

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

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**P.M., Appellant** )

**and** )

**DEPARTMENT OF LABOR, OFFICE OF )  
WORKERS' COMPENSATION PROGRAMS, )  
San Francisco, CA, Employer** )

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**Docket No. 13-1621  
Issued: April 17, 2014**

*Appearances:*  
*Appellant, pro se*  
*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 June 28, 2013 appellant filed a timely appeal from the January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which terminated her compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether OWCP properly terminated appellant's compensation for the accepted condition of right knee sprain.

**FACTUAL HISTORY**

On November 23, 2010 appellant, a 51-year-old senior claims examiner, sustained a traumatic injury in the performance of duty when she jerked/twisted her right leg to free her foot,

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

which had become entangled in a coil of telephone wire under a table. OWCP accepted her claim for right knee sprain. Appellant received compensation for temporary total disability on the periodic rolls.

A conflict arose between Dr. Arun M. Mehta, a Board-certified orthopedic surgeon and an OWCP second opinion physician, and Dr. Richard A. Nolan, the attending Board-certified orthopedic surgeon. Dr. Mehta examined appellant in June 2011, about six and a half months after her injury. Examination revealed tenderness in the mid-joint medially with range of motion slightly limited. Dr. Mehta found that, while appellant's right knee injury consisted of contusion and medial collateral ligamentous injury, it was not currently active. Appellant's present symptomatology, he concluded, was due to nonwork-related injury or degenerative changes. Dr. Mehta added that no consequential injuries had resulted from the accepted right knee injury.

Dr. Nolan also examined appellant in June 2011 and found, among other things, slight medial compartment laxity on valgus stress testing. He made the same finding in March 2012. Dr. Nolan observed that appellant's knee was minimally symptomatic following a 1985 meniscectomy until she suffered a rotational sprain on November 23, 2010, which triggered a progressive and disabling inflammatory response that she now had to deal with. He stated "This is a direct result of the injury of November 23, 2010, and it requires appropriate treatment." In Dr. Nolan's opinion, the employment injury brought into clinical fruition a quiescent arthritic process.

OWCP referred appellant, together with the case file and a statement of accepted facts, to Dr. Gregory Horner, a Board-certified orthopedic surgeon, for an impartial medical examination.

On May 21, 2012 Dr. Horner related appellant's history of having tripped on a telephone cord. "There was some degree of an impact injury," though appellant described having not actually fallen but having lost her footing and experiencing some increased pain in the right knee. Dr. Horner reviewed the reports of Dr. Mehta and Dr. Nolan.

Dr. Horner reviewed appellant's medical record at length. After describing his findings on physical examination, he expressed his opinion that she had no residuals of her November 23, 2010 employment-related right knee injury. Dr. Horner explained that appellant's osteoarthritic degeneration clearly predated the injury and that the injury was not significant to have caused in any way her current physical examination and radiographic and imaging findings. He stated, "I feel that she has fully resolved that injury of November 23, 2010 and 100 percent of her current illness with respect to her right knee are attributable to the natural progression of osteoarthritis beginning as far back as 1985 when she underwent medial knee debridement."

Dr. Horner added that appellant was capable of performing her duties as a senior claims examiner "as the injury has fully resolved." If appellant had any difficulty or pain that interfered with her ability to perform those duties, it was attributable to the natural progression of osteoarthritis and not, in any way, to her injury on November 23, 2010.

In June 2012 Dr. Nolan found that appellant's right collateral ligaments were intact to stress testing. In November 2012 he added that the 25-year interval between her 1985 injury and her 2010 work injury would weigh in favor of the 2010 injury being responsible for the primary

problem with her right knee. Dr. Nolan stated, “That is to say, had [appellant] not had the 2010 injury she would not be experiencing the symptoms and disability she is currently experiencing.”

OWCP issued a notice of proposed termination of compensation. It found that Dr. Horner’s well-reasoned opinion constituted the weight of the medical evidence and established that the accepted right knee sprain had ceased with no residuals.

In a decision dated January 25, 2013, OWCP terminated appellant’s compensation for the November 23, 2010 right knee sprain.

