

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

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**P.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Los Angeles, CA, Employer**

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**Docket No. 13-1927  
Issued: September 3, 2014**

*Appearances:*  
*Daniel M. Goodkin, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On August 19, 2013 appellant, through counsel, filed a timely appeal from the August 7, 2013 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 is whether appellant is entitled to receive compensation after June 24, 2008 due to her accepted left knee condition.

**FACTUAL HISTORY**

On September 7, 2007 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that she sustained degenerative spurring of her left knee due to her work

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

duties which included engaging in extensive walking.<sup>2</sup> She stopped work on August 31, 2007 and did not return.<sup>3</sup>

Diagnostic testing of appellant's knees obtained on June 15, 2007 showed that she had degenerative change of her knees with left medial compartmental narrowing. On August 31, 2007 an attending physician indicated that appellant should be placed on work restrictions including working in a sedentary position with no lifting more than five pounds.

In an October 23, 2007 decision, OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that her left leg condition was causally related to her employment duties.

On May 28, 2008 Dr. Daniel R. Laster, an attending Board-certified orthopedic surgeon, performed a left total knee arthroplasty which was not authorized by OWCP at the time. In a June 24, 2008 report, he described appellant's progress after her May 28, 2008 left knee surgery and indicated that she was totally disabled from May 28 to August 28, 2008. Dr. Laster stated that appellant's left knee condition "was caused and accelerated during the course of the patient's employment."

By decision dated November 18, 2008, OWCP affirmed its October 23, 2007 decision denying appellant's claim for a work-related left knee condition. It indicated that the June 24, 2008 report of Dr. Laster was of limited probative value on the relevant issue of the case because he did not describe her work duties or provide medical rationale explaining how they could have caused or aggravated her left knee condition.

In a November 12, 2009 letter, appellant, through counsel, requested reconsideration of his claim and submitted a November 9, 2009 report of Dr. Laster. In his report, Dr. Laster noted that appellant worked as a mail carrier and that he had examined her work duties in detail. He stated that she initially was seen in September 2007 with a progressive history of knee pain, left greater than right. The objective findings at that time showed decreased range of motion with crepitus and radiographs revealed tricompartmental arthrosis bilaterally, left greater than right. Dr. Laster noted that appellant ultimately underwent a left total knee replacement done on May 28, 2008 and stated, "It is my opinion that the patient's arthritis was hastened by the vigorous walking required by her job. This opinion is confirmed by the fact that the patient had developed end-stage arthrosis at the early age of 48 years."<sup>4</sup>

In a March 3, 2010 letter, appellant indicated that she had worked for the employing establishment for 23 years and that she had to walk to make about 1,000 deliveries per day. She

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<sup>2</sup> OWCP previously accepted that appellant sustained bilateral plantar fasciitis in August 2002. Appellant's previous occupational disease claim that she sustained a low back condition due to work factors was denied on the grounds that she did not submit sufficient medical evidence in support of her claim.

<sup>3</sup> Appellant later claimed that the employing establishment sent her home because it did not have work available within her work restrictions. It appears that she was separated from the employing establishment in early 2009.

<sup>4</sup> The record contains additional medical reports detailing appellant's left knee symptom between mid-2009 and mid-2010.

indicated that she was required to climb stairs, separate and case mail, carry packages weighing more than 10 pounds and pick up heavy boxes of mail on a daily basis. Appellant performed a great deal of mandatory overtime work and rarely worked just an eight-hour day.<sup>5</sup>

In a May 13, 2010 decision, OWCP vacated its November 18, 2008 decision and accepted appellant's case for an acceleration of degenerative joint disease of her left knee as a result of walking and climbing stairs/steps at work over an extended period. It discussed Dr. Laster's November 9, 2009 report but did not clearly identify which medical evidence supported the acceptance of appellant's claim for this condition.

On May 18, 2010 appellant filed a Form CA-7 (Claim for Compensation) alleging entitlement to wage-loss compensation for the period August 31, 2007 to May 18, 2010.

In October 2010, the Office of Personnel Management (OPM) advised OWCP that appellant was receiving payments from OPM. Appellant later elected to retroactively receive OWCP benefits effective August 31, 2007 instead of OPM benefits.<sup>6</sup>

In an April 4, 2013 letter, OWCP indicated that the medical evidence of file only supported payment of compensation from August 31, 2007 to June 24, 2008. OWCP stated, "If an election for this closed period (August 31, 2007 to June 24, 2008) is desired, let me know and I will send an election to the claimant for this closed period of time.... As noted above, there is no medical evidence in the file since June 24, 2008 which indicates that the claimant has not been able to work due to her accepted condition of left lower leg osteoarthritis."

In an April 9, 2013 letter, appellant's counsel indicated that appellant had elected to receive OWCP compensation and argued that OWCP had impermissibly shifted the burden of proof to her for establishing entitlement to wage-loss compensation after June 24, 2008. Counsel cited Board cases which he felt supported this proposition.

In a May 9, 2013 decision, OWCP determined that appellant's "claim for compensation from June 25, 2008 onward is denied." It indicated that it was her burden of proof to establish entitlement to compensation after June 24, 2008.

In a May 14, 2013 letter, counsel continued to argue that OWCP had impermissibly shifted the burden of proof to appellant for establishing entitlement to wage-loss compensation after June 24, 2008.

