

injury had ceased without residuals; and (2) whether appellant established that he remained disabled for work on or after May 8, 2012 due to an accepted left knee injury.

On appeal, counsel contends that the medical evidence supports continuing work-related disability and that a second opinion physician's reports are too equivocal to carry the weight of the medical evidence. Alternatively, he asserts a conflict between appellant's attending orthopedic surgeon and the second opinion physician.

FACTUAL HISTORY

OWCP accepted that on March 4, 2010 appellant, then a 45-year-old letter carrier, sustained a left knee contusion and lateral meniscus tear³ in an occupational motor vehicle accident. He stopped work on March 4, 2010 and returned to full duty on April 19, 2010.

On January 14, 2011 Dr. Thomas Nordstrom, an attending Board-certified orthopedic surgeon, performed an arthroscopic partial lateral meniscectomy on the left knee to repair a lateral meniscal tear. OWCP authorized the procedure. Dr. Nordstrom released appellant to full duty as of March 7, 2011.

In a June 21, 2011 report, Dr. Nordstrom related appellant's complaints of pain and swelling while walking his mail route. A July 7, 2011 MRI scan showed a new posterior horn tear of the medial meniscus. On August 22, 2011 Dr. Nordstrom performed partial left medial and lateral meniscectomies, chondroplasty of the patella, and synovectomy with plica excision to address scarring and synovitis. OWCP authorized the procedures. Dr. Nordstrom held appellant off work. Appellant received wage-loss compensation for total disability beginning on August 22, 2011.

A December 5, 2011 MRI scan showed "[f]indings suspicious for a small undersurface tear in the posterior horn of the medial meniscus" including increased contrast extension into the area. In a December 6, 2011 report, Dr. Nordstrom opined that the December 5, 2011 MRI scan findings were consistent with "minimal anterior meniscal degeneration or an undersurface tear." He noted that appellant still had significant left knee pain but was regaining strength in physical therapy. Dr. Nordstrom recommended repeat arthroscopy.

On February 29, 2012 OWCP obtained a second opinion from Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, who reviewed the medical record and a statement of accepted facts. On examination, he noted a full range of motion, minimal tenderness over the medial femoral condyle, negative Lasegue's and McMurray tests, no instability, an unremarkable gait and 5/5 quadriceps and hamstring strength. Dr. Lakin opined that the accepted conditions had "healed sufficiently to allow" appellant to return to full-duty work. He asserted that the objective clinical findings did not support Dr. Nordstrom's request for a third arthroscopic procedure.

³ A May 28, 2010 magnetic resonance imaging (MRI) scan of the left knee showed a lateral meniscus tear, small Baker's cyst and minimal cartilage loss at the patella.

OWCP requested that Dr. Lakin submit a supplemental report addressing whether the December 5, 2011 MRI scan demonstrated residuals of the accepted left knee injury and whether further treatment was warranted. Dr. Lakin provided a March 16, 2012 report stating that appellant had no clinical signs of a meniscal tear and did not require additional left knee surgery. He explained that the negative McMurray test was “not consistent with a meniscal injury” and that appellant did not report true locking of the knee. Dr. Lakin noted that the increased signal in the posterior horn observed on December 5, 2011 MRI scan was not clinically significant and could be related to postoperative changes. He opined that appellant had “no subjective or objective findings consistent with a meniscal tear that would require surgical intervention.” Dr. Lakin reiterated that appellant could return to full-duty work as he had excellent motion and strength and the knee was “clinically asymptomatic,” without “significant subjective complaints that correlate with [his] objective findings.”

By notice dated April 4, 2012, OWCP advised appellant that it proposed to terminate his wage-loss and medical benefits on the grounds that the accepted left knee injury had ceased without residuals, based on Dr. Lakin’s opinion as the weight of the medical evidence.

Appellant’s counsel responded by April 20 and May 3, 2012 letters, contending that Dr. Lakin’s report was not sufficiently rationalized to establish that the accepted left knee injury had resolved without residuals. Alternatively, he asserted a conflict between Dr. Lakin and Dr. Nordstrom. Counsel submitted an April 11, 2012 report from Dr. Nordstrom noting good leg strength and that appellant walked “reasonably well.” Dr. Nordstrom explained that it was “hard for [him] to say [appellant] needs a surgery definitively.” However, appellant had recovered only “70 [to] 75 percent” and felt that he was not fully functional. Dr. Nordstrom released appellant to return to work with no restrictions.

By decision dated May 8, 2012, OWCP terminated appellant’s wage-loss and medical compensation benefits, effective that day, based on Dr. Lakin’s opinion that the accepted left knee injuries had ceased without residuals or any disability for work.

In a May 14, 2012 letter, appellant’s counsel requested an oral hearing, later changed to a request for review of the written record. He asserted that there was a conflict of medical evidence between Dr. Lakin, for the government, and Dr. Nordstrom, for appellant. Counsel submitted a May 23, 2012 report from Dr. Nordstrom, noting that appellant had returned to full-time limited duty, walking two to four hours per day. As appellant complained of left knee pain and stiffness after three hours of walking, Dr. Nordstrom opined that appellant should be placed on permanent limited duty.

By decision dated October 15, 2012, an OWCP hearing representative affirmed the May 8, 2012 termination, finding that Dr. Lakin’s report continued to represent the weight of the medical evidence. The hearing representative found that Dr. Lakin explained unequivocally that appellant’s accepted left knee injury resolved without residuals. In contrast, Dr. Nordstrom noted that appellant might need additional surgery based on minimal clinical findings.

On December 6, 2012 appellant claimed a schedule award. In support of his claim, he submitted a September 26, 2012 report from Dr. Nicholas P. Diamond, an attending osteopath Board-certified in orthopedics and family practice, who related appellant’s complaints of chronic

left knee pain and stiffness. Dr. Diamond noted that appellant walked with an intermittent limp. On examination, he noted tenderness over the patella, at the medial joint space, medial femoral condyle and medial patellar facet. Apley's, drawer, Lachman's, McMurray's, patellar apprehension and inhibition signs were negative. Dr. Diamond found crepitus in the medial joint compartment and on patellofemoral compression. Range of motion was full, with pain. Dr. Diamond found quadriceps and gastrocnemius strength at 4/5. He diagnosed status post arthroscopic subtotal lateral meniscectomy, status post medial and lateral meniscectomy with synovectomy and plica excision for scarring and synovitis, and a re-ear of the anterior horn of the medial meniscus confirmed on MRI scan and on clinical examination. Referring to Table 16-3, page 509 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ Dr. Diamond found 13 percent impairment of the left lower extremity due to postsurgical status, findings on examination and clinical history. He noted that appellant attained maximum medical improvement as of September 26, 2012.

In a November 19, 2012 letter, Dr. Nordstrom concurred with Dr. Diamond's determination of 13 percent impairment of the left leg. An OWCP medical adviser reviewed Dr. Diamond's report on December 17, 2012 and concurred with the 13 percent impairment rating.

In a February 11, 2013 letter, appellant's counsel requested reconsideration. He asserted that Dr. Diamond's impairment rating established continuing work-related residuals.

By decision dated May 14, 2013, OWCP denied modification of the May 8, 2012 termination decision on the grounds that the additional evidence submitted was insufficient to warrant modification. It found that Dr. Diamond's September 26, 2012 report did not support a causal relationship between the objective findings in the left knee and the accepted injury "or inability to return to work full time/full duty."

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment,

⁴ Table 16-3, pages 509-11 of the sixth edition of the A.M.A., *Guides* is entitled "Knee Regional Grid -- Lower Extremity Impairments."

⁵ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁶ *Id.*

⁷ *Roger G. Payne*, 55 ECAB 535 (2004).

OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left knee contusion and lateral meniscus tear. Appellant underwent a partial lateral meniscectomy on January 14, 2011 and partial medial and lateral meniscectomies on August 22, 2011. Dr. Nordstrom, an attending Board-certified orthopedic surgeon, opined that, although appellant still had subjective pain and stiffness as of April 11, 2012, he could resume full-duty work. OWCP terminated appellant's wage-loss and medical benefits effective May 8, 2012 on the grounds that the accepted left knee injuries had ceased without disabling residuals, based on the second opinion provided by Dr. Lakin, a Board-certified orthopedic surgeon.

On appeal, counsel asserts that Dr. Lakin's opinion was too equivocal to carry the weight of the medical evidence. Dr. Lakin provided February 29 and March 16, 2012 reports explaining that the December 5, 2011 MRI scan finding of a possible undersurface tear in the posterior horn of the medial meniscus was of no clinical significance. He noted that the very minimal findings on clinical examination, coupled with a negative McMurray's test, were inconsistent with a meniscal injury. Dr. Lakin found appellant able to resume full-duty work as the accepted injuries had resolved. The Board finds that Dr. Lakin's reports set forth detailed reasoning, based on the complete medical record and statement of accepted facts, supporting that the accepted left knee injuries had resolved.⁹

Counsel also contends that Dr. Lakin's opinion created a conflict with that of Dr. Nordstrom, an attending Board-certified orthopedic surgeon, opined that a December 5, 2011 MRI scan showed either minimal meniscal deterioration or an undersurface tear. Dr. Nordstrom did not definitively diagnose a meniscal tear. On December 6, 2011 he recommended a third arthroscopy. However, Dr. Nordstrom changed his opinion on April 11, 2012, stating that surgery was not definitively necessary. Although he commented that appellant was perhaps 75 percent recovered, he did not specify which objective findings supported that appellant had not fully recovered. Dr. Nordstrom also released appellant to full duty. The Board finds that the equivocal nature of Dr. Nordstrom's opinion diminishes its probative quality. It is not of sufficient weight to create a conflict with that of Dr. Lakin.¹⁰ Therefore, OWCP properly terminated appellant's compensation effective May 8, 2012 based on Dr. Lakin's opinion.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits clearly warranted by the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or

⁸ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁹ *Conard Hightower*, 54 ECAB 796 (2003).

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

she had an employment-related disability that continued after termination of compensation benefits.¹¹ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹² The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts the burden of proof of OWCP to disprove an employment relationship.¹³

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained a left knee contusion and lateral meniscus tear on March 4, 2010. At the time of these injuries, he was a letter carrier. Appellant stopped work on August 22, 2011 and did not return. By May 8, 2012 decision, OWCP terminated his wage-loss and medical compensation effective that day on the grounds that the accepted injuries had ceased without residuals. The burden now shifts to appellant to demonstrate that he continued to be disabled for work on and after May 8, 2012 due to the accepted March 4, 2010 left knee injuries.¹⁴

Pursuant to a February 11, 2013 request for reconsideration, counsel asserted that prior reports from Dr. Nordstrom and a September 26, 2012 impairment rating by Dr. Diamond, an osteopathic physician Board-certified in orthopedics and family practice, established continuing disability for work. In a May 23, 2012 report, Dr. Nordstrom noted that appellant had returned to full-time work with walking limited to four hours per day. He recommended permanent work restrictions based on appellant's subjective symptoms. However, Dr. Nordstrom did not find that appellant was disabled for work due to objective residuals of the accepted left knee injuries. Dr. Diamond provided a September 26, 2012 impairment rating finding 13 percent impairment of the left leg due to appellant's status post partial medial and lateral meniscectomies under the sixth edition of the A.M.A., *Guides*. However, he did not find appellant totally disabled for work and did not provide sufficient medical rationale with regard to why any continuing condition or degree of disability was attributable to appellant's employment. OWCP denied modification by decision dated May 14, 2013, finding that Dr. Lakin's opinion continued to represent the weight of the medical evidence.

The Board finds that OWCP properly found that appellant did not establish a continuing disability for work on and after May 8, 2012, based on Dr. Lakin's opinion as second opinion physician. Dr. Lakin provided a detailed report, based on a complete and factual medical history, explaining the objective criteria supporting his opinion that the accepted injuries had ceased without residuals. Therefore, OWCP correctly accorded Dr. Lakin's opinion the weight

¹¹ See *Virginia Davis-Banks*, 44 ECAB 389 (1993); see also *Howard Y. Miyashiro*, 43 ECAB 1101 (1992).

¹² *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹³ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹⁴ *Virginia Davis-Banks*, *supra* note 11.

of the medical evidence.¹⁵ Neither Dr. Nordstrom nor Dr. Diamond identified objective residuals of the accepted injuries that would disable appellant for work on and after May 8, 2012.

On appeal, counsel contends that the medical evidence supports continuing work-related disability on and after May 8, 2012. However, as stated above, the medical record does not demonstrate that appellant was disabled for work on and after May 8, 2012 due to the accepted left knee 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 properly terminated appellant's medical and wage-loss compensation benefits effective May 8, 2012 on the grounds that an accepted left knee injury ceased without residuals. The Board further finds that appellant has not established that he was disabled for work on and after May 8, 2012 due to the accepted left knee injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2013 is affirmed.

Issued: February 5, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁵ *Anna M. Delaney*, 53 ECAB 384 (2002).