

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

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**D.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brooklyn, NY, Employer**

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**Docket No. 14-120  
Issued: April 9, 2014**

*Appearances:*  
*Thomas S. Harkins, 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 October 24, 2013 appellant, through her attorney, filed a timely appeal from a May 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective March 28, 2012 on the grounds that she no longer had any residuals causally related to her accepted employment-related injury; and (2) whether appellant had continuing employment-related residuals or disability after March 28, 2012.

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

## **FACTUAL HISTORY**

On June 3, 2010 appellant, then a 34-year-old clerk, sustained injury to her right knee and lower thigh when she attempted to move a tray that was stuck on the tray line. She stopped work that day. OWCP accepted appellant's claim for a right knee contusion and paid compensation benefits. She has not returned to work.

In medical reports of record Dr. Ronald D. Richman, a Board-certified orthopedic surgeon and appellant's treating physician, opined that a left knee condition and a back condition became evident since the accepted work injury. He recommended surgical consultation for a possible right anterior cruciate ligament (ACL) and medial cruciate ligament (MCL) tears. Dr. Richman also recommended a magnetic resonance imaging (MRI) scan of the left knee.

OWCP referred appellant for a second opinion evaluation. In an October 26, 2011 report, Dr. Leon Sultan, a Board-certified orthopedic surgeon, noted a history of appellant's injury, reviewed the medical records and reported findings on right knee examination. He advised that her right knee was unremarkable and demonstrated no residual disuse atrophy, ligamentous instability or motion restriction. Dr. Sultan found that there was no localized swelling or deformity. Spurling and McMurray testing were negative. Dr. Sultan found no disabling residuals from the June 3, 2010 employment incident or any continuing disability. He further opined that no further medical treatment was needed for the employment-related right knee condition, there was no concurrent nonwork-related disability and appellant could return to her date-of-injury position full time as a mail clerk with no restrictions.

Following the second opinion examination, OWCP received Dr. Richman's prescription notes for internal derangement of the left knee; a referral to physical therapy for the left knee; and physical therapy notes for both knees. A September 8, 2011 Form CA-20 listed a June 3, 2010 history of striking right knee on railing. Appellant submitted magnetic resonance imaging (MRI) scans showing tears of the MCL and ACL on the right with instability and weakness of both knees. Dr. Richman advised that surgical intervention was needed. A January 4, 2012 Form CA-20 noted physical therapy continued for the right knee, with possible surgical intervention required for both knees.

In a January 3, 2012 report, Dr. Richman stated that appellant showed a slight improvement in her right knee. He recommended that she continue with physical therapy and treatment of both knees. Appellant brought a note from the Department of Labor inquiring why her left knee should be considered in her right knee case. Dr. Richman advised that a complete explanation was dictated in an August 2011 report, for which he provided a copy. He advised that he was retiring in two weeks. In the August 30, 2011 note, Dr. Richman recommended that appellant should obtain authorization for an MRI scan of the left knee and a second opinion for surgery. He opined that the left knee became stressed due to increased weight bearing, which subsequently produced symptoms requiring treatment.

In a December 22, 2011 report, Dr. Richman noted that a left knee MRI scan showed findings of MCL sprain with disruption and a partial ACL tear. He noted that the right knee had medial instability and pain to palpation along the medial joint line. Dr. Richman reiterated that

appellant should continue with physical therapy for both knees and undergo arthroscopy of the right knee.

OWCP found a conflict in medical opinion between Dr. Richman and Dr. Sultan regarding continuing residuals of the right knee due to the June 3, 2010 employment injury and whether appellant was disabled for work. It referred appellant, the medical record, a statement of accepted facts and a list of questions, to Dr. Norman Sveilich, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a February 7, 2012 report, Dr. Sveilich noted a history of injury and review of appellant's medical treatment. On examination he noted findings on range of motion. The right knee was described as normal with no erythema, no crepitus of the patella, no tenderness to palpation. There was no medial instability or laxity. X-ray findings of the right and left lower extremities showed mild narrowing of the medial compartments. The left and right knees were essentially normal. Dr. Sveilich opined that appellant had reached maximum medical improvement and the contusion to her right knee had resolved. Appellant could work full duty without restriction. Dr. Sveilich also opined that all other orthopedic symptoms had resolved. He attributed her ongoing complaints to her morbid obesity and disease muscle atrophy of the right thigh.

