

FACTUAL HISTORY

On June 7, 2013 appellant, then a 54-year-old mail handler, filed an occupational disease claim asserting that her repetitive duties including pushing, pulling, twisting, turning, lifting, and unloading caused her to develop knee injuries. She first became aware of her condition and its relation to her work on February 13, 2005. On July 26, 2013 OWCP accepted appellant's claim for a temporary aggravation of localized primary osteoarthritis of the bilateral lower legs. Appellant stopped work on June 25, 2013 and claimed wage-loss compensation beginning September 7, 2013.

The record indicates that appellant was treated by Dr. Anthony G. Leung, a Board-certified orthopedist, on November 18, 2010 and July 22, 2011 for moderate-to-severe degenerative joint disease. Dr. Leung administered synvisc injections to both knees.

Appellant was treated by Dr. William C. Kim, a Board-certified orthopedist, from July 1, 2008 to October 11, 2011, for advanced osteoarthritis of the bilateral knees. In reports dated April 2 to August 21, 2013, Dr. Kim diagnosed moderately severe osteoarthritis of both knees. He noted that appellant was a mail handler for 25 years and was responsible for loading and unloading trucks, lifting, carrying, and twisting. Dr. Kim opined that, although the osteoarthritis progressed on its own natural history, appellant's course of employment over a period of years with prolonged standing and walking contributed to her pain and progression. In his first report of occupational injury and certificate of work disability dated August 20, 2013, Dr. Kim noted her complaints of stiffness and swelling and diagnosed bilateral degenerative joint disease of the knees. Dr. Kim opined that appellant was totally disabled for four weeks. In primary treating physician's progress reports dated September 27 and October 15, 2013, he noted that appellant presented with bilateral knee pain and swelling. Dr. Kim diagnosed bilateral knee degenerative joint disease and recommended a total left knee replacement. He again noted that appellant was disabled for four weeks. On October 15, 2013 Dr. Kim noted that she required a knee replacement as conservative treatment had failed. He noted findings of 10 degrees of varus malalignment and limited knee range of motion. Dr. Kim noted that x-ray demonstrates severe osteoarthritis of the bilateral knees, medial compartment predominant. He diagnosed severe osteoarthritis of the bilateral knees.

On October 24, 2013 OWCP referred appellant to Dr. G.B. Ha'Eri, a Board-certified orthopedist, to determine if the accepted conditions had resolved. In a November 6, 2013 report, Dr. Ha'Eri indicated that he reviewed the records provided and examined appellant. Appellant reported that she stopped work on June 26, 2013. She walked with a cane. Inspection of appellant's knees revealed no joint swelling or effusions, mild degree of varus deformity bilaterally, limited range of motion with both knees, tenderness to palpation bilaterally, crepitus was present, and manipulation of the knees revealed no gross instability. Dr. Ha'Eri noted x-rays of both knees showed advanced osteoarthritis mainly affecting the medial compartment. He diagnosed bilateral knee advanced degenerative joint disease. Dr. Ha'Eri noted that the diagnosed condition directly related to appellant's work exposure was a temporary aggravation of her preexisting naturally occurring degenerative joint disease of both knees and this condition ceased to exist when she stopped working on June 26, 2013. He indicated that the degenerative joint disease of her knees was naturally occurring, genetically determined, and aggravated by her obesity. Dr. Ha'Eri explained that the preexisting and naturally occurring bilateral knee

degenerative joint disease was temporarily aggravated by appellant's work duties and this aggravation ceased when she stopped working. He noted that her current symptoms and disability were due to the naturally occurring degenerative condition of her knees. With regard to Dr. Kim's recommendation of a bilateral total knee replacement due to her work injury, Dr. Ha'Eri advised that the total bilateral arthroplasty was medically reasonable, but it was not due to the industrial injury. Dr. Ha'Eri reiterated that the temporary aggravation of appellant's preexisting degenerative condition of her knees ceased on June 26, 2013 and appellant did not have residuals of the February 13, 2005 injury, and no longer required any medical treatment for her knees on an industrial basis. He noted that she had work restrictions due to the degenerative condition of her knees. In a work capacity evaluation dated November 6, 2013, Dr. Ha'Eri diagnosed localized primary osteoarthritis of the bilateral knees and noted that appellant reached maximum medical improvement and could return to work with restrictions related to the degenerative conditions of the knees.

On December 2, 2013 OWCP requested that Dr. Kim review the second opinion report of Dr. Ha'Eri and indicate whether he agreed with Dr. Ha'Eri's conclusions.

Appellant submitted a November 12, 2013 report from Dr. Kim who diagnosed osteoarthritis of the bilateral knees. Dr. Kim noted that appellant had pain, a limp, restricted ability to walk and perform activities of daily living and required a total knee replacement. He opined that the cause of the knee osteoarthritis bilaterally was due to preexisting genetic predisposition, but her work aggravated her condition resulting in an early need for a total knee replacement. In a November 12, 2013 supplemental report, Dr. Kim provided an overview of appellant's treatment from 2007 to 2013. He noted that standing bilateral knee x-rays from October 25, 2013 revealed severe osteoarthritis. Dr. Kim opined that the cause of appellant's osteoarthritis bilaterally was due to preexisting genetic predisposition, but her work aggravated her condition resulting in a need for a knee replacement. He reviewed her job duties as a mail handler and indicated that she could not tolerate these duties. In a certificate of work disability, Dr. Kim diagnosed bilateral knee osteoarthritis and noted that appellant was totally disabled until December 11, 2013. In a report dated December 3, 2013, as requested he reviewed Dr. Ha'Eri's November 6, 2013 report and opined that the underlying osteoarthritis preexisted her injury, but specifically opined that the injury resulted in significant aggravation of her preexisting condition with significant symptoms and disability. On December 3, 2013 Dr. Kim diagnosed bilateral knee osteoarthritis and noted that appellant was disabled until January 15, 2014.

