

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

J.P., Appellant)

and)

**DEPARTMENT OF COMMERCE, BUREAU
OF THE CENSUS, Redwood City, CA, Employer**)

**Docket No. 12-829
Issued: October 3, 2012**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2012 appellant, through his attorney, filed a timely appeal from a February 2, 2012 decision of the Office of Workers' Compensation Programs (OWCP) concerning the termination of his compensation benefits. 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 for wage-loss and medical benefits effective July 27, 2011 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 7, 2009 appellant, then a 53-year-old enumerator, injured his left knee and ankle while walking down stairs. OWCP accepted the claim for left knee and ankle sprains and temporary aggravation of left leg arthropathy. Appellant, who started his position on March 26, 2009, was terminated for cause on April 12, 2009.

On December 8, 2009 appellant filed a claim for wage-loss compensation beginning April 10, 2009.

On August 27, 2010 Dr. Aubrey A. Swartz, a second opinion Board-certified orthopedic surgeon, reviewed the medical evidence, statement of accepted facts set forth findings on physical examination. He concluded that appellant no longer had any residuals or disability due to his accepted ankle and knee sprains. The physical examination revealed no instability, no warmth, no discoloration, no limp, no swelling and a normal range of motion. Based upon a review of x-rays, Dr. Swartz concluded that the employment injury caused a temporary aggravation of a preexisting chronic degenerative left knee osteoarthritis.

In progress notes dated October 2010 through March 24 2011, Dr. Thai T. Do, a treating Board-certified internist, diagnosed a re-tear in the posterior medial meniscus, a small tear in the lateral meniscus, severe medial and lateral knee chondromalacia/osteoarthritic changes and anterior cruciate ligament tear based upon review of a magnetic resonance imaging (MRI) scan. He related that appellant sustained a work injury on April 7, 2009 when he lost his balance while walking down stairs and twisted his left knee. In a January 24, 2011 progress note, Dr. Do released appellant to modified duty with restrictions. He also noted a history of left knee injuries.

In a January 11, 2011 report, Dr. Raffy Mirzayan, an examining Board-certified orthopedic surgeon, noted a history of the April 7, 2009 injury. He diagnosed left knee arthritis, medial meniscus re-tear and lateral meniscus tear.

On February 17, 2011 Dr. Do related that an MRI scan showed changes consistent with left knee medial and lateral tears and severe chondromalacia. He obtained a history that appellant underwent left knee surgery 30 years prior and a second surgery 6 years present. Dr. Do diagnosed preexisting left knee osteoarthritis with temporary aggravation, left knee acute lateral meniscus tear and acute left knee medial meniscus tear. He opined that the April 7, 2009 employment injury was the direct cause of the medial and lateral meniscus tear and that it caused a temporary aggravation of appellant's preexisting arthritis.

In an April 22, 2011 supplemental report, Dr. Swartz reviewed an updated statement of accepted facts and additional medical evidence. He related that the meniscal tears were more likely degenerative in nature and not an unusual development with advanced or severe knee arthritis. Dr. Swartz also noted that the tears were not seen until a November 12, 2010 MRI scan, which was approximately one and one-half years after the April 7, 2009 employment injury. He concluded that appellant would probably have had the degenerative tears even if the April 7, 2009 employment injury had not happened. Dr. Swartz related that arthritis also affected the menisci and there was no evidence showing that the tears were due to the April 7,

2009 employment injury. He opined that appellant no longer had any residuals or disability as a result of the accepted April 7, 2009 employment injury. Dr. Swartz attributed appellant's current condition and disability to the preexisting severe left knee degenerative osteoarthritis.

On June 22, 2011 OWCP issued a notice of proposed termination of compensation and medical benefits based on the opinion of Dr. Swartz. It afforded appellant 30 days to submit additional evidence or argument to the extent he disagreed with the proposed termination of benefits. No evidence was received.

By decision dated July 27, 2011, OWCP terminated appellant's wage-loss and medical benefits effective that day.

On August 4, 2011 appellant's representative requested a telephonic hearing before an OWCP hearing representative, which was held on November 9, 2011. Subsequent to the hearing, OWCP received additional medical evidence. On December 2, 2011 Dr. Do diagnosed preexisting left knee osteoarthritis with temporary aggravation, left knee acute lateral meniscus tear and acute left knee medial meniscus tear. He opined that the April 7, 2009 employment injury was the direct cause of the medial and lateral meniscus tears and caused a temporary aggravation of appellant's preexisting arthritis.

By decision dated February 2, 2012, the hearing representative affirmed the July 27, 2011 termination decision.

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.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See I.R.*, Docket No. 09-1229 (issued February 24, 2010); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

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

⁶ *B.K.*, Docket No. 08-2002 (issued June 16, 2009); *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on the opinion of Dr. Swartz, an OWCP referral physician, who reviewed the history of appellant's employment injury, medical treatment and the statement of accepted facts concerning the left knee and ankle sprains and temporary aggravation of left leg arthropathy. Dr. Swartz reported essentially normal findings on physical examination and noted no objective evidence of the accepted employment conditions. He opined that appellant no longer had any residuals or disability due to his accepted April 7, 2009 employment injury. Dr. Swartz found that the diagnosed meniscal tears were degenerative in nature, that were not visible on testing until the November 12, 2010 MRI scan approximately one and one-half years following the April 7, 2009 employment injury. He advised that there was no evidence that the tears were due to the employment injury. Dr. Swartz concluded that appellant's current condition and disability were due to a preexisting left knee osteoarthritic condition which was unrelated to the accepted conditions.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ Dr. Swartz fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing employment-related residuals or disability. The Board finds that his opinion is detailed, well rationalized and based upon a complete and accurate history. The Board finds that Dr. Swartz' opinion represents the weight of the medical evidence. The Board establishes that appellant no longer has any residuals or disability causally related to his accepted employment conditions of left knee and ankle sprains and temporary aggravation of left leg arthropathy. OWCP met its burden of proof to terminate compensation.

For conditions not accepted by OWCP as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove any such relationship.⁸ Dr. Do diagnosed preexisting left knee osteoarthritis with temporary aggravation, left knee acute lateral meniscus tear and acute left knee medial meniscus tear in his various reports. He concluded that appellant sustained a temporary aggravation of his left knee osteoarthritis which had resolved, but attributed the left knee medial and lateral meniscus tears to the April 7, 2009 employment injury. Dr. Do provided insufficient rationale to explain how the meniscus tears were caused or aggravated by appellant's employment injury. The Board has held that medical reports unsupported by medical rationale are of limited probative value.⁹ Dr. Mirzayan diagnosed left knee arthritis, medial meniscus re-tear and lateral meniscus tear and noted an April 7, 2009 employment injury. However, he offered no opinion as to the cause of these conditions. The Board has held that medical opinions not containing rationale on causal relation are of diminished probative value and are insufficient

⁷ See *K.W.*, 59 ECAB 271 (2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

⁸ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ *T.F.*, 58 ECAB 128 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

to meet appellant's burden of proof. Thus, the reports from Drs. Do and Mirzayan are insufficient to establish that the medial and lateral meniscus tears were due to the April 7, 2009 employment injury.¹⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective July 27, 2011 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2012 is affirmed.

Issued: October 3, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Richard A. Neidert*, 57 ECAB 474 (2006).