On appeal, appellant contends that the medical reports used to terminate her benefits were too old; that OWCP apportioned; that Dr. Horner blind-sided her because she thought she was seeing him for her shoulders; that OWCP had an obligation to assist her in obtaining further medical development prior to termination; that she has not been paid compensation since January 25, 2013; that she is incapable of working due to her right knee; that OWCP ignored Dr. Nolan’s requests for treatment authorization and to expand her claim; that the notice of proposed termination should not have been finalized with so many actions pending; that the employing establishment ordered her to return to work knowing she could not work; that her November 23, 2010 work injury has not resolved and has been in constant agonizing pain since that date; and that her compensation should not have been terminated on January 24, 2013 but to the end of the periodic rolls. She submitted to the Board what is essentially a copy of the arguments she presented to OWCP on January 10, 2012, which it addressed at length in its final decision.

### **LEGAL PRECEDENT**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

## ANALYSIS

OWCP accepted that appellant sustained a right knee sprain on November 23, 2010. It paid her compensation on the basis of that medical condition. As it has now terminated those benefits, it has the burden to establish that the November 23, 2010 employment-related right knee sprain has resolved.

Dr. Mehta, OWCP's second opinion physician, examined appellant in June 2011 and found that she was no longer suffering from contusion or medial collateral ligamentous injury. The accepted medical condition was no longer active. Dr. Nolan, the attending physician, also examined appellant in June 2011 and found a slight medial compartment laxity on valgus stress testing. He found that appellant's right knee injury continued to cause her problems.

To resolve this conflict, OWCP properly referred appellant to Dr. Horner, a Board-certified orthopedic surgeon. It provided him with her entire case file and a statement of accepted facts so he could base his opinion on a proper factual and medical background. Dr. Horner reviewed appellant's history of injury and medical record. He examined her and found that she had no residuals of her November 23, 2010 employment-related right knee injury. Dr. Horner concluded that appellant's current symptoms were "100 percent attributable" instead to the natural progression of her preexisting osteoarthritis. He explained that the November 23, 2010 employment injury was not significant enough to have caused her current findings on physical, radiographic and imaging examinations. Dr. Horner further concluded that appellant was capable of performing her duties as a senior claims examiner "as the injury has fully resolved." Thus, in reaching his conclusion, he considered the accepted injury, the mechanism of injury and the symptomatology of appellant's preexisting osteoarthritis.

The Board finds that the opinion of the impartial medical specialist is based on a proper factual and medical background and is sufficiently well rationalized that it must be accorded special weight in resolving whether appellant continues to suffer from the accepted right knee sprain. The issue raised by OWCP's January 25, 2013 termination decision is whether appellant continues to suffer from the accepted medical condition, not whether a rotational sprain caused an aggravation of preexisting osteoarthritis or a consequential left knee injury or an emotional condition. Those are separate legal issues not decided by OWCP's decision. On the specific issue of whether the accepted sprain has resolved, the weight of the medical evidence establishes that OWCP has met its burden of proof to terminate compensation for that medical condition.

Dr. Nolan found, beginning in June 2012 and continuing, that appellant's right medial collateral ligament was intact to valgus stress testing. There was no longer any laxity and no diagnosis of a continuing right knee sprain. It would appear, then, that Drs. Mehta, Nolan and Horner now essentially agree that appellant no longer suffers from the ligamentous soft tissue injury she sustained in 2010.

As the weight of the medical opinion evidence establishes that the November 23, 2010 right knee sprain has resolved, the Board will affirm OWCP's January 25, 2013 decision. 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.

The Board has reviewed appellant's arguments on appeal and can find no reversible error in OWCP's January 25, 2013 decision. The Board is unaware of any authority that a medical report older than six months is too stale to establish that the accepted medical condition has resolved. It is unclear how appellant's expectations going into Dr. Horner's examination would have altered his findings or opinion on the accepted right knee sprain. OWCP provided her an opportunity to submit additional evidence. Again, whether appellant's current disability for work or need for treatment is the result of a previously quiescent osteoarthritis that was symptomatically triggered by the November 23, 2010 work injury is immaterial to whether she continues to suffer from the accepted sprain.

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation for the accepted condition of right knee sprain.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2014  
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