

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

L.F., Appellant

and

**U.S. POSTAL SERVICE, LOGISTICS &
DISTRIBUTION CENTER, Warrendale, PA,
Employer**

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**Docket No. 11-1784
Issued: March 6, 2012**

Appearances:
Douglas Sughrue, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 28, 2011 appellant, through her attorney, filed a timely appeal from an April 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation effective September 25, 2009 on the grounds that she had no further disability due to her August 19, 2006 employment injury; (2) whether it properly terminated authorization for medical treatment; and (3) whether appellant established that she had continuing employment-related disability after September 25, 2009.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 24, 2006 appellant, then a 54-year-old mail handler, filed a claim alleging that on August 19, 2006 she sustained a gash in her right leg and tendinitis of the right knee when she was struck from behind with a cart. OWCP accepted the claim for a contusion of the right lower leg and a torn right medial meniscus. Appellant stopped work on August 19, 2006 and returned to limited-duty work for four hours per day on January 30, 2007. She began working modified employment for six hours per day on October 27, 2007.²

On December 16, 2008 OWCP referred appellant to Dr. Scott J. Szabo, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated January 29, 2009, Dr. Szabo reviewed the history of injury and discussed her complaints of right knee pain. On examination he found patellofemoral crepitation “symmetrical to [appellant’s] contralateral side.” Dr. Szabo found no rotator instability and negative McMurray and Apley tests with good strength on knee flexion but mild discomfort. He stated:

“The accepted conditions of the right lower leg and contusion and right medial meniscus tear have resolved. In spite of subjective complaints of pain and perceived limitations, her contusion and laceration have healed uneventfully. [Appellant’s] [magnetic resonance imaging (MRI) scan study] reviewed does not demonstrate a meniscus tear and her examination does not demonstrate any contusion or meniscus tearing. Her extremity has no disuse atrophy, loss of motion, weakness, instability or effusion noted. It does, however, demonstrate evidence of patella chondromalacia and mild pes anserine bursitis, provocative tests of meniscus tear that is unrelated.”

Dr. Szabo opined that appellant had no residuals of her August 19, 2006 employment injury as there was no objective evidence of “medial meniscus pathology” by imaging study or on examination. He advised that she had no work restrictions due to her employment injury but that her nonemployment-related preexisting patella chondromalacia might cause limitations. Dr. Szabo determined that appellant’s chondromalacia was not aggravated by her employment injury. He found that she could work full time. Dr. Szabo stated:

“The MRI [scan study] does not demonstrate medial meniscus tearing. Subjective complaints are not over her medial side of her knee, but rather anterior and objectively she has medial knee pain over her pes anserine bursa as opposed to her meniscus with negative McMurray and Apley. This claimant can work her regular position based on the description as previously reviewed and does not need arthroscopic knee surgery.”

In an addendum dated March 5, 2009, Dr. Szabo reiterated that appellant had no limitations due to her contusion and laceration of the calf or medial mensical tear but had limitations due to preexisting nonemployment-related patella condromalacia. He completed a work restriction evaluation and provided restrictions.

² By decision dated March 13, 2007, OWCP denied appellant’s claim for compensation for total disability from December 23, 2006 to January 19, 2007 and January 22 to February 2, 2007.

By letter dated March 17, 2009, OWCP requested that Dr. Derek J. (Duke) Thomas, a Board-certified orthopedic surgeon and appellant's attending physician, review Dr. Szabo's report and discuss whether he agreed with the conclusions. In a work restriction evaluation dated March 24, 2009, Dr. D. Thomas found that appellant could work six hours per day with restrictions.

On August 21, 2009 OWCP notified appellant of its proposed termination of her compensation and authorization for medical benefits as she had no further employment-related disability or condition requiring medical treatment.

In a September 5, 2009 response, appellant disagreed with the proposed termination of compensation. She described difficulties performing activities and noted that the opinions of her attending physicians conflicted with the opinion of Dr. Szabo.

By decision dated September 25, 2009, OWCP terminated appellant's compensation and medical benefits effective that date. It found that Dr. Szabo's opinion represented the weight of the evidence and established that she had no further residuals of her work injury.

In a report dated January 4, 2010, Dr. Stephen J. Thomas, a Board-certified orthopedic surgeon, related that he initially evaluated appellant on April 11, 2007 at the request of Dr. D. Thomas. He discussed her August 18, 2006 work injury and the MRI scan study finding of a medial meniscal tear. On April 11, 2007 Dr. S. Thomas recommended a knee arthroscopy but appellant did not undergo surgery. He stated, "I do believe that her physical findings, as well as history, were consistent with a work[-]related medial meniscal tear. Since I have not seen her since April 2007, I could not comment on the prognosis or her work limitations." Dr. S. Thomas related that he had reviewed Dr. Szabo's report and "did not feel, at this point, an examination approximately [two and a half] years after the injury, is valid enough for its conclusions."

