

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

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**S.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Charleston, WV, Employer**

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**Docket No. 14-1414  
Issued: December 12, 2014**

*Appearances:*  
*Stephen Scavuzzo, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 11, 2014 appellant, through counsel, filed a timely appeal from the April 15, 2014 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.

**ISSUE**

The issue on appeal is whether OWCP properly terminated appellant's compensation and medical benefits effective June 17, 2013.

**FACTUAL HISTORY**

On December 29, 2011 appellant, then a 61-year-old distribution clerk, filed a traumatic injury claim alleging that she fell on an icy employing establishment parking lot on her way into

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

work and sustained an injury to her left knee and elbow.<sup>2</sup> She stopped work on that date. On January 19, 2012 OWCP accepted appellant's claim for contusion of the left knee and elbow.

In a February 9, 2012 report, Dr. Jamal Bazzi, an orthopedic surgeon, noted that appellant reported trauma to the left hip and left knee on December 29, 2011 while working for the employing establishment. He related that she slipped and fell in the employing establishment parking lot and had not worked since the accident. Dr. Bazzi noted complaints of pain over the lateral and anterior aspects of the left hip and the lateral aspect and anterior aspect of the knee. He advised that appellant's hip and knee pain were exacerbated with walking, standing, and bending the knee. Dr. Bazzi examined appellant and diagnosed left hip osteoarthritis, left hip trochanteric bursitis, and left knee mild osteoarthritis. February 9, 2012 bilateral knee x-rays revealed no acute fracture or dislocation and some osteoarthritic changes.

On February 27, 2012 appellant filed a CA-7 claim for wage loss for the period February 12 to 24, 2012. She was paid compensation benefits.<sup>3</sup>

In a report dated June 4, 2012, Dr. John H. Phillips, an orthopedic surgeon, noted appellant's history of injury and treatment and noted a low energy fall several months prior. Appellant had persistent pain in her knees and hip, which was not resolving despite appropriate nonoperative measures. Dr. Phillips recommended a magnetic resonance imaging (MRI) scan of the left knee.

An October 17, 2012 MRI scan of the left hip, read by Dr. Eric J. Fish, an osteopath and diagnostic radiologist, revealed bilateral degenerative changes without an indication of acute fracture, subluxation, or significant joint effusion. There was no abnormal signal change within the overlying soft tissues to suggest a fluid collection or edema.

In an October 22, 2012 report, Dr. Phillips noted that appellant was seen for left hip and trochanteric pain in the past. He indicated that she returned for follow up and the MRI scan of her right and left hips was obtained and a trochanteric injection was administered. Dr. Phillips noted that it was possible that appellant was increasingly symptomatic from hip arthritis, but he wanted to ensure that there was not another injury that they were masking. In a November 19, 2012 report, he advised that she had hip pain, which was related to the original injury of December 29, 2011.

OWCP referred appellant and a statement of accepted facts to Dr. Kirpal Sidhu, a Board-certified orthopedic surgeon, for a second opinion as to whether she could return to work. In a November 13, 2012 report, Dr. Sidhu noted appellant's history of injury and treatment. Appellant reported pain in her left thigh, knee, and hip since her December 29, 2011 work injury. On examination, Dr. Sidhu provided findings which included a slightly pigmented scar of old abrasions over the left knee. He indicated that there was no gross swelling, redness, or increased warmth of the knees. The left elbow had no swelling or tenderness and full range of motions. Dr. Sidhu diagnosed left thigh pain, possible lumbar radiculopathy, and bilateral moderately

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<sup>2</sup> The regular work hours of appellant were from 6:00 a.m. to 5:00 p.m. The fall occurred at 5:55 a.m.

<sup>3</sup> Additional CA-7 claims for compensation were submitted through June 14, 2013.

severe osteoarthritis of both hips. He opined that appellant's left elbow and left knee contusions had resolved. Dr. Sidhu also found significant spondylosis in the lower lumbar region, L4-5, on x-rays. He stated that appellant's left thigh pain seemed in the L2 or L3 distribution, which could be from the upper lumbar region. Dr. Sidhu advised that the left thigh pain could also be due to severe left hip osteoarthritis and partly due to lumbar spondylosis. He stated that, although the osteoarthritis and lumbar spondylosis were preexisting conditions, the lumbar spondylosis with radicular pain was likely aggravated by the work injury. Dr. Sidhu stated that the aggravation would typically resolve within 6 to 12 weeks unless there was a disc herniation. He recommend a lumber MRI scan to determine if the symptoms were related to the work injury or just part of appellant's degenerative disc disease.

In a December 21, 2012 report, Dr. Sean M. Ladson, a Board-certified diagnostic radiologist, to whom appellant was referred by Dr. Sidhu, noted lumbar spine MRI scan findings. He listed an impression of severe spinal canal stenosis at L5-S1 and, to a lesser extent, L4-5 due to disc osteophyte complexes with disc protrusions. Appellant had severe bilateral neural foramina narrowing at L5-S1, worse on the left, as well as degenerative changes and various levels of neuroforaminal compromise.

In an undated addendum, received by OWCP on January 16, 2013, Dr. Sidhu reviewed Dr. Ladson's findings, noting that the MRI scan revealed degenerative changes at multiple levels. Based on this, he opined that appellant's current condition was "a natural consequence and progression of degenerative disc disease. With a widespread disease the work relation is hard to prove. Appellant's symptoms are consistent with osteoarthritis of hip joint and also partly the result of L3-4 left foraminal stenosis." Dr. Sidhu noted that other disc protrusions at multiple levels were asymptomatic. He concluded that appellant's degenerative disc disease was preexisting. In an accompanying January 13, 2012 work capacity evaluation, Dr. Sidhu reiterated that her left knee and elbow contusions had resolved while her osteoarthritis of both hips and lumbar spondylosis were not work related. He indicated that appellant could work within restrictions, but these restrictions were related only to the preexisting conditions.

In a February 8, 2013 report, Dr. Phillips noted that he had reviewed the second opinion report of Dr. Sidhu. He stated that he did not disagree with the diagnoses, specifically that the contusion of the left elbow and left knee were resolved. Dr. Phillips also agreed with the remainder of the report.

On April 12, 2013 OWCP proposed to terminate appellant's compensation, based on the opinion of Dr. Sidhu, which established that the residuals of the work injury had ceased. Appellant was given 30 days to submit additional evidence or argument.

In an April 15, 2013 telephone memorandum, OWCP noted that appellant inquired in response to the notice and was advised that her treating physician agreed with the proposal.

OWCP received an April 8, 2013 report from Dr. Larry Hartman, a Board-certified neurosurgeon, who noted appellant's history and findings. Review of a lumbar MRI scan revealed very generalized degenerative disease of the entire lumbar spine. Dr. Hartman stated that "every part" of appellant's examination and imaging studies suggested "a different potential etiology." He stated that he "did not have a clear picture of what we are dealing with, now some

16 months after the initial injury.” Dr. Hartman noted possible causes of appellant’s symptoms and requested x-rays of the hips and pelvis. An April 9, 2013 report from Dr. Thomas R. Roatsey, an osteopath, noted a date of injury of December 29, 2011, her status and work restrictions. The report diagnosed left hip pain, low back pain with radiculopathy, and left knee pain.

In an April 10, 2013 report, Dr. Phillips noted that appellant had hip osteoarthritis as evidenced by x-ray and trochanteric bursitis evidenced by clinical examination. He advised that she was primarily symptomatic from anterior thigh pain that extended to her groin region. Dr. Phillips explained that this was somewhat of an atypical presentation for osteoarthritis given that appellant had multiple potential pain generators between her lumbar spine, trochanteric bursa, and degenerative hip joint. He recommended an intra-articular steroid injection and opined that it was an important step to carry out before considering total hip arthroplasty or other similar surgery. Dr. Phillips explained that, if her hip was not a significant pain generator, total hip arthroplasty would not relieve her pain.

In a letter dated May 9, 2013, appellant’s counsel argued that the medical evidence supported that appellant’s preexisting condition was aggravated by the fall on December 29, 2011. In a May 22, 2013 report, Dr. Phillips repeated his request for an injection.

In a June 17, 2013 decision, OWCP terminated appellant’s compensation benefits effective June 17, 2013. It found that the weight of medical evidence rested with Dr. Sidhu and supported that she no longer had residuals of the accepted work-related conditions.

On July 17, 2013 appellant’s counsel requested a hearing, which was scheduled for January 28, 2014. However, the request was changed to a request for an examination of the written record on January 27, 2014. He contacted OWCP *via* telephone and noted that he believed a referee evaluation was warranted.

In a letter dated February 25, 2014, appellant’s counsel argued that appellant’s termination should be reversed because OWCP failed to consider his May 9, 2013 letter. He indicated that it showed how her preexisting condition was aggravated by the fall of December 29, 2011. Counsel also argued that OWCP failed to consider Dr. Hartman’s April 8, 2013 report, which discussed appellant’s condition as secondary to a herniated disc caused by the fall. He argued that the decision should be reversed, as an unresolved conflict remained, and OWCP had not met its burden to terminate.

In a February 7, 2013 treatment record, Dr. Roatsey noted follow-up treatment for left hip pain and stated that, on his review of MRI scan results, it was his opinion that appellant’s fall at work exacerbated her condition because she did not have “hip/leg/back pain before the fall.” The May 15, 2013 treatment records diagnosed left hip and knee pain and reiterated Dr. Roatsey’s opinion that “all these are work related because [appellant] was having no problems before her accident at work.” He advised that, while appellant may have had preexisting problems, these were “fine” until her injury and, but for the injury, she would still be working and “not have any problems with them.”

By decision dated April 15, 2014, an OWCP hearing representative affirmed the June 17, 2013 decision.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employing establishment.<sup>5</sup>

### **ANALYSIS**

In this case, OWCP accepted that appellant sustained a contusion of the left knee and elbow when she fell in the employing establishment parking lot on the way into work. There was no dispute that this was in the performance of duty. Appellant submitted claims for wage-loss compensation. On October 26, 2012 OWCP referred her for a second opinion examination with Dr. Sidhu, a Board-certified orthopedic surgeon, to determine whether there were any residuals of her accepted conditions and whether she could return to work.

In a November 13, 2012 report, Dr. Sidhu examined appellant and provided findings, which included that the left knee had a slightly pigmented scar of old abrasions over the left knee. There was no swelling or increased warmth of the knee. The left elbow had no swelling or tenderness and had full range of motion. Dr. Sidhu concluded that the accepted left knee and elbow contusions had resolved. He found that appellant had moderately severe osteoarthritis in both hips and significant spondylosis at L4-5 based on x-rays. Dr. Sidhu explained that these conditions preexisted the employing establishment injury. He noted possible causes of appellant's left thigh pain, including her hip osteoarthritis, and lumbar spondylosis. Dr. Sidhu opined that the preexisting degenerative spine condition was likely exacerbated by the 2011 work injury, but would have typically resolved within 6 to 12 weeks of the December 29, 2011 incident unless there was a disc herniation. Although he advised that his clinical examination did not indicate a herniation, he recommended a lumbar MRI scan to determine if the symptoms were due to the work injury or just part of appellant's degenerative disc disease. An MRI scan was performed on December 21, 2012. After reviewing the MRI scan findings, Dr. Sidhu, in an addendum to his report, stated that there were degenerative changes at multiple levels. He advised that appellant's current condition was "a natural consequence and progression of degenerative disc disease." Dr. Sidhu explained that "if it was a single level disc protrusion without osteophytes, then work relation could be considered. With a widespread disease, the work relation is hard to prove. Appellant's symptoms are consistent with osteoarthritis of hip joint and also partly the result of L3-4 left foraminal stenosis." Dr. Sidhu concluded that her degenerative disc disease was preexisting and, in an accompanying January 13, 2012 work capacity evaluation, reiterated that her left knee and elbow contusions had resolved while her current osteoarthritis of both hips and lumbar spondylosis were disabling and required work

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<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

restrictions. He found no basis on which to attribute any ongoing condition to appellant's December 29, 2011 work injury.

The Board finds that Dr. Sidhu's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted conditions. Dr. Sidhu explained why he determined that her current condition was not aggravated by her work injury after obtaining a lumbar MRI scan. The Board also notes that there are no current reports from a treating physician to contradict these findings. In fact, the treating physician, Dr. Phillips, on February 8, 2013, concurred with Dr. Sidhu's findings. While Dr. Phillips submitted subsequent reports, he did not clearly support an ongoing work-related condition due to the accepted work injuries.

Records from Dr. Roatsey do not sufficiently support continuation of benefits based on the accepted contusions of the left elbow and knee. Dr. Roatsey's February 7, 2013 treatment record opines that appellant's fall at work exacerbated her condition because she did not have "hip/leg/back pain before the fall." His May 15, 2013 treatment record diagnoses left hip and knee pain and reiterates his opinion that "all these are work related because [appellant] was having no problems before her accident at work." Dr. Roatsey advised that, while appellant may have had preexisting problems, these were "fine" until her injury and, but for the injury, she would still be working and "not have any problems with them." The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>6</sup> These reports provide insufficient reasoning to create a conflict with, or overcome, the opinion of Dr. Sidhu.

Appellant also provided an April 8, 2013 report from Dr. Hartman, who reviewed her history and found that the etiology of her condition was not clear. Dr. Hartman did not provide an opinion on causal relationship, but instead, recommended further testing.

Because appellant no longer has residuals or disability related to her accepted employment conditions, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective June 17, 2013. Accordingly, its decision to terminate her compensation and medical benefits shall be affirmed.

On appeal, appellant's counsel argued that the decision ignored the report of Dr. Hartman. However, the Board notes that the report of Dr. Hartman does not support continuing work-related conditions. It clearly stated that he "did not have a clear picture of what we are dealing with, now some 16 months after the initial injury." Counsel also argued that Dr. Hartman provided a May 15, 2013 treatment note, in which he opined that the symptoms were work related. The Board notes that, while the record contains a May 15, 2013 treatment note from Dr. Roatsey, noted above, there is no such treatment record from Dr. Hartman. As explained, the evidence supports that appellant no longer has residuals or disability related to her accepted employment conditions. She 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.

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<sup>6</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

**CONCLUSION**

The Board finds that OWCP met its burden of proof in terminating appellant's benefits effective June 17, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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