

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

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**M.C., Appellant**

**and**

**DEPARTMENT OF COMMERCE, 2010  
DECENNIAL CENSUS, Dallas, TX, Employer**

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**Docket No. 14-283  
Issued: April 28, 2014**

*Appearances:*  
*Vincent R. Garvey, Jr., Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 21, 2013 appellant, through her attorney, filed a timely appeal from a June 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying modification of the termination of her compensation benefits. 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.

**ISSUE**

The issue is whether appellant established that she had continuing employment-related disability after July 11, 2011 due to her accepted left knee conditions.

On appeal, counsel contends that OWCP failed to give proper weight to the opinion of appellant's attending physician and that the medical evidence of record is sufficient to reinstate her compensation benefits.

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

## **FACTUAL HISTORY**

OWCP accepted that appellant, then a 41-year-old census enumerator, sustained a left knee sprain and a lateral meniscus tear in the performance of duty on June 8, 2010. Appellant stopped work and underwent left knee surgery performed by Dr. Robert Grob, a Board-certified orthopedic surgeon, on January 12, 2011. She received compensation benefits. Appellant has not returned to work.

In a January 12, 2011 report, Dr. Grob indicated that appellant had pain in her left knee for the past several years and injured her knee at work earlier that year in which she had a slip and fall accident. He stated that she opted for elective arthroscopy of her left knee. On March 1, 2011 Dr. Grob diagnosed status post arthroscopy of the left knee with degenerative joint disease. He indicated that appellant fell approximately nine days prior and had immediate pain in her left knee. Appellant stated that most of her pain was on the lateral side of her knee.

OWCP referred appellant to Dr. Peter Feinstein, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related condition. In a May 24, 2011 report, Dr. Feinstein conducted a physical examination and reviewed a statement of accepted facts, history of the injury and the medical evidence of record. He reported that appellant had Osgood-Schlatter disease in both knees as a child and was seen immediately prior to the employment injury by Dr. Grob for arthritis and chondromalacia in both knees. Dr. Feinstein found that she was morbidly obese and ambulated with a slight limp to the left lower extremity. Appellant had valgus deformity of both knees, worse in the left knee, which he explained would predispose her to arthritic or degenerative problems. There was no swelling or effusion of the left knee compared to the right by direct circumferential measurement of the knee with a tape measure. There was full range of motion of both knees in flexion and extension and no evidence of any ligamentous instability in terms of stress testing of the anterior and posterior cruciate ligament and medial and lateral collateral ligament. Trendelenburg's test was normal and appellant was able to balance her entire body weight first on her right lower extremity and then on her left lower extremity. Dr. Feinstein concluded that her accepted left knee conditions had completely resolved. He stated that there was no evidence of a sprain and no evidence of any symptomatic torn medial or lateral meniscus. Dr. Feinstein advised that appellant suffered from degenerative arthritis of both knees, left greater than right, from preexisting valgus deformities due to her morbid obesity, unrelated to the employment injury. He found that she was capable of working in a full-duty capacity without restrictions based on her recovery from the employment injury.

By letter dated June 9, 2011, OWCP notified appellant that it proposed to terminate her compensation benefits on the basis that her accepted conditions had resolved, relying on Dr. Feinstein's May 24, 2011 report. It afforded her 30 days to submit additional evidence or argument in response to the proposed action.

Appellant submitted a June 28, 2011 report from Dr. Grob who reiterated his diagnosis and indicated that her knee pain was getting worse. Dr. Grob stated that she was having more pain along the anterior aspect of her knee and was not moving her knee, which was causing some contracture along her patellar tendon.

By decision dated July 11, 2011, OWCP terminated appellant's compensation benefits effective that day. It found the weight of the evidence was represented by Dr. Feinstein.