On January 12, 2010 Dr. D. Thomas related that he had treated appellant since August 30, 2006 for her August 18, 2006 work injury. He described her treatment and findings on examination beginning August 30, 2006. Dr. D. Thomas provided permanent work restrictions on December 5, 2007 and noted that Dr. S. Thomas had recommended arthroscopic surgery in 2007. He related that, when he last evaluated appellant on March 12, 2008, he found that she had reached maximum medical improvement and released her from treatment. Dr. D. Thomas opined that she was not "going to improve really significantly with[out] any major interventions. Perhaps an arthroscopic surgery may give [appellant's] some relief. Based on the length of [appellant's] injury and the time she has been in light duty I do not think she is going to return to her normal job at any time."

On February 1, 2010 Dr. S. Thomas related that the injury appellant sustained could result in a medial meniscal tear. On February 9, 2010 Dr. D. Thomas asserted that her work injury could cause a medial meniscal tear based on the mechanism of impact.

On March 15, 2010 appellant requested reconsideration. By decision dated June 21, 2010, OWCP denied modification of its September 25, 2009 decision.

In a report dated January 6, 2011, Dr. Gregory T. Altman, a Board-certified orthopedic surgeon, related that an MRI scan study showed an intact meniscus but an articular cartilage

injury. He stated, "It appears that [appellant] had a traumatic cartilage injury after her work-related accident in 2005. It was either an acute traumatic injury or an aggravation to her articular cartilage that has caused her symptoms and this appears to be directly related." In a duty status report dated February 14, 2011, Dr. Altman listed work restrictions.

On March 10, 2011 appellant, through her attorney, requested reconsideration. He argued that Dr. Altman found that she continued to have a knee problem due to her work injury. Counsel also contended that Dr. Szabo's report was insufficient to constitute the weight of the evidence as he ignored appellant's subjective complaints even though the complaints were supported by objective findings. He asserted that a conflict in medical opinion existed.

By decision dated April 14, 2011, OWCP denied modification of its June 21, 2010 decision. It found that Dr. Altman did not provide medical rationale or a complete medical history and thus his opinion was insufficient to outweigh Dr. Szabo's findings or to create a conflict in opinion.

On appeal, appellant's attorney argues that Dr. Szabo's opinion is of less probative value than that of her attending physicians and as it is incomplete and unrationalized. Counsel also argues that Dr. Szabo's opinion was insufficient to meet OWCP's burden of proof as he ignored her subjective complaints and listed work restrictions. He contends that a conflict in medical opinion exists and that appellant should not be penalized for failing to undergo surgery. Counsel notes that Dr. Altman found an articular cartilage tear.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP 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.³ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a contusion of the right leg and a torn right medial meniscus due to an August 19, 2006 work injury. On October 27, 2007 appellant began working modified employment for six hours per day and receiving compensation for two hours per day.

On December 16, 2008 OWCP referred appellant to Dr. Szabo for a second opinion examination. It terminated her compensation based on its finding that his report constituted the weight of the medical evidence and established that she had no further employment-related disability. The Board has reviewed the opinion of Dr. Szabo and finds that it has reliability, probative value and convincing quality with respect to the conclusions reached. On January 29,

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

2009 Dr. Szabo discussed the history of injury and appellant's current complaints of pain in the right knee. On examination he found patellofemoral crepitation of both knees symmetrically, no rotator instability and negative McMurray and Apley tests. Dr. Szabo determined that appellant's right lower leg contusion and right medial meniscus tear had resolved. He provided rationale for his opinion by explaining that an MRI scan study that did not show a meniscal tear and that on examination he found no atrophy, motion loss, effusion, weakness or instability. Dr. Szabo opined that appellant had no work restrictions due to her employment injury but had limitations resulting from nonemployment-related preexisting patella chondromalacia unrelated to or aggravated by her employment injury. The Board finds that Dr. Szabo's report, which is reasoned and based on a properly factual and medical history, constitutes the weight of the evidence and establishes that appellant's right leg contusion and torn medial meniscus tear have resolved.⁵

The remaining evidence submitted prior to OWCP's termination of compensation is insufficient to show that appellant remained disabled due to her work injury. On March 17, 2009 OWCP requested that Dr. D. Thomas, her attending physician, review and discuss Dr. Szabo's second opinion examination. In response, Dr. D. Thomas provided a work restriction evaluation indicating that appellant could work six hours per day with restrictions. He did not, however, address the cause of her work limitations and thus his opinion is of little probative value.⁶

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS -- ISSUE 2

OWCP met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Szabo, the second opinion examiner, who found that appellant had no residuals of her accepted conditions. Dr. Szabo explained that, based on his physical examination and the diagnostic studies, she had no further medial meniscal tear or right leg contusion. As his opinion is detailed and well rationalized, it constitutes the weight of the evidence and establishes that she has no further need for medical treatment due to her accepted employment injury.⁹

⁵ See *E.J.*, 59 ECAB 695 (2008); *K.E.*, Docket No. 08-1461 (issued December 17, 2008).

