL HISTORY

On March 12, 2009 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim alleging that on that date she injured her left knee when, after delivering mail, her left foot

¹ 5 U.S.C. § 8101 *et seq.*

hit a concrete saddle. On May 21, 2009 OWCP accepted her claim for sprain of unspecified sites, left knee and leg, and paid wage-loss and medical benefits.

In a June 10, 2009 medical report, Dr. Apostolos P. Tambakis, a Board-certified orthopedic surgeon, diagnosed appellant with derangement of her left knee and synovitis of her right knee. He opined that appellant had a marked disability causally related to the accident of March 12, 2009 and placed her on anti-inflammatory medication. In monthly progress reports from July 8 through December 15, 2009, Dr. Tambakis continued to indicate that appellant had marked disability due to the employment-related injury to her left knee. He noted that he was treating appellant for derangement of the left knee and synovitis in the right knee.

By letter dated February 17, 2010, OWCP referred appellant to Dr. Robert J. Orlandi, a Board-certified orthopedic surgeon, for a second opinion. In a report dated March 10, 2010, Dr. Orlandi diagnosed appellant with lumbar strain resolved with a normal examination of each hip (noncausal hip symptoms) and left knee strain resolved. He opined that appellant could return to work without restriction and does not require physical therapy or a magnetic resonance imaging (MRI) scan. Dr. Orlandi noted that there was no musculoskeletal disability and that appellant had no lumbar spasm. He stated that appellant had no neurologic deficit to either lower extremity and no swelling of her left knee or patellar abnormality. Dr. Orlandi noted that the left knee injury was causally related to the accident of record but stated that there should have been no consequential low back injury as the left knee MRI scan was entirely normal. He indicated that appellant needed no further treatment.

On July 16, 2010 OWCP issued a notice of proposed termination of appellant's medical and wage-loss benefits, finding that the medical evidence established that she no longer had any residuals or disability due to her employment injury. The termination of benefits became effective on August 18, 2010.

By letter dated August 25, 2010, appellant requested a telephonic hearing. At the hearing held on December 6, 2010, she testified that she was hired by the employing establishment in November 2007 and eventually became a part-time flexible worker. Appellant testified that, after she delivered mail, her left foot hit the concrete saddle and that she heard and felt her left knee clack. She testified that she went back to work on July 20, 2010 for four hours a day. Appellant noted that, when she saw Dr. Orlandi, the second opinion physician, he did not really do an examination and did not even have her take her pants off so that he could look at the knee. She noted that she was treated by Dr. Tambakis and that her present "knee doctor" is Dr. David S. Menche, a Board-certified orthopedic surgeon. Appellant testified that she is not working because of her left knee injury.

In an October 14, 2009 report, Dr. Menche indicated that appellant was seen for persistent complaints regarding her left knee. He noted that she had positive medial joint line tenderness, negative lateral joint line tenderness and mild patella facet joint line tenderness. Dr. Menche noted that he gave appellant an injection and advised her regarding arthroscopic procedures. In a December 1, 2010 report, he indicated that appellant had persistent complaints regarding her left knee, that he gave her another injection and that he advised her regarding arthroscopic intervention. Dr. Menche noted that she was aware of the guarded prognosis in view of the pathology seen and the chronicity of her symptoms.

By decision dated March 8, 2011, OWCP affirmed the decision terminating wage-loss compensation and medical benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require medical treatment.⁵

ANALYSIS

OWCP accepted appellant's claim for sprain of unspecified sites, left knee and leg. It terminated her compensation and medical benefits effective August 18, 2010 because it found that she no longer had any residuals from this accepted employment condition. In making this determination, OWCP found that the weight of the medical evidence was represented by the opinion of Dr. Orlandi, the second opinion physician.

The Board finds that OWCP properly terminated appellant's compensation benefits effective August 18, 2010. In order to determine the extent and degree of any employment-related disability, OWCP referred appellant to Dr. Orlandi for a second opinion examination. Dr. Orlandi opined that appellant's strain of her left knee had resolved and that she could return to work without restriction and needed no further treatment. He noted that appellant had no musculoskeletal disability and no lumbar spasm. Dr. Orlandi further noted that there was no swelling in appellant's left knee and no patellar abnormality. As he properly explained the basis for his opinion that there was no continuing disability due to the accepted employment injuries and that these conditions had resolved, OWCP properly gave the weight of the medical evidence to his opinion and terminated appellant's benefits.

Dr. Tambakis, appellant's treating orthopedic surgeon, stated that appellant continued to have marked disability in her knees causally related to the employment-related injury. However, Dr. Tambakis referred to derangement of the left knee and synovitis of her right knee, both

² *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

³ *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988); *see I.R.*, Docket No. 09-1229 (issued February 24, 2010).

⁴ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁵ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003); *B.K.*, Docket No. 08-2002 (issued June 16, 2009).

conditions which had never been accepted. Appellant's claim has only been accepted for sprain of the left knee and leg. Dr. Tambakis' opinion does not establish that appellant continues to have disability causally related to her accept condition.

The opinions of Dr. Menche do not address the issue of causal relationship between appellant's left knee pain and the accepted left knee and leg sprains. They do not provide a firm diagnosis and do not address continued employment-related disability.

Accordingly, OWCP properly found that the weight of the medical evidence, as represented by Dr. Orlandi, established that the accepted work injury had resolved and properly terminated appellant's medical and compensation benefits.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective August 18, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2011 is affirmed.

Issued: July 23, 2012
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