In a letter dated February 23, 2012, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Sveilich's report.

In a February 7, 2012 report, Dr. Shepard Splain, a Board-certified orthopedic surgeon, noted the history of injury to appellant's right knee. He stated that physical therapy has not relieved her discomfort. Examination revealed a markedly overweight female but no findings of disability or a medical condition. Dr. Splain noted that an MRI scan of the right knee did not reveal evidence of internal derangement or any other pathology. He concluded that appellant was not a surgical candidate for her right knee.

By report dated February 27, 2012, Dr. Neofitos Stefanides, an orthopedic surgeon, reported that appellant had low back pain since her June 3, 2010 work injury, when her knee struck a railing. The pain radiated down into the thigh past the knee into the leg and foot. Dr. Stefanides listed findings of the back and both knees with an upper extremity musculoskeletal examination. An assessment of neuritis/radiothorastic/lumbar and chondromalacia patella was provided. Dr. Stefanides opined that, based on appellant's history, physical examination, and radiographic findings, her conditions were causally related to the work injury and she remained totally disabled from her usual work activities.

By decision dated March 28, 2012, OWCP terminated appellant's compensation benefits based on Dr. Sveilich's impartial medical report.

On April 20, 2012 appellant requested an oral hearing before an OWCP hearing representative that was scheduled for September 18, 2012. In a September 7, 2012 letter, appellant's attorney requested that the scheduled hearing be cancelled. By decision dated September 28, 2012, OWCP accepted appellant's request to withdraw the hearing and returned the case to the district Office.

Appellant's counsel requested reconsideration. In a March 20, 2013 brief, he contended that OWCP failed to accept all of the conditions related to the work injury and that she continued to have residuals from her injuries. Counsel contended that appellant had bilateral knee medial meniscus tears and lumbar radiculopathy as noted in Dr. Stefanides November 11, 2012 report.

In a November 11, 2012 report, Dr. Stefanides noted that he initially evaluated appellant on March 25, 2011. Thereafter, he treated her on several occasions, most recently on October 19, 2012. Appellant had low back pain since her work injury on June 3, 2010 when her knee struck a railing. Dr. Stefanides listed examination findings of both knees and the lumbar spine. He noted impression of bilateral knee medial meniscal tear; and lumbar radiculopathy. Based on appellant's history, physical examination, and radiographic findings, Dr. Stefanides reiterated his opinion that her physical injuries were causally related to the work-related injury. He found her totally disabled from her usual work activities. With regard to the right and left knees, appellant sustained a mild-to-moderate injury and the most recent MRI scan indicated meniscal tears without ligament disruption, which would best be treated with arthroscopic procedures. She also sustained permanent orthopedic disability with regard to her lumbar spine due to lumbar radiculopathy. Dr. Stefanides recommended lumbar epidurals and further diagnostic testing to confirm the diagnosis.

By decision dated May 29, 2013, OWCP denied modification of the March 28, 2012 termination decision. It found that Dr. Stefanides' report was insufficient to outweigh the special weight accorded to Dr. Sveilich as the impartial medical specialist.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>2</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup> Furthermore, 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 a claimant no longer has residuals of an employment-related condition that requires further medical treatment.<sup>4</sup>

Section 8123(a) of FECA provides that, 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>5</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall

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<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>4</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

<sup>5</sup> 5 U.S.C. § 8123(a).

appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted the claim for right knee contusion. On March 28, 2012 it terminated appellant's compensation benefits based on the opinion of the impartial medical examiner, Dr. Sveilich. The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits.

OWCP relied on the medical opinion of Dr. Sveilich, a Board-certified orthopedic surgeon, who was selected to resolve a conflict in the medical opinion between Dr. Sultan, an OWCP referral physician, and Dr. Richman, appellant's treating physician, who found that appellant continued to have residuals and disability from her accepted June 3, 2010 employment injury while Dr. Sveilich opined that appellant no longer had any residuals or disability due to the accepted employment injury. OWCP properly found a conflict in medical opinion on the issues of medical residuals and disability. It properly referred appellant to Dr. Sveilich to resolve the conflict in the medical opinion evidence pursuant to 5 U.S.C. § 8123(a).

In a February 7, 2012 report, Dr. Sveilich provided findings based on a physical examination, a review of the statement of accepted facts and medical history. He determined that appellant no longer had residuals of her accepted right knee contusion. Dr. Sveilich stated that the left and right knees were essentially normal on examination. Swelling was noted on the right knee but there was a negative fluctuation test and no tenderness on palpation. Dr. Sveilich found that appellant had no disability or residuals due to her accepted right knee contusion; rather he noted that her ongoing symptoms were due to her morbid obesity and disease atrophy of the right thigh. He opined that she reached maximum medical improvement and that the right knee contusion had resolved and she could return to work full duty.

The Board finds that Dr. Sveilich had an accurate knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Sveilich is a specialist in the appropriate field. At the time benefits were terminated, he determined that appellant had no work-related residuals or disability for full-time employment. Dr. Sveilich's opinion as set forth in his February 7, 2012 report is found to be probative evidence and reliable. The Board finds that Dr. Sveilich's opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted condition of right knee contusion.

Prior to the termination of her compensation benefits, appellant submitted a February 7, 2012 report from Dr. Splain and the February 27, 2012 report from Dr. Stefanides. However,

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<sup>6</sup> 20 C.F.R. § 10.321.

<sup>7</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*; 52 ECAB 252 (2001).

these reports are insufficient to create a conflict with Dr. Sveilich. Dr. Splain made no findings of disability or a medical condition. He noted that the MRI scan did not reveal evidence of internal derangement or any other pathology and concluded that appellant was not a surgical candidate for her right knee. Dr. Splain's report is insufficient to create a conflict with Dr. Sveilich.

In his February 27, 2012 report, Dr. Stefanides noted that appellant had low back pain since her June 3, 2010 work injury. He opined that her conditions of neuritis/radio thoracic/lumbar and chondromalacia patella were causally related to the work injury and that she remained totally disabled from her usual work activities. The Board finds that Dr. Stefanides' report is of limited probative value. Dr. Stefanides diagnosed chondromalacia patella, but did not indicate which knee was affected. He provides insufficient rationale for continued employment-related residuals and disability due to the accepted right knee condition. OWCP has not accepted either a left knee condition or a back condition. For conditions not accepted by OWCP as being employment related, it is the claimant's burden to provide rationalized medical evidence sufficient to establish causal relation.<sup>8</sup> Thus, this report is insufficient to create a conflict in medical opinion with Dr. Sveilich.

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not established that she has any continuing residuals of her work-related right knee contusion on or after March 28, 2012.

After the termination of benefits on March 28, 2012, appellant's counsel requested reconsideration and submitted a November 11, 2012 report from Dr. Stefanides. In his report, Dr. Stefanides noted that he last examined appellant on October 19, 2012 and he opined that her conditions of bilateral knee meniscal tear and lumbar radiculopathy were causally related to the work-related injury and that she was totally disabled. While he opined that the most recent MRI scan indicated bilateral meniscal tear without ligament disruption, he provides no rationale for continued employment-related residuals and disability due to the accepted right knee condition. OWCP has not accepted either a left knee condition or a back condition and Dr. Stefanides has not provided any medical rationale which causally relates a left knee or back condition to the accepted work-related injury of June 3, 2010.<sup>10</sup> Thus, Dr. Stefanides' report is insufficiently rationalized to establish a causal relationship between her condition on and after March 28, 2012

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<sup>8</sup> G.A., Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>9</sup> See *I.J.*, 59 ECAB 408 (2008); *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>10</sup> See *supra* note 9.

and the accepted right knee contusion. Therefore, appellant has failed to meet her burden of proof.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions. Consequently, appellant did not establish that she had any employment-related condition or disability after March 28, 2012.

On appeal appellant's counsel argues that OWCP improperly terminated appellant's compensation benefits as the medical evidence of file establishes that she continues to suffer disability from her injuries and conditions causally related to the employment injury of June 3, 2010. However OWCP met its burden of proof to terminate appellant's compensation benefits and she failed to meet her burden of proof in establishing any continuing disability or medical residuals on or after March 28, 2012. Appellant's counsel also contends that OWCP must expand the class of accepted conditions in this case. While the record contains evidence of a left knee condition and a back condition, appellant has not met her burden of proof in providing rationalized medical evidence sufficient to establish causal relation.

Appellant must submit medical evidence which based upon an accurate history of injury, explains with medical rationale how appellant's employment injury physiologically caused the diagnosed conditions.

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 met its burden of proof to terminate appellant's compensation benefits and that appellant has failed to meet her burden of proof in establishing any continuing disability or medical residuals on or after March 28, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 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