

FACTUAL HISTORY

OWCP accepted that on August 5, 1980 appellant, then a 23-year-old water plant operator, sustained a right knee contusion when he bumped it on a desk. On September 30, 1980 he underwent OWCP-authorized surgery on his right knee, including arthroscopy, arthrotomy, repair of capsular defect and release of plica synovialis.² Appellant was injured again on July 2, 1981 due to a fall down steps at work and he stopped work on that date, returned to work on July 20, 1981 but stopped again on April 8, 1982.³ OWCP initially accepted the July 2, 1981 injury for a right knee contusion, right elbow abrasion, lumbar spine contusion and lumbosacral sprain. It later accepted permanent aggravation of the underlying right knee condition of “old disruption of anterior cruciate ligament.” Appellant received wage-loss compensation on the periodic rolls. On October 22, 1985 Dr. Robert Goodman, an attending Board-certified orthopedic surgeon, discussed treatment of appellant’s right knee and back conditions. He diagnosed a chronic lumbar strain by history and status post medial meniscectomy and pes transfer, right knee with anterior cruciate deficient knee.

On February 3, 1986 OWCP granted appellant a schedule award for 18 percent permanent impairment of his right leg. In a November 13, 1986 decision, it reduced his compensation to reflect his ability to earn wages in the constructed position of cashier.

Appellant received treatment for his right knee condition from attending physicians. OWCP noted in early 2011 that the record lacked current medical reports from these physicians and therefore it referred him for a second opinion examination to Dr. Stanley W. Collis, a Board-certified orthopedic surgeon.⁴

In a May 17, 2011 report, Dr. Collis detailed appellant’s August 5, 1980 and July 2, 1981 work injuries as well as the mid-1970s injury in the military which led to a right knee meniscectomy. He also noted appellant’s history of right knee surgery in September 1980. Dr. Collis reported findings on physical examination including full range of right knee motion, good right quadriceps strength and no lateral, anterior or posterior instability of the right knee, lack of spasm or tenderness in the back and reasonably good range of back motion. McMurray’s sign was not elicited, knee and ankle reflexes were equal bilaterally and appellant did not have any obvious pain upon knee motion. Dr. Collis noted that the examination did not reveal any objective evidence of residuals of the accepted work injuries with respect to the right knee, back or right elbow. He indicated that there was no evidence of a work-related permanent aggravation of the right knee, but he found that appellant’s need for work restrictions was due to the preexisting degenerative condition of his right knee.

² Appellant originally injured his right knee in the military in the mid-1970s and underwent meniscectomy surgery on the same knee. The injury has been variously reported as occurring in 1974, 1975 or 1976.

³ After stopping work for the employing establishment, appellant performed work for private employers. He has not worked since the late 1980s.

⁴ The last medical evidence of record prior to the time of the second opinion referral was a December 19, 2008 report in which an attending physician stated that appellant reported right knee and leg pain. The physician did not provide any examination findings, but noted that appellant should continue with work restrictions.

In a June 1, 2011 letter, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits as he had no residuals of his accepted work injuries. The proposed action was based on the opinion of Dr. Collis. Appellant was provided 30 days to submit evidence and argument challenging the proposed termination action.

In an August 5, 2011 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective August 5, 2011 noting that the weight of the medical opinion evidence, represented by the opinion of Dr. Collis, showed that his accepted work-related conditions had resolved.

Appellant requested a hearing with an OWCP hearing representative. Prior to the hearing, the hearing representative issued a November 3, 2011 decision setting aside OWCP's August 5, 2011 decision and remanding the case to OWCP for further development. He found Dr. Collis' May 17, 2011 report was not based on a complete and accurate statement of accepted facts and noted therefore that OWCP had not met its burden to terminate appellant's compensation. The hearing representative determined that, since OWCP had not advised Dr. Collis of the exact nature of the preexisting right knee problem that was aggravated by the July 2, 1981 work injury (old disruption of anterior cruciate ligament), his opinion was of insufficient probative value to show the injury-related conditions had resolved. He directed OWCP to advise Dr. Collis of the specific nature of the preexisting right knee condition that was aggravated by the July 2, 1981 work injury and to ask him to explain whether appellant still had residuals of the accepted aggravation.

