

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

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**B.O., Appellant**

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
CENTER, Jacksonville, FL, Employer**

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**Docket No. 15-0385  
Issued: August 19, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 9, 2014 appellant filed a timely appeal of a November 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</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 OWCP met its burden to terminate her compensation benefits effective November 16, 2014.

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<sup>1</sup> Appellant filed a timely request for oral argument. After exercising its discretion pursuant to 20 C.F.R. § 501.5(a), by order dated May 6, 2015, the Board denied her request on the grounds that her arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-385 (issued May 6, 2015).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 2, 1985 appellant, then a 29-year-old mail handler, filed a traumatic injury claim alleging that she tore a nail on her right big toe when a wheel ran over her foot. OWCP accepted the claim for great right toe contusion and assigned OWCP File No. xxxxxx205.

On October 5, 1985 appellant, then a 30-year-old mail handler filed a traumatic injury claim alleging that on October 4, 1985 she pulled a muscle in her right knee while pulling on a jammed mail container. OWCP accepted the claim for right knee sprain, lateral collateral ligament; strained right hamstring, right knee subluxation, permanent aggravation of degenerative right patella facet changes; right patellae chondromalacia; and closed right dislocation of patella.

OWCP combined File No. xxxxxx205 with File No. xxxxxx269, listing the latter as the master file number.

By letter dated March 14, 1986, the employing establishment informed appellant that it had terminated her employment effective March 13, 1986.

OWCP issued a loss of wage-earning capacity (LWEC) determination on November 16, 1987 reducing appellant's wage-loss compensation based on her ability to earn wages in her position of medical unit secretary.

The record reveals that appellant underwent vocational rehabilitation and obtained her license as a lab technician with the State of Florida: Health and Rehabilitation Service, Public Health Unit. In a notice dated November 23, 1992, OWCP proposed to reduce appellant's compensation because the position of lab technician fairly and reasonably represented her wage-earning capacity.

By decision dated January 6, 1993, OWCP determined that modification of the November 16, 1987 LWEC was not warranted as her current pay rate for the position of lab technician was the same as the rated position of medical unit secretary.

On June 30, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, to determine appellant's current status. In a July 22, 2014 report, Dr. Smith noted the claim had been accepted for lateral collateral right knee ligament sprain, dislocation of right knee patella, and right knee patella chondromalacia. A physical examination revealed no gross right knee instability, normal patella track, and no chondromalacia due to the total knee replacement. Dr. Smith noted that appellant underwent bilateral total knee replacement in 2004. OWCP did not authorize the total right knee replacement surgery as it determined that the surgery was unrelated to the accepted 1985 employment injury. Dr. Smith concluded that all of her employment-related conditions had resolved and that she required no further medical treatment. He determined that appellant was

disabled from returning to her date-of-injury position based on the bilateral total knee replacements, but was capable of performing sedentary work.<sup>3</sup>

On September 16, 2014 OWCP issued a notice proposing to terminate appellant's compensation benefits. It found that the weight of the evidence that her accepted conditions had resolved with no residuals resided with the opinion of Dr. Smith, a second opinion physician.

In a letter dated October 10, 2014, appellant indicated her disagreement with the proposal to terminate her compensation benefits as she continued to have residuals from her accepted employment injury. She submitted a September 26, 2014 report from Dr. Jonathan P. Garino, a treating Board-certified orthopedic surgeon, diagnosing obesity and status bilateral knee joint replacement. A physical examination of the right knee revealed a normal gait, no swelling, no tenderness, and no limitation on flexion or extension. Dr. Garino reported instability tests were negative. In an attached work capacity evaluation form, he indicated that appellant was capable of working an eight-hour day with restrictions. The restrictions included up to one hour of standing or walking and no twisting, bending/stooping, pushing, pulling, kneeling, lifting, swatting, and climbing.

By decision dated November 13, 2014, OWCP finalized the termination of her compensation benefits to become effective November 16, 2014.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>4</sup> After it has determined that an employee has disability causally related to her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>8</sup>

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<sup>3</sup> By decision dated February 25, 2004, OWCP denied authorization for bilateral knee replacements as not warranted due to the accepted injuries. An OWCP hearing representative affirmed this denial on May 16, 2005.

<sup>4</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

## ANALYSIS

OWCP accepted the conditions right toe contusion, right knee sprain, lateral collateral ligament; strained right hamstring, right knee subluxation, permanent aggravation of degenerative right patella facet changes; right patellae chondromalacia; and closed right dislocation of patella as being caused by the September 2 and October 4, 1985 employment injuries. By decision dated November 13, 2014, it terminated appellant's compensation benefits. OWCP found that the weight of the evidence rested with the opinion of Dr. Smith, an OWCP referral physician, who concluded that appellant no longer had any disability or residuals due to her accepted employment conditions.

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on the opinion of Dr. Smith, an OWCP referral physician, who reviewed the complete history of appellant's employment injury, medical treatment and the statement of accepted facts concerning the work accepted conditions: right toe contusion, right chondromalacia patellae, right hamstring muscle sprain, right patella subluxation, permanent aggravation of right patella facet degenerative changes, and right dislocated patella. Dr. Smith reported essentially normal findings on physical examination and noted no objective evidence of the accepted employment conditions. He found that appellant no longer had any residuals or disability due to her accepted October 4, 1985 employment injury. A physical examination revealed no right knee instability, a normal patella track and no chondromalacia. Dr. Smith concluded that appellant's current condition and disability were due to her bilateral total knee replacements, which were unrelated to the accepted conditions.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>9</sup> Dr. Smith fully discussed the history of injury and noted that there were no objective findings to establish that appellant had any continuing employment-related residuals or disability. The Board finds his opinion is detailed, well rationalized and based upon a complete and accurate history. The Board finds that Dr. Smith's opinion represents the weight of the medical evidence. OWCP met its burden of proof to terminate compensation.

Dr. Garino diagnosed status post bilateral knee joint replacement and obesity and provided work restrictions. While he opined that she was capable of working with restrictions, he provided no rationale for this limitation to show that it is causally related to appellant's accepted employment conditions. Dr. Garino, however, provided no opinion as to whether appellant continued to have residuals of her accepted conditions. As such, his report is of diminished probative value.<sup>10</sup>

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<sup>9</sup> See *K.W.*, 59 ECAB 271 (2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

<sup>10</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009); *T.F.*, 58 ECAB 128 (2006) (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale); see also *S.D.*, 58 ECAB 713 (2007) (the Board has held that a medical opinion not fortified by medical rationale is of little probative value).

The Board finds that OWCP properly terminated compensation benefits effective November 16, 2014 because appellant no longer suffered from any residuals related to her accepted employment condition and will affirm that decision.

On appeal, appellant disagrees with OWCP's reliance on Dr. Smith's opinion to find that she no longer had any residuals or disability due to her accepted right knee conditions. As explained above, the medical evidence establishes that her accepted condition had resolved with no residuals. The record contains no physician's opinion, with supporting rationale based on the objective evidence, that appellant continued to have residuals of the accepted employment condition.

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 compensation benefits effective November 16, 2014 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 13, 2014 is affirmed.

Issued: August 19, 2015  
Washington, DC

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

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

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