⁶ See *Conard Hightower*, 54 ECAB 796 (2003) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁷ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁸ See *Manual Gill*, 52 ECAB 282 (2001); *Mary A. Lowe*, 52 ECAB 223 (2001).

⁹ *Id.*

LEGAL PRECEDENT -- ISSUE 3

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to appellant to establish that he has continuing disability after that date related to his accepted injury.¹⁰ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹¹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹²

ANALYSIS -- ISSUE 3

Given the Board's finding that OWCP properly relied upon the opinion of Dr. Szabo in terminating compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.¹³

On January 4, 2010 Dr. S. Thomas indicated that at the time he evaluated appellant on April 11, 2007 he diagnosed a torn medial meniscus and recommended surgery. He asserted that, since he had not treated her since 2007, he could not address her work limitations. As Dr. S. Thomas did not address the relevant issue of whether appellant had any further employment-related disability, his opinion is of diminished probative value.

In a report dated January 12, 2010, Dr. D. Thomas discussed his treatment of appellant from August 30, 2006 until his last evaluation on March 12, 2008. He indicated that on December 5, 2007 he found permanent work restrictions and on March 12, 2008 he released her from care. Dr. D. Thomas related that without surgery or other intervention appellant would not improve and stated, "Based on the length of her injury and the time she has been in light duty I do not think she is going to return to her normal job at any time." He did not, however, explain how the August 19, 2006 employment injury continued to cause disability. As Dr. D. Thomas failed to provide a rationalized medical opinion supporting that appellant's ongoing work restrictions were related to the accepted work injury, his report is insufficient to establish continuing employment-related disability.¹⁴

In a report dated February 1, 2010, Dr. S. Thomas indicated that the type of injury appellant sustained could result in a medial meniscal tear. On February 9, 2010 Dr. D. Thomas determined that the mechanism of injury could cause a medial meniscal tear. OWCP, however, accepted that appellant sustained an employment-related right medial meniscal tear. The issue is

¹⁰ See *I.J.*, 59 ECAB 408 (2008); *Franklin D. Haislah*, 52 ECAB 457 (2001).

¹¹ *Id.*

¹² *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ See *Manual Gill*, *supra* note 8.

¹⁴ Medical reports not containing rationale on causal relationship are entitled to little probative value. See *Jimmie Duckett*, 52 ECAB 332 (2001).

whether it caused disability after September 25, 2009. The physicians do not address the relevant issue and thus their reports are of little probative value.

On January 6, 2011 Dr. Altman asserted that an MRI scan study showed no medial meniscal tear but instead an articular cartilage injury. He found that the articular cartilage injury appeared to be either caused or aggravated by a 2005 injury. OWCP, however, did not accept an articular cartilage tear as employment related. Where appellant claims that, a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁵ Dr. Altman did not provide a description of the August 19, 2006 work injury and thus his report is of diminished probative value.¹⁶ Further, he did not provide any rationale for his causation finding. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet her burden of proof.¹⁷

On appeal, appellant's attorney argues that Dr. Szabo did not provide sufficient rationale for his opinion and did not explain his disability finding given appellant's subjective complaints and need for work restrictions. Dr. Szabo, however, determined that she had subjective complaints and required work restrictions due to nonemployment-related patella chondromalacia. Counsel also contends that Dr. Szabo's opinion conflicts with that of appellant's attending physicians. As discussed, however, the opinions of her physicians are insufficiently rationalized to support that she had continuing employment-related disability. Appellant's attorney also maintains that appellant should not be penalized for failing to undergo surgery. The issue, however, is whether appellant has any further disability due to her August 19, 2006 work injury rather than whether she properly refused surgery. Counsel also notes that Dr. Altman diagnosed an articular cartilage tear but, as discussed above, he did not rely on a complete history of injury or provide rationale for his opinion.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation and authorization for medical benefits effective September 25, 2009 on the grounds that she had no further disability due to her August 19, 2006 employment injury. The Board further finds that she has not established that she had continuing employment-related disability after September 25, 2009.

¹⁵ See *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁶ See *Douglas M. McQuaid*, 52 ECAB 382 (2001); *Joseph M. Popp*, 48 ECAB 624 (1997).

¹⁷ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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