On February 10, 2014 OWCP proposed to terminate all benefits finding that Dr. Ha'Eri's November 6, 2013 report established no continuing residuals of appellant's work-related conditions.

Appellant submitted reports from Dr. Kim dated October 15, November 12, and December 3, 2013, all previously of record. She submitted a September 17, 2013 report from him, noting that conservative treatment failed and she required a knee replacement due to advanced osteoarthritis. Appellant submitted progress reports dated February 18 and March 4, 2014 from Dr. Kim who diagnosed bilateral knee osteoarthritis and noted that appellant could return to modified duty for six weeks. Dr. Kim noted that appellant required a total knee replacement. In a certificate of work disability dated February 18, 2014, he diagnosed bilateral knee osteoarthritis and noted that appellant could return to work limited duty on February 19,

2014 with 50 percent of the work being sedentary duties. In a March 4, 2014 report, Dr. Kim opined that, although the osteoarthritis would have occurred absent appellant's aggravating factors, he believed that both the obesity as well as repetitive weight bearing and stress on her knees as a postal employee aggravated her condition of osteoarthritis.

In a decision dated March 25, 2014, OWCP terminated appellant's compensation benefits effective March 20, 2014 finding that the medical evidence established that she had no continuing residuals of her accepted conditions.

On April 8, 2014 appellant requested a review of the written record. She submitted reports from Dr. Leung dated July 7 and 22, 2011 and reports from Dr. Kim dated April 2, 2013 to February 18, 2014, all previously of record. She submitted a new certificate of disability for work from Dr. Kim dated January 7, 2014 who diagnosed bilateral degenerative joint disease of the knees and noted that appellant could return to work on January 13, 2014 with restrictions and 50 percent sedentary work for six weeks. Appellant submitted a primary treating physician's progress report from Dr. Kim dated April 8, 2014 which noted her complaints of bilateral knee pain. Dr. Kim diagnosed bilateral knee osteoarthritis and noted that appellant could return to modified duty on April 15, 2014 subject to restrictions. Appellant also submitted physical therapy reports.

In a decision dated September 3, 2014, OWCP's Branch of Hearings and Review affirmed the decision dated March 25, 2014.

LEGAL PRECEDENT

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

Under FECA, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁶

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).

⁶ *Raymond W. Behrens*, 50 ECAB 221 (1999).

ANALYSIS

OWCP accepted appellant's claim for temporary aggravation of localized primary osteoarthritis of the bilateral lower legs. Appellant stopped work on June 25, 2013 and claimed wage loss beginning September 7, 2013. OWCP terminated her compensation effective March 20, 2014 based on Dr. Ha'Eri's opinion. The Board finds, however, that there is an unresolved conflict in medical opinion between Dr. Ha'Eri, OWCP referral physician, and Dr. Kim, appellant's treating physician.

In his report, Dr. Ha'Eri opined that the temporary aggravation of localized primary osteoarthritis of the bilateral lower legs ceased on June 26, 2013 and appellant did not have residuals of the February 13, 2005 injury and no longer required any medical treatment for her knees on an industrial basis. He disagreed with Dr. Kim that appellant required a bilateral total knee replacement due to her work injury and advised that the total bilateral arthroplasty was medically reasonable, but it was due to age-related degenerative joint disease of the knees, not the industrial injury. Dr. Ha'Eri opined that appellant had reached maximum medical improvement and could return to work full time with restrictions related to the degenerative condition of the knees.

By contrast, reports from Dr. Kim dated November 12, 2013 to March 4, 2014 continued to support total disability due to appellant's accepted condition of temporary aggravation osteoarthritis of the bilateral lower legs. He opined that the cause of appellant's osteoarthritis bilaterally was preexisting genetic predisposition, but that her work aggravated her condition resulting in the need for a knee replacement. Dr. Kim reviewed appellant's job duties as a mail handler and indicated that she could not tolerate these duties. He reviewed Dr. Ha'Eri's November 6, 2013 report and opined that the underlying osteoarthritis preexisted her injury, but the injury resulted in significant aggravation of her preexisting condition with significant symptoms and continuing disability. Dr. Kim believed that appellant's diagnosed obesity, as well as repetitive weight bearing and stress on her knees as a postal employee, aggravated her osteoarthritis.

Section 8123 of FECA⁷ provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁸ The Board finds that, because OWCP relied on Dr. Ha'Eri's opinion to terminate appellant's compensation without having resolved the existing conflict,⁹ OWCP has failed to meet its burden of proof in terminating compensation benefits.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Id.* at § 8123(a); *Shirley L. Steib*, 46 ECAB 39 (1994).

⁹ *See Craig M. Crenshaw, Jr.*, 40 ECAB 919, 923 (1989) (finding that OWCP failed to meet its burden of proof because a conflict in the medical evidence was unresolved).

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate benefits, effective March 20, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2014 is reversed.

Issued: April 7, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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