OWCP wrote to Dr. Collis and requested a supplemental report on November 7, 2011. In an undated report received on November 10, 2011, Dr. Collis responded that he was aware of the accepted facts included a diagnosis of permanent aggravation of old disruption of anterior cruciate ligament and stated, "Apparently, it was temporary since the examination reveals no anterior instability or any other instability." He indicated that knee x-rays revealed some narrowing of the medial compartment that was "developmental post two surgeries for preexisting" but not work-related injuries.⁵

By decision dated November 30, 2011, OWCP indicated that it was terminating appellant's wage-loss and medical benefits effective November 30, 2011.⁶ It found that the opinion of Dr. Collis showed that appellant ceased to have residuals of his accepted work injuries. OWCP indicated that Dr. Collis determined that there was no current instability of appellant's right knee and reasoned any aggravation of his right knee by his federal employment was temporary and without current objective residuals.

Appellant requested a telephonic hearing with an OWCP hearing representative and a hearing was held on June 7, 2012. During the hearing, he testified that he continued to have

⁵ Dr. Collis made reference to appellant's left knee, but this reference appears to have been inadvertent as it is clear from his May 17, 2011 report that he understood that appellant's right knee condition was accepted as work related.

⁶ OWCP indicated that appellant's wage-loss compensation and medical benefits were terminated effective November 30, 2011, but those benefits were terminated on August 5, 2011. It did not reinstate his compensation after setting aside its August 5, 2011 termination decision.

work-related residuals and indicated that he would be submitting a medical report of Dr. Richard T. Sheridan, an attending Board-certified orthopedic surgeon.

In a June 5, 2012 report, Dr. Sheridan discussed appellant's medical history, including his two work-related injuries and reported his findings on physical examination. He stated that appellant's right knee condition had not resumed a baseline level of progression as a result of his 1980 and 1981 injuries. Dr. Sheridan noted that appellant also had residuals of his work-related lumbar contusion and strain as evidenced by some diminution of back motion and by positive straight leg raising tests. He posited that appellant still had work restrictions (including no lifting, pushing or pulling more than 20 pounds) due to his accepted work injuries.

By decision dated August 23, 2012, an OWCP hearing representative determined that OWCP had properly terminated appellant's wage-loss compensation and medical benefits, but noted that the receipt of new evidence after the hearing established a conflict in medical evidence between Dr. Collis and Dr. Sheridan. The hearing representative remanded the case to OWCP and instructed it to refer appellant for an independent medical examination to resolve the conflict.

OWCP referred appellant to Dr. Robert F. Baker, a Board-certified orthopedic specialist, for an independent medical examination and opinion regarding whether appellant continued to have residuals of his accepted work injuries.

In a November 5, 2012 report, Dr. Baker discussed the medical history of record and detailed prior findings on physical examination and diagnostic testing. He reported the findings of his own physical examination noting that appellant walked in a slow deliberate manner with a stabilizing brace on the right knee. Dr. Baker stated that appellant did not exhibit any classic pain behavior but noted that on several occasions he expressed discomfort with pain in his right knee. Appellant complained of tenderness to very light palpation of his right knee and there was no significant swelling of his right knee. Dr. Baker noted that it was difficult to assess appellant's right knee stability due to pain complaints, but indicated that he had 2+ instability with right knee flexion in the varus/valgus directions and about 1+ instability with anterior posterior stress. He stated that the 1980 arthroscopy revealed that only the plica was restricted and showed evidence of the old anterior cruciate ligament injury. Dr. Baker stated:

“Subsequent to the injury wherein [appellant] fell on July 2, 1981, he was treated conservatively and then subsequently released from the orthopedic clinic on October 1, 1981 and given a return on [an as needed] basis only. No further evidence of follow up from an orthopedic point of view with respect to the knee was noted in the records until the October 22, 1985 evaluation by Dr. [Goodman] as noted above. Therefore, it would be medically probable to state that there was no evidence of any permanent aggravation to [appellant's] chronic right knee problem from either the August 5, 1980 or the July 2, 1981 incidents.

“With respect to [appellant's] knee, the steady progression of the degenerative changes primarily affecting the medial joint compartment and the patellofemoral joint are in my opinion secondary and a not unusual consequence of the incident that occurred while on active duty which caused his partial medial meniscectomy

and [anterior cruciate ligament] disruption and subsequently chronically unstable right knee.

