

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

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G.L., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
IMMIGRATION & CUSTOMS )  
ENFORCEMENT, Los Angeles, CA, Employer )

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**Docket No. 15-1487  
Issued: October 13, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 30, 2015 appellant filed a timely appeal from a June 11, 2015 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 OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 11, 2015.

**FACTUAL HISTORY**

On April 10, 1984 appellant, then a 56-year-old immigration detention officer, filed a traumatic injury claim alleging that on February 3, 1984 he twisted his right knee and fell down

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

at work. On March 12, 1984 appellant underwent right knee arthroscopic surgery and stopped work. OWCP accepted his claim for unspecified derangement of right knee and authorized payment of benefits. Appellant received medical treatment from Dr. Harold B. Markowitz, a Board-certified orthopedic surgeon.

On November 18, 1985 OWCP granted appellant a schedule award for six percent permanent impairment of the right lower extremity. The award ran for 17.28 weeks from July 31 to November 28, 1984.

Appellant underwent vocational rehabilitation. On September 29, 1988 he returned to work as a full-time, modified school bus driver. On January 23, 1990 OWCP reduced appellant's wage-loss compensation based on his ability to earn wages in his position as a school bus driver. Appellant continued to receive partial disability compensation and medical benefits.

In an October 5, 1989 diagnostic report, Dr. Michael B. Brachman, a Board-certified diagnostic radiologist, observed mild-to-moderate uptake in the patella bilaterally and slight uptake in the medial tibial plateau. He explained that these findings were most consistent with degenerative arthritis.

Appellant continued to receive medical treatment from Dr. Markowitz, who stated, in an October 12, 1989 report, that appellant complained of stiffness and pain in his right knee and intermittent pain in his left knee. Dr. Markowitz noted that an October 5, 1989 bone scan revealed findings most consistent with degenerative arthritis. Upon examination, he observed marked pain to patellofemoral compression of the right knee and marked pain to palpation along the anterior aspect of the right knee. Full motion was present. Dr. Markowitz opined that appellant had symptoms and findings which were consistent with degenerative arthritis in the right knee.

In an October 13, 2010 report, Dr. Markowitz documented appellant's complaints of intermittent pain and swelling in his right knee. He noted that appellant had complaints in his right knee following a work-related injury. Upon examination of appellant's knees, Dr. Markowitz observed slight swelling present in his right knee and pain to palpation along the medial and lateral joint lines on the right, with slight patellofemoral crepitus on motion of his right knee. Patellar subluxation and McMurray's tests were normal. Dr. Markowitz reported that x-rays taken that day demonstrated moderate degenerative osteoarthritic changes in the right knee. He diagnosed degenerative osteoarthritis of the right knee. Dr. Markowitz concluded that appellant had no need for further medical treatment.

The record does not contain any medical records from October 19, 2010 to June 30, 2014.

On May 1, 2014 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Ghol Bahram Ha'Eri, a Board-certified orthopedic surgeon, for a second-opinion examination to determine whether appellant continued to suffer residuals of the February 3, 1984 work injury. In a June 30, 2014 report, Dr. Ha'Eri discussed the SOAF and appellant's history. He noted that appellant's condition was accepted for internal derangement of the right knee. Dr. Ha'Eri related appellant's complaints of right knee and elbow pain. Upon examination of the knees, he observed no swelling or effusion and no

deformity. Dr. Ha'Eri reported that palpation revealed tenderness, which was mild on the left and moderate on the right. He found that right knee examination demonstrated mild tenderness over the medial aspect. Range of motion was normal. Dr. Ha'Eri diagnosed bilateral knee osteoarthritis. He opined that appellant did not have any continuing residuals of the February 3, 1984 employment injury. Dr. Ha'Eri noted that the March 12, 1984 right knee surgery revealed that appellant had been in the early stage of degenerative arthritis of his knee. He explained that the February 3, 1984 employment injury resulted in the temporary aggravation of appellant's preexisting mild degenerative condition of the right knee. Dr. Ha'Eri opined that the temporary aggravation ceased after the March 12, 1984 surgery and that subsequent changes to appellant's right knee were related to the normal progression of the preexisting underlying disease. He reported that appellant's current knee condition of degenerative arthritis was not medically connected to the February 3, 1984 employment injury.

On April 16, 2015 OWCP proposed to terminate appellant's compensation and medical benefits based on Dr. Ha'Eri's June 30, 2014 second opinion report, which found that appellant's February 3, 1984 employment injury had resolved. Appellant was advised that he had 30 days to submit additional evidence or argument if he disagreed with the notice of proposed termination. No evidence was received.

By decision dated June 11, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective June 11, 2015.

### **LEGAL PRECEDENT**

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>2</sup> OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>3</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>6</sup>

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<sup>2</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

<sup>6</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

## ANALYSIS

OWCP accepted that on February 3, 1984 appellant sustained a right knee injury in the performance of duty. Appellant's claim was accepted for unspecified derangement of the right knee. By decision dated June 11, 2015, OWCP terminated appellant's compensation benefits. It found that the weight of the evidence rested with the opinion of Dr. Ha'Eri, an OWCP referral physician, who concluded that appellant no longer had any residuals causally related to the February 3, 1984 employment injury.

The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits. In his June 30, 2014 report, Dr. Ha'Eri reviewed appellant's history of injury, medical treatment, and the SOAF. He noted that at the time of the 1984 surgery chondromalacia of the patella and medial femoral condyle were reported. Dr. Ha'Eri explained that the February 3, 1984 employment injury resulted in the temporary aggravation of appellant's preexisting mild degenerative condition of the right knee. He opined that the temporary aggravation ceased after the March 12, 1984 surgery and that subsequent changes to appellant's right knee were related to the normal progression of the preexisting underlying disease. Dr. Ha'Eri concluded that appellant's current condition of degenerative arthritis was unrelated to his February 3, 1984 employment injury.

The weight of 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>7</sup> In this case, Dr. Ha'Eri fully discussed the history of injury and provided findings on examination. He explained that appellant's accepted knee condition had ceased and that his current degenerative knee condition was not related to the February 3, 1984 employment injury. The medical record supported that appellant was diagnosed with degenerative arthritis as early as October 5, 1989 and there is no medical evidence to establish that his degenerative condition was related to his employment. The Board finds that Dr. Ha'Eri's opinion is detailed, well rationalized and based upon a complete and accurate history. Dr. Ha'Eri provided medical rationale for his opinion that appellant's accepted right knee condition had resolved and that his current condition of degenerative arthritis was not related to the February 3, 1984 injury.

The Board finds that Dr. Ha'Eri's opinion constitutes the weight of the medical evidence and is sufficiently rationalized to establish that appellant's February 3, 1984 employment injury had resolved.<sup>8</sup> There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that he has any continuing residuals related of his accepted condition. OWCP, therefore, met its burden of proof to terminate appellant's entitlement to compensation and medical benefits effective June 11, 2015.

Appellant had received a loss of wage-earning capacity determination on April 2, 2001. The Board has held that once a loss of wage-earning capacity is determined, it remains in place

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<sup>7</sup> See *K.W.*, 59 ECAB 271 (2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

<sup>8</sup> See *R.T.*, Docket No. 15-907 (issued August 18, 2015).

unless modified.<sup>9</sup> A modification of such a determination is not warranted unless there is a material change in the nature and extent of the employment-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was in fact erroneous.<sup>10</sