

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

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**J.W., Appellant**

**and**

**DEPARTMENT OF THE ARMY, BLUEGRAS  
ARMY DEPOT, Richmond, KY, Employer**

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**Docket No. 14-1762  
Issued: December 23, 2014**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 8, 2014 appellant, through his attorney, filed a timely appeal from the March 6, 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.<sup>2</sup>

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits effective March 9, 2014 as he had no residuals of the accepted conditions.

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

<sup>2</sup> Appellant submitted new evidence on appeal. However, the Board lacks jurisdiction to review evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On March 24, 2005 appellant, then a 67-year-old security officer filed a traumatic injury claim alleging that on March 18, 2005 he sustained a knee injury. He alleged that as he kneeled down on a mat during handcuff training, a screw inside the mat punctured his right knee. Appellant stopped work on March 18, 2005 and returned to work on March 22, 2005.

In a March 18, 2005 report, Dr. Thomas Cervoni, a Board-certified orthopedic surgeon, advised that appellant had a right knee anterior puncture that likely penetrated the prepatellar bursa. On March 28, 2005 he noted that the right knee anterior puncture wound was stable with no signs infection. Dr. Cervoni advised that appellant had returned to full function of the right knee. He also diagnosed left knee medial collateral ligament sprain and medial meniscal tear, advising that, when appellant injured his right knee, he likely had twisting injury to his left knee. Dr. Cervoni noted that appellant was experiencing left knee pain and palpitation over the medial collateral ligaments. In an April 25, 2005 magnetic resonance imaging (MRI) scan report, Dr. Steven Goldstein, a Board-certified radiologist, advised that left knee imaging revealed degenerative changes involving the posterior horn of the medial meniscus. In a May 6, 2005 report, he stated that appellant had no persistent symptoms or recurrent pain, swelling or mechanical symptoms in the left knee. Dr. Goldstein advised that the puncture wound on the anterior aspect of the knee was well-healed with no swelling or infection. Dr. Cervoni diagnosed improved left knee meniscal tear and stable right knee anterior puncture wound. He released appellant to regular duty.

By decision dated December 5, 2005, OWCP accepted appellant's claim for right knee puncture wound, strain/sprain of the left knee, and left knee tear of the medial meniscus.

Appellant did not seek further treatment for his knees until 2012. In a June 18, 2012 report, Dr. Mark Secor, an orthopedic surgeon, diagnosed medial compartment degenerative joint disease of the right knee. He advised that appellant injured his right knee several years earlier when a screw punctured it and that he had been having difficulty ever since. Dr. Secor opined that it may represent degenerative changes from 2005 which may or may not have been accelerated by the screw incident.

In an August 16, 2012 report, Dr. Secor noted that appellant sustained a right knee puncture wound on March 18, 2005. He advised that questions remained as to whether the degenerative change was preexisting or whether it was accelerated or caused by the work injury appellant sustained.

In a November 18, 2012 notice of recurrence (Form CA-2a), appellant alleged that his knee pain was present since his original injury. He advised that he was limited in his performance after returning to work because he was unable to pass a physical agility test. The employing establishment indicated that appellant was currently working light duty for another injury<sup>3</sup> and advised that a reduction in force had recently been announced at his work site.

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<sup>3</sup> The record indicates that matters pertaining to a left shoulder condition have been developed by OWCP in a separate claim that is not presently before the Board.

By letter dated December 10, 2012, OWCP advised appellant that there was no need to adjudicate his recurrence claim because no wage-loss compensation or payment for expenses was being claimed. Appellant subsequently indicated that he sought payment of medical expenses.

On February 8, 2013 OWCP referred appellant to Dr. Stanley Collis, a Board-certified orthopedic surgeon, for a second opinion examination regarding whether appellant had residuals of his accepted conditions. It provided Dr. Collis with the medical record, a statement of accepted facts, and a list of questions to be answered.

In a February 26, 2013 report, Dr. Collis noted the history of injury, advising that on March 18, 2005 appellant injured his prepatellar bursa when a screw punctured his right knee. He advised that appellant related a lot of right knee pain with weight bearing which required him to use a cane at times. Dr. Collis noted that currently the knee had some puffiness, stiffness, minimal effusion, and weakness of the quadriceps. Appellant had full right knee extension and could flex the knee to about 60 degrees. Ligaments were stable and intact. Dr. Collis advised that an x-ray of the right knee revealed advanced degenerative arthritis on the medial side of his joint. He diagnosed advanced degenerative arthritis in the medial compartment of the right knee. Dr. Collis opined that appellant's condition was due to age and was not a residual effect of the injury. With respect to the accepted condition of punctured right knee, he advised that the skin healed well, there was no point tenderness in the area of the puncture, and that the prepatellar bursa seemed to be intact. Dr. Collis explained that he found no evidence of inflammation or point tenderness in the area of the stab injury. He concluded that, based on examination, record review, and x-rays, there was no evidence of an ongoing work-related injury.

By letter dated April 29, 2013, OWCP asked Dr. Collis for clarification because his report only addressed the right knee. The letter also advised him to address whether the accepted work injury aggravated or accelerated appellant's arthritis. Dr. Collis responded on May 2, 2013 that appellant had not complained of any work-related left knee problems. He stated that the right knee aggravation was only temporary and was fully resolved. Dr. Collis also reiterated that appellant's right knee arthritis was developmental due to his genes and was not work related.

OWCP subsequently sought further evaluation from Dr. Collis. In an August 6, 2013 report, Dr. Collis noted examining appellant on that date and related the history of the left knee injury. He advised that appellant related to him that he twisted his left knee during the March 18, 2005 work incident. Appellant related that the right knee was his main problem although he stated that he continued to have some left knee pain. Dr. Collis noted that upon physical examination the left knee had normal configuration and that it looked normal in appearance. He further noted that appellant had full flexion and full extension with no apparent pain. No instability of the left knee was noted. Dr. Collis advised that a left knee x-ray revealed some decrease of space of the medial compartment of the knee joint. He diagnosed minimal arthritis of the medial compartment of the left knee. Dr. Collis opined that this condition was not work related. He attributed any left knee discomfort to his minimal left knee arthritis, his weight, and the fact that he was using his left knee more frequently because of the developmental arthritis of the right knee. Dr. Collis explained that his examination of the left knee was unremarkable for a 75-year-old man of his weight. He concluded that appellant did not have any work-related problems with either the left or right knee.

By letter dated December 11, 2013, OWCP notified appellant that it proposed to terminate his medical benefits based on the reports of Dr. Collis. Appellant was advised that he had 30 days to submit any medical evidence to dispute termination.

By decision dated March 6, 2014, OWCP terminated appellant's medical benefits, effective March 9, 2014.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation and medical benefits,<sup>4</sup> which includes furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.<sup>6</sup> The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation. To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>7</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for right knee puncture wound, strain/sprain of the left knee, and left knee tear of the medial meniscus. Appellant was released from treatment on May 6, 2005 and did not seek treatment for his knees until seven years later in 2012. The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits for the accepted conditions.

In both his June 18 and August 16, 2012 reports, Dr. Secor diagnosed medial compartment degenerative joint disease of the right knee. In these reports, he stated that he was unsure as to whether appellant's current condition was preexisting or whether it was accelerated or caused by the work injury appellant sustained. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.<sup>8</sup> Dr. Secor did not provide any unequivocal support that appellant had an ongoing employment-related knee condition.

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<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

<sup>5</sup> *D.C.*, Docket No. 09-1070 (issued November 12, 2009); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>6</sup> *I.J.*, *supra* note 4.

<sup>7</sup> *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>8</sup> *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

In view of Dr. Secor's equivocal opinion, OWCP referred appellant to Dr. Collis for a second opinion. In his February 26, 2013 report, Dr. Collis noted right knee examination findings and diagnosed advanced degenerative arthritis on the medial part of his right knee joint. He advised that appellant's condition was not related to any residual effects of the work incident and that it was developmental and brought about because of age. Dr. Collis further stated that the right puncture wound of the right knee was well healed and that the condition was fully resolved. After OWCP asked him to address appellant's left knee, Dr. Collis, in a May 2, 2013 report, stated that appellant did not complain of any work-related left knee problems. Dr. Collis stated that the right knee aggravation was only temporary and was fully resolved. He also reiterated that appellant's right knee arthritis was developmental due to his genes and was not work related. OWCP subsequently asked Dr. Collis to examine appellant again and, in his August 6, 2013 report, Dr. Collis diagnosed minimal arthritis of the medial compartment of the left knee. Dr. Collis noted detailed left knee findings and opined that the left knee condition was not work related. He opined that appellant's left knee discomfort was aggravated by his weight and the fact that he was using his left knee more frequently because of the developmental arthritis of the right knee. Dr. Collis found no basis on which to attribute any condition in either knee to appellant's employment.

The Board finds that Dr. Collis provided a comprehensive, well-rationalized opinion in which he clearly advised that appellant did not have residuals of the accepted conditions. The Board finds that his opinion represents the weight of the medical evidence. As noted, the reports from Dr. Secor provided, at best, equivocal support for causal relationship while Dr. Collis examined appellant twice, reviewed the medical record, and concluded that appellant currently had no condition in either knee that was caused or aggravated by his employment. As a result, OWCP properly terminated appellant's medical benefits for the accepted condition effective March 9, 2014.

On appeal, appellant argued that OWCP solely based its decision on Dr. Collis' report and did not consider differing opinions from a Veterans hospital where he received treatment. The Board notes that it reviewed all evidence of record at the time of its March 6, 2014 decision. As explained, the weight of this evidence supports that appellant no longer has residuals of his accepted work injuries.

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 effective March 9, 2014.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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