“On this basis, it would be my opinion that [appellant] could only perform a sit-down type job where he would not be standing or repetitively walking or climbing or descending stairs or ladders with respect to the right knee. Again, I would emphasize that, in my opinion, the restrictions suggested for the right knee would be on the basis of the sequelae of the original incident that occurred in 1976. (It will be noted that the date of the original injury is not represented by any documentation of treatment and the date given to me today by [appellant] was 1974 and it is to be noted that other individuals and evaluating physicians in the record have either said 1974, 1975 or 1976.)”

In a December 3, 2012 decision, OWCP found that appellant had not met his burden of proof to establish residuals of his accepted work injuries after November 30, 2011. It based this decision on the opinion of Dr. Baker.

Appellant disagreed with this decision and requested a review of the written record by an OWCP hearing representative. In an April 24, 2013 decision, the hearing representative affirmed OWCP’s December 3, 2011 decision. The hearing representative found that the original November 30, 2011 termination of appellant’s compensation was proper and also found that he did not meet his burden of proof to establish continuing residuals of his accepted work injuries after November 30, 2011.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁷ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸ OWCP’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

ANALYSIS -- ISSUE 1

OWCP accepted that on August 5, 1980 appellant sustained a right knee contusion when he bumped his right knee on a desk and, in September 1980, he underwent OWCP-authorized surgery on his right knee.¹⁰ Appellant was injured again on July 2, 1981 due to a fall down steps at work and OWCP initially accepted this injury for right knee contusion, right elbow abrasion, lumbar spine contusion and lumbosacral sprain. OWCP later accepted that on July 2, 1981 he

⁷ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁸ *Id.*

⁹ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ Appellant originally injured his right knee in the military in the mid-1970s and underwent meniscectomy surgery on the same knee.

sustained a permanent aggravation of the underlying right knee condition of old disruption of anterior cruciate ligament. It terminated appellant's wage-loss compensation and medical benefits effective November 30, 2011 based on the opinion of Dr. Collis, a Board-certified orthopedic surgeon serving as an OWCP referral physician, who produced a May 17, 2011 report and a supplemental report, which was received on November 10, 2011.¹¹

The Board finds that the weight of the medical evidence regarding whether appellant had work-related residuals after November 30, 2011 is represented by the thorough, well-rationalized opinion of Dr. Collis. The reports of Dr. Collis establish that after November 30, 2011 appellant did not have residuals of his August 5, 1980 and July 2, 1981 work injuries and OWCP met its burden of proof to terminate his wage-loss and medical benefits effective November 30, 2011.

In his reports, Dr. Collis detailed appellant's factual and medical history, including the August 5, 1980 and July 2, 1981 work injuries and his findings on physical examination.¹² He noted that appellant had full range of right knee motion, good right quadriceps strength and reasonably good range of back motion. There was no lateral, anterior or posterior instability of the right knee and there was no spasm or tenderness in the back. Dr. Collis noted that the examination did not reveal any objective evidence of residuals of the accepted work injuries with respect to the right knee, back or right elbow. He also indicated that there was no evidence of a work-related permanent aggravation of the right knee.

The Board has carefully reviewed the opinion of Dr. Collis and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Collis provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹³ He provided medical rationale for his opinion by explaining that there was no objective evidence of appellant's work injuries and noting that his need for work restrictions was due to the preexisting degenerative condition of his right knee. Appellant did not submit medical evidence showing that he had continuing work-related residuals. Therefore, OWCP properly terminated appellant's compensation effective November 30, 2011.¹⁴

¹¹ OWCP initially terminated appellant's compensation effective August 5, 2011 based on Dr. Collis' May 17, 2011 report, but it set aside this termination action and requested Dr. Collis produce a supplemental report to clarify his opinion. After receiving Dr. Collis' supplemental report, it terminated appellant's compensation effective November 30, 2011.

¹² In a report received on November 10, 2011, Dr. Collis noted that he was aware that the accepted facts included a diagnosis of permanent aggravation of the preexisting condition of old disruption of anterior cruciate ligament.