In an August 7, 2013 decision, OWCP affirmed its May 9, 2013 decision noting that appellant had not met her burden of proof to establish entitlement to compensation after June 24, 2008 by submitting supportive medical evidence.

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<sup>5</sup> Appellant mentioned a 1987 injury to her left knee but did not identify this injury as a cause of her current left knee symptoms. It does not appear that there is an open OWCP case file for such an injury.

<sup>6</sup> Appellant secured approval for her OPM retirement in August 2009. The retirement was made retroactive to August 30, 2007.

## LEGAL PRECEDENT

Once OWCP accepts a claim it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.<sup>7</sup> The fact that OWCP accepts a claim for a specified period of disability does not shift the burden of proof to the claimant to show that he or she is still disabled. The burden is on OWCP to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>8</sup> OWCP's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>9</sup>

In the case of *G.Q.*,<sup>10</sup> the Board noted that OWCP accepted on January 4, 2012 that the claimant sustained a left ankle sprain in the performance of duty on May 26, 2011. On the same day, OWCP concluded that his accepted condition had resolved by September 20, 2011, thereby accepting the claimant's case for the specified closed period May 26 to September 19, 2011. The Board noted that the relevant precedent dictated that OWCP's acceptance of a claim for a specified period of disability did not shift the burden of proof to the claimant to demonstrate that he or she remained disabled thereafter. The Board noted that, in such cases, it was OWCP's burden to demonstrate the absence of employment-related disability for the period following termination or modification of benefits and it found that OWCP had the burden to terminate the claimant's benefits as of September 19, 2011.

In *Elsie L. Price*,<sup>11</sup> OWCP accepted that the claimant was totally disabled for the specified closed period November 25, 1996 to December 11, 2001 due to her accepted back injuries. The Board noted that OWCP's acceptance of a claim for a specified period of disability did not shift the burden of proof to the claimant to demonstrate that he or she remained disabled thereafter. The Board found that it was OWCP's burden to establish that appellant's condition was no longer totally disabling after December 11, 2001.

## ANALYSIS

On September 7, 2007 appellant filed an occupational disease claim alleging that she sustained degenerative spurring of her left knee due to her work duties which included engaging in extensive walking. She stopped work on August 31, 2007 and did not return to work. In

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<sup>7</sup> *Edwin Lester*, 34 ECAB 1807 (1983).

<sup>8</sup> Docket No. 12-1459 (issued November 27, 2012).

<sup>9</sup> *Mary Lou Barragy*, 46 ECAB 781, 787 (1995). Moreover, OWCP procedure addresses cases when the medical evidence supports that a condition being accepted at the time of adjudication has already resolved. In such a case, an OWCP claims examiner cannot state that the work-related condition has resolved without citing evidence demonstrating that the condition has resolved. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Acceptances*, Chapter 2.806.5 (June 2011).

<sup>10</sup> *See supra* note 8.

<sup>11</sup> 54 ECAB 734 (2003).

May 2010, OWCP accepted appellant's case for an acceleration of degenerative joint disease of her left knee as a result of walking and climbing stairs/steps at work over an extended period.<sup>12</sup> In an April 4, 2013 letter, OWCP indicated that the medical evidence of file only supported payment of compensation from August 31, 2007 to June 24, 2008. Appellant claimed entitlement to compensation after June 24, 2008 and argued that OWCP had impermissibly shifted the burden of proof to her for establishing entitlement to wage-loss compensation after June 24, 2008. In May 9 and August 7, 2013 decisions, OWCP denied her claim for compensation after June 24, 2008 noting that she had not met her burden of proof to establish entitlement to compensation after June 24, 2008 by submitting supportive medical evidence.

The Board finds that, in denying appellant's claim for compensation after June 24, 2008, OWCP impermissibly shifted the burden of proof to appellant. In the cases of *G.Q.* and *Elsie L. Price*,<sup>13</sup> OWCP accepted the claimants' cases for specified closed periods ranging in time from about four months to five years. In each case, it was found that OWCP's acceptance of a claim for a specified period of disability did not shift the burden of proof to the claimant to demonstrate that he or she remained disabled thereafter and it was OWCP's burden to demonstrate the absence of employment-related disability for the period following the end of the specified closed period of disability. Similarly in the present case, OWCP had accepted appellant's claim for a specified closed period, August 31, 2007 to June 24, 2008. Given the above-described precedent, OWCP had the burden of proof to show that she was not entitled to compensation after June 24, 2008. However, OWCP applied an improper standard when it indicated in its decisions that appellant had the burden of proof to establish work-related disability after June 24, 2008.

The Board finds that the case must be remanded to OWCP in order to apply the proper burden of proof standard to appellant's claim for compensation after June 24, 2008. After carrying out such development, OWCP shall issue an appropriate decision.

### CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant is entitled to receive compensation after June 24, 2008 due to her accepted left knee condition.

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<sup>12</sup> On May 18, 2010 appellant filed a Form CA-7 (Claim for Compensation) alleging entitlement to wage-loss compensation for the period August 31, 2007 to May 18, 2010.

<sup>13</sup> See *supra* notes 8 and 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 7, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.<sup>14</sup>

Issued: September 3, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.