United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 14-495**
	)	**Issued: August 21, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 2, 2014 appellant, through counsel, filed a timely appeal from a July 30, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which terminated her medical and wage-loss benefits. Pursuant to the Federal Employees' Compensation Act[1] and (FECA) 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits for her accepted injury effective January 22, 2013; and (2) whether appellant established that she had any continuing disability or residuals of her accepted conditions after January 22, 2013.

FACTUAL HISTORY

On August 15, 2011 appellant, then a 52 year-old city carrier, twisted her right knee when she stepped out of her mail truck. OWCP accepted the claim for right knee sprain and tear of the

[1] 5 U.S.C. §§ 8101-8193.

right medial meniscus. Appellant stopped work on August 16, 2011.[2] She was treated by Dr. Richard McGraw, an osteopath, on August 30, 2011. Dr. McGraw noted positive crepitus and medial joint line pain of the right knee, positive McMurray's test, positive patella grind and valgus. He diagnosed right knee sprain and internal derangement. Dr. McGraw recommended physical therapy.

Appellant came under the treatment of Dr. Isaac Cohen, a Board-certified orthopedic surgeon. In reports dated October 10, 2011 to January 16, 2012, Dr. Cohen noted her history, findings and diagnosed right knee medial meniscus tear, synovitis and internal derangement. In a December 5, 2011 work capacity evaluation and January 16, 2012 duty status report, Dr. Cohen, released appellant to work part-time limited duty six hours per day. A magnetic resonance imaging (MRI) scan dated November 22, 2011 revealed oblique tear at the junction of the posterior horn of the medial meniscus with mild synovitis, focal full thickness chondral thinning and subchondral edema in the medial femora trochlea and mild effusion, small popliteal cyst and prepatellar bursal inflammation.

Appellant came under the treatment of Dr. Eric L. Freeman, a Board-certified orthopedic surgeon, from January 23 to February 13, 2012 for right knee pain occurring after the August 15, 2011 work injury. Dr. Freeman noted that an MRI scan of the right knee confirmed a torn right medial meniscus and he recommended surgery. He performed surgery on March 2, 2012 for an authorized abrasion arthroplasty of the patella, arthroscopy of the medial femoral condyle, synovectomy and partial medial and lateral meniscectomy. Dr. Freeman diagnosed right knee torn medial meniscus, torn lateral meniscus, synovitis, grade 2 changes of the inferior pole of the patella and medial femoral condyle. In a duty status report dated March 5, 2012, he diagnosed right tear of the medial meniscus and advised that appellant was temporarily totally disabled. Appellant received wage-loss compensation.

Following surgery, appellant resumed treatment with Dr. Cohen from March 26 to June 11, 2012. Dr. Cohen noted that she was doing well postoperatively with minimal quadriceps weakness. On August 6, 2012 he noted that appellant could return to worked light-duty part time for six hours a day. In a report dated September 17, 2012, Dr. Cohen treated her for left hip and right knee pain. He noted negative meniscal signs, no lateral laxity and degenerative arthritis due to appellant's body habitus. Dr. Cohen diagnosed medial meniscus tear of the right knee and recommended physical therapy. An MRI scan of the right knee revealed partial medial meniscectomy without evidence of recurrent medial meniscal tear, chondral thinning at the medial compartment, mild to moderate effusion, distal quadriceps tendinopathy and prepatellar inflammation.

On November 20, 2012 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion examination. In a December 6, 2012 report, Dr. Sultan noted appellant's history of injury and reviewed the medical record. He advised that her physical examination revealed well-healed arthroscopic scars on the right knee, no knee joint effusion, mobile right knee patella, intact collateral and cruciate ligaments on stress testing, negative patellofemoral compression test, no patellofemoral crepitus, no pain on palpation over the medial

[2] At the time of her injury, the record reflect that appellant was working six hours daily, limited duty, following a September 1, 2001 traumatic injury that was accepted for left thumb and hand tenosynovitis. This other claim is not presently before the Board.

or lateral joint line, normal range of motion on extension, negative Spring's and McMurray's test, a stable walking pattern and no antalgia. Dr. Sultan found that appellant's right knee condition was stable and she was at maximum medical improvement in July 2012. He noted that the right knee surgery of March 2, 2012 sufficiently addressed her accepted right knee condition and that she had recovered from the knee surgery sufficiently to return to work in her preinjury position, which was six hours a day at limited duty. Dr. Sultan advised that appellant's prognosis with regards to the right knee was favorable and she did not require any further treatment including physical therapy but he recommended home exercise programs to maintain muscle tone and joint mobility.

On December 20, 2012 OWCP issued a notice of proposed termination of compensation and medical benefits based on Dr. Sultan's report.

In a January 16, 2013 letter, appellant, through counsel, asserted that there was a conflict of medical opinion between appellant's treating physician, Dr. Cohen, and Dr. Sultan as to appellant's residuals and work capacity. Appellant submitted a duty status report from Dr. Cohen who diagnosed knee swelling, tenderness and advised that appellant could return to work limited duty six hours per day.

In a January 22, 2013 decision, OWCP terminated appellant's wage-loss and medical benefits effective that day, based on Dr. Sultan's report.

On April 27, 2013 appellant requested reconsideration and submitted additional medical evidence. She reiterated that there was a conflict in medical opinion between Dr. Cohen, who opined that she had residuals of her work-related knee condition and was totally disabled, and Dr. Sultan, OWCP's referral physician, who opined that appellant could return to work limited duty. Appellant submitted a February 26, 2013 report from Dr. Cohen who reviewed a history of injury and medical treatment. Dr. Cohen noted the right knee was swollen with a mild effusion, limited range of motion, medial joint line tenderness and crepitus. He diagnosed tear of the meniscus of the right knee, synovitis of the right knee, knee pain and internal derangement of the right knee. Dr. Cohen noted appellant was asymptomatic prior to the August 15, 2011 work injury in which she sustained a tear of the medial meniscal joint in the right knee. He advised that she might need additional surgery, that she was totally disabled and had significant difficulties ambulating such that she could not perform her letter carrier duties. Dr. Cohen opined that the work injury of August 15, 2011 was the proximate cause of the described medical condition and noted that appellant had not reached maximum medical improvement.

OWCP found a conflict of medical opinion between Dr. Cohen, who indicated that appellant sustained residuals of his work-related injuries and was totally disabled, and Dr. Sultan, the OWCP referral physician, who determined that appellant's accepted conditions had resolved and she could return to work full time limited duty.

On June 7, 2013 OWCP referred appellant to Dr. Bradley L. White, a Board-certified orthopedic surgeon, selected as the impartial medical referee. In a July 12, 2013 report, Dr. White noted reviewing the record, including the history of appellant's work injury. Examination revealed well-healed right knee scars, no clinical deformities of either knee, no atrophy, no joint effusions, range of motion of the knees was 130 degrees bilaterally, significant joint crepitus of the right knee, quadriceps strength was 5/5, no instability or ligamentous laxity

of either knee, no joint line tenderness of either knee and no evidence of patellar instability bilaterally. Dr. White diagnosed resolved right knee sprain and resolved exacerbation of osteoarthritis of the right knee joint. He noted appellant's work-related right knee sprain and exacerbation of osteoarthritis of the right knee joint resolved. Dr. White noted that the underlying and preexisting degenerative findings on the MRI scans of the right knee described as full thickness chondral thinning were not causally related and only temporarily aggravated by the work injury and had resolved. He opined that any persisting symptomology was due to the natural history and expected progression of the degenerative condition of the knee itself and not causally related to the work injury.

Dr. White found that appellant reached maximum medial improvement and did not require any further treatment for the work-related injury and recommended home exercise program and weight reduction. He opined that there was no evidence of any ongoing disability causally related to her work injury. Dr. White noted that the continuing symptomology of the right knee pain was secondary to the significant osteoarthritis. He advised that appellant could return to her previous modified assignment as a letter carrier, six hours per day pursuant to the restrictions in place since her 2001wrist injury. In a July 12, 2013, work capacity evaluation, Dr. White diagnosed right knee sprain and indicated that appellant could return to work six hours per day, limited duty with restrictions she was under at the time of her August 15, 2011 knee injury.

In a decision dated July 30, 2013, OWCP denied modification of the January 22, 2013 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] 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.[4] 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, which requires further medical treatment.[5]

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for work-related right knee sprain and right knee medial meniscus tear. Appellant stopped work on August 16, 2011 and has not returned.

OWCP referred appellant for a second opinion evaluation by Dr. Sultan. In a December 6, 2012 report, Dr. Sultan provided an extensive review of appellant's medical

[3] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[4] *Mary A. Lowe*, 52 ECAB 223 (2001).

[5] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

history, reported examination findings. He noted her right knee condition was stable and she was at maximum medical improvement in July 2012. Dr. Sultan indicated that the right knee surgery of March 2, 2012 sufficiently addressed appellant's accepted right knee condition and indicated that she recovered from the knee surgery sufficiently to return to her preinjury position. He noted the examination revealed well-healed arthroscopic scars on the right knee, no knee joint effusion, mobile right knee patella, intact collateral and cruciate ligaments, no patellofemoral crepitus and no pain on palpation over the medial or lateral joint line. Dr. Sultan advised that appellant's prognosis with regards to the right knee was favorable and appellant did not require any further treatment.

The Board finds that Dr. Sultan's report represents the weight of the medical evidence at the time that OWCP terminated benefits and that OWCP properly relied on his report in terminating such compensation benefits on January 22, 2013. Dr. Sultan's opinion is based on proper factual and medical history as he reviewed a statement of accepted facts and appellant's prior medical treatment and test results. He also related his comprehensive examination findings in support of his opinion that the accepted work-related conditions had resolved. Dr. Sultan reported no basis on which to find that appellant had any continuing residuals of her accepted right knee sprain and tear of the right meniscus. There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing residuals of the accepted contusion of the right knee sprain and tear of the right meniscus.

Appellant submitted a January 16, 2013 letter and disagreed with the proposed termination of benefits. She asserted that there was a conflict of opinion between appellant's treating physician, Dr. Cohen and OWCP referral physician as to appellant's work restrictions. Appellant submitted a January 7, 2013 duty status report from Dr. Cohen who diagnosed knee swelling, tenderness and advised that appellant could return to work limited duty six hours per day. However, Dr. Cohen's report failed to specifically provide any medical reasoning to explain how any continuing condition was causally related to the August 15, 2011 work injury, accepted for contusion of the right knee sprain and tear of the right meniscus, and therefore is of limited probative value.[6] Therefore, this report is insufficient to meet appellant's burden of proof.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had continuing disability causally related to his accepted employment injury.[7] To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[8]

[6] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

[8] *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her work-related right knee sprain and tear of the right meniscus.

After the termination of benefits, appellant submitted a February 26, 2013 report from Dr. Cohen who diagnosed tear of the meniscus of the right knee, synovitis of the right knee, knee pain and internal derangement of the right knee. Dr. Cohen advised that she was totally disabled and had significant difficulties ambulating and could not perform her duties as a letter carrier. He opined that the work injury of August 15, 2011 was the proximate cause of the described medical condition and noted that appellant had not reached maximum medical improvement.

OWCP determined that a medical conflict arose between appellant's attending physician, Dr. Cohen, who indicated that appellant sustained residuals of his work-related injuries and was disabled from work, and Dr. Sultan, who determined that appellant's accepted conditions had resolved and she could return to work in her preinjury position, six hours per day without restrictions related to her accepted injuries. Consequently, OWCP referred appellant to Dr. White to resolve the conflict.

The Board finds that the opinion of Dr. White is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that residuals of appellant's work-related conditions have ceased. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[9]

In a July 12, 2013 report, Dr. White reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or findings due to the accepted conditions. He diagnosed resolved right knee sprain and resolved exacerbation of osteoarthritis of the right knee joint. Dr. White noted that the underlying and preexisting degenerative findings on the MRI scans of the right knee described as full thickness chondral thinning were not causally related and were only temporarily aggravated by the work injury and have resolved. He opined that any persistent symptomology was due to the natural history and expected progression of the degenerative condition of the knee itself and not causally related to the work injury. Dr. White found that appellant did not require any further treatment for the accepted injury and recommended home exercise program and weight reduction. He opined that there was no evidence of any ongoing disability advised that appellant could return to her previous modified assignment as a letter carrier as per the restrictions in place since her wrist injury in 2001.

The Board finds that Dr. White had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. White is a specialist in the appropriate field. He clearly opined that appellant had no continuing work-related right knee condition. Dr. White's opinion as set forth in his report of July 12, 2013 is probative evidence and reliable. The Board finds that Dr. White's opinion constitutes the weight of the medical evidence and establishes that appellant did not have residuals of the employment-related condition.

[9] *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

Appellant did not submit any other medical evidence establishing that she had any employment-related condition or disability after January 22, 2013.

On appeal, appellant's counsel argues that OWCP did not meet its burden of proof to terminate compensation. The Board finds that OWCP met its burden of proof. Counsel also asserts that the accepted conditions should be expanded. However, this is not presently before the Board as OWCP's July 30, 2013 decision did not adjudicate whether additional conditions should be accepted.[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 has met its burden of proof to terminate benefits effective January 22, 2013 and that appellant failed to establish that she had any continuing disability due to her accepted condition after January 22, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 30, 2013 is affirmed.

Issued: August 21, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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

[10] *See* 20 C.F.R. § 501.2(c) (the Board only has jurisdiction to consider and decide appeals from final decisions of OWCP).