On February 6, 2012 appellant, through her attorney, requested reconsideration. In a May 3, 2011 report, Dr. Grob reiterated his diagnosis and indicated that she still had some pain, but denied any numbness or tingling. On January 27, 2012 he reiterated the factual history of appellant's June 8, 2010 employment injury and history of medical treatment. Dr. Grob opined that after her employment injury, she developed a symptomatic medial and lateral meniscal tear, as well as an exacerbation of arthritis. Appellant had a history of arthritis in the past, but her symptomology was completely abated at least six to eight months before her employment injury on June 8, 2010. She continued to have chronic pain in her left knee. Dr. Grob opined that appellant was developing some post-traumatic arthritis as a result of her employment injury and explained that her symptomology had not fully resolved just because she had arthroscopic surgery.

By decision dated March 15, 2012, OWCP denied modification of its July 11, 2011 termination decision.

On March 13, 2013 appellant, through her attorney, requested reconsideration and submitted narrative statements dated February 25 and March 25, 2013, together with photographic evidence.

OWCP referred appellant to Dr. Dale J. Federico, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical opinion between Drs. Feinstein and Grob on whether she continued to have any disability or residuals of the accepted left knee conditions. In a May 15, 2013 report, Dr. Federico reviewed a statement of accepted facts and the medical evidence of record. Appellant informed him that following surgery she still had residual pain and difficulty with physical therapy. She had problems kneeling, squatting and difficulty with stairs. Dr. Federico's examination of appellant's left knee showed a full range of motion, flexion and extension. There was no pain to varus or valgus stress. There was medial joint line tenderness and pain to McMurray's test. The anterior cruciate ligament and collateral ligaments appeared intact and appellant was neurologically intact. Dr. Federico concluded that her accepted left knee conditions had resolved. He found that appellant's current problem was osteoarthritis, which was a preexisting condition. Dr. Federico opined that her current condition was not causally related to the employment injury as it took years to develop and the twisting event of coming down the steps on June 8, 2010 did not cause her osteoarthritis. He explained that twisting events were usually the precipitating factor in meniscus pathology and it was most reasonable that the twisting event created or aggravated the existing meniscus tear. Dr. Federico noted that surgical intervention for meniscus tears were successful 95 percent of the time, whereas surgical intervention for osteoarthritis usually did not have any long-standing significant outcome. When patients had both problems, he stated that it was sometimes difficult to determine their outcome because of the existing arthritis.

By decision dated June 24, 2013, OWCP denied modification of its March 15, 2012 decision, finding that Dr. Federico represented the special weight of the medical evidence.

## LEGAL PRECEDENT

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the claimant. To prevail, the claimant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after the termination of compensation benefits.<sup>2</sup> 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 factual and medical background, supporting such a causal relationship.<sup>3</sup> Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<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> When 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 on a proper factual background, must be given special weight.<sup>6</sup>

## ANALYSIS

OWCP accepted appellant's claim for left knee sprain and lateral meniscus tear. It terminated her compensation benefits effective July 11, 2011. The Board's jurisdiction is limited to decisions of OWCP issued no more than 180 days prior to notice of appeal to the Board.<sup>7</sup> Appellant did not file an appeal from the July 11, 2011 decision with the Board. Thus, the Board does not have jurisdiction to review the July 11, 2011 decision terminating her compensation benefits. The only issue before the Board is appellant's continuing employment-related disability. The burden has shifted to her to establish continuing residuals or disability after July 11, 2011 causally related to her accepted left knee conditions.<sup>8</sup>

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<sup>2</sup> See *I.J.*, 59 ECAB 408 (2008).

<sup>3</sup> See *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>4</sup> See *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>5</sup> 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

<sup>6</sup> See *Manuel Gill*, 52 ECAB 282 (2001).

<sup>7</sup> For final adverse OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e); *D.G.*, Docket No. 12-770 (issued April 20, 2012).

<sup>8</sup> See *I.J.*, *supra* note 2. See also *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *S.H.*, Docket No. 13-1850 (issued January 9, 2014); *J.B.*, Docket No. 13-810 (issued November 5, 2013).

OWCP referred appellant to Dr. Federico to resolve the conflict in the medical opinion evidence between Drs. Feinstein and Grob. Dr. Grob, appellant's treating physician, opined that appellant had residuals from her accepted left knee injury. Dr. Feinstein, an OWCP referral physician, disagreed with Dr. Grob, finding that appellant no longer had any residuals or disability due to the accepted employment injury and her left knee conditions had resolved. The Board notes that a conflict in medical opinion arose between appellant's physician and OWCP's referral physician on the issues of medical residuals and disability. The Board finds that OWCP properly referred appellant to Dr. Federico to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

On March 1, 2011 Dr. Grob diagnosed appellant's status as postarthroscopy of the left knee with degenerative joint disease. He noted that she fell approximately nine days prior to examination and experienced pain in her left knee. On January 27, 2012 Dr. Grob opined that appellant was developing some post-traumatic arthritis as a result of her employment injury and explained that her symptomology had not fully resolved. He indicated that she had a history of arthritis in the past, but her symptomology was completely abated at least six to eight months before her employment injury on June 8, 2010. Dr. Grob failed to provide a sufficient explanation as to the causal relation of appellant's current condition to the accepted injury. He addressed conditions which have not been accepted, as causally related to the June 8, 2010 employment injury.<sup>9</sup> Dr. Grob's reports are of diminished probative value and are insufficient to overcome the weight accorded Dr. Federico's report as the impartial medical examiner or to create a new conflict.<sup>10</sup>

Appellant submitted photographic evidence in support of her claim. This material does not constitute competent medical evidence. There is no diagnosis, history of injury, results of diagnostic tests or rationale by a physician relating appellant's disability to her employment.<sup>11</sup> As such, the Board finds that she did not meet her burden of proof with these submissions.

In a May 15, 2013 report, Dr. Federico reviewed the statement of accepted facts and the medical evidence of record. Appellant noted that after surgery, she had residual pain and difficulty with physical therapy, kneeling, squatting and climbing stairs. Dr. Federico's examination of her left knee showed a full range of motion in, flexion and extension without pain to varus or valgus stress testing. The anterior cruciate ligament and collateral ligaments were reported to be intact and appellant was neurologically intact. Dr. Federico concluded that her accepted left knee conditions resolved. He attributed appellant's ongoing conditions to osteoarthritis, which preexisted her injury. Dr. Federico opined that her current condition was not causally related to the employment injury as it took years for arthritis to develop and the twisting event of coming down steps on June 8, 2010 did not cause the osteoarthritis.

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<sup>9</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (for conditions not accepted or approved by OWCP as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

<sup>10</sup> See *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>11</sup> See 5 U.S.C. § 8101(2).

Dr. Federico reviewed appellant's medical history, examined her and found no objective evidence of ongoing residuals or disability due to the accepted left knee conditions. He reviewed the statement of accepted facts and the medical record. Dr. Federico found no objective evidence of symptoms related to the accepted conditions. He concluded that appellant's left knee sprain and lateral meniscus tear had resolved without evidence of other conditions or residuals related to her employment. The Board finds that Dr. Federico had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Federico is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Federico addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition and found no basis on which to attribute any residuals or continued disability to the accepted conditions.<sup>12</sup> His opinion as set forth in his May 15, 2013 report is found to be probative evidence and reliable. The Board finds that Dr. Federico's opinion constitutes the special weight of the medical evidence and is sufficient to establish that the accepted left knee conditions have ceased.

On appeal, counsel contends that OWCP failed to give proper weight to the opinion of Dr. Grob and that the medical evidence of record is sufficient to reinstate appellant's compensation benefits. As noted, the Board finds that, Dr. Federico's report represents the special weight of the medical evidence. Dr. Federico's opinion was based on an accurate history, results of physical and diagnostic testing, accompanied by a rationalized explanation on causal relation to support that appellant's accepted conditions have resolved.

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 appellant has not established that she had continuing employment-related disability after July 11, 2011 due to her accepted left knee conditions.

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<sup>12</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2014  
Washington, DC

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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