¹³ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹⁴ OWCP indicated that appellant's wage-loss compensation and medical benefits were terminated effective November 30, 2011, but they actually had been terminated since August 5, 2011. It did not reinstate his compensation after setting aside its August 5, 2011 termination decision. Appellant would be entitled to wage-loss compensation and medical benefits from August 5 to November 30, 2011.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.¹⁵

Section 8123(a) of FECA provides in pertinent part: “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.”¹⁶ In situations where 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.¹⁷

In a situation where OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, it has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.¹⁸

ANALYSIS -- ISSUE 2

After OWCP’s November 30, 2011 decision terminating appellant’s compensation effective November 30, 2011, he submitted additional medical evidence. Given that the Board has found that OWCP properly relied on the opinion of OWCP’s referral physician, Dr. Collis, in terminating his compensation effective November 30, 2011, the burden shifts to him to establish that he is entitled to compensation after that date.

Appellant submitted a June 5, 2012 report in which Dr. Sheridan, an attending Board-certified orthopedic surgeon, determined that he continued to have work-related residuals after November 30, 2011. OWCP determined that there was a conflict in the medical opinion between Dr. Sheridan and Dr. Collis on the issue of whether appellant met his burden of proof to establish that he had residuals of his accepted work injuries after November 30, 2011. In order to resolve the conflict, it properly referred appellant to Dr. Baker, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.¹⁹

¹⁵ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁶ 5 U.S.C. § 8123(a).

¹⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁸ *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

¹⁹ *See supra* note 16.

In a November 5, 2012 report, Dr. Baker reported physical examination findings noting appellant complained of tenderness to very light palpation of his right knee and that he had 2+ instability with right knee flexion in the varus/valgus directions and about 1+ instability with anterior posterior stress. He discussed appellant's treatment after his 1980 and 1981 work injuries and stated, "Therefore, it would be medically probable to state there was no evidence of any permanent aggravation to [appellant's] chronic right knee problem from either the August 8, 1980 or the July 2, 1981 incidents." In the next paragraph, Dr. Baker stated that the steady progression of the degenerative changes of appellant's right knee were a "secondary and a not unusual consequence of the incident that occurred while on active duty" which in turn caused the need for right meniscectomy surgery and the anterior cruciate ligament disruption which led to a chronically unstable right knee.

The Board finds that the opinion of Dr. Baker is not sufficiently well rationalized to constitute the weight of the medical evidence regarding appellant's claim that he had work-related residuals after November 30, 2011.²⁰ The Board notes that it remains unclear whether Dr. Baker has acknowledged OWCP's accepted that appellant sustained a permanent aggravation of the underlying right knee condition of old disruption of anterior cruciate ligament. As noted, an opinion on causal relationship must be based on a complete and accurate factual and medical history.²¹ His opinion is vague with respect to this matter. Dr. Baker's report also indicates that he felt that appellant's right knee problems were due to his military injury in the mid-1970s. However, Dr. Baker did not provide a detailed history of appellant's military injury or explain how it could be the cause of his current right knee problems.

For these reasons, the opinion of Dr. Baker is in need of clarification and elaboration. The case will be remanded to OWCP for referral of the case record, a statement of accepted facts and, if necessary, appellant, to Dr. Baker for a supplemental report regarding whether appellant had continuing residuals of his accepted work injuries after November 30, 2011. If Dr. Baker is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his or her rationalized medical opinion on the issue.²² After such further development as OWCP deems necessary, an appropriate decision should be issued regarding whether appellant had residuals of his accepted work injuries after November 30, 2011.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits effective November 30, 2011 on the grounds that he had no residuals of his accepted work injuries after that date. Appellant is entitled to receive wage-loss compensation and medical benefits between August 5 and November 30, 2011. The Board

²⁰ See *supra* note 17.

²¹ See *supra* note 9.

²² *Harold Travis*, 30 ECAB 1071, 1078 (1979).

further finds that the case is not in posture for decision regarding whether he met his burden of proof to establish that he had residuals of his accepted work injuries after November 30, 2011.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that OWCP met its burden of proof to terminate appellant's compensation benefits effective November 30, 2011, but that he would be entitled to receive wage-loss compensation and medical benefits between August 5 and November 30, 2011. The April 24, 2013 decision is set aside with respect to the matter of whether appellant has established that he had residuals of his accepted work injuries after November 30, 2011 and the case is remanded to OWCP for further development.

Issued: April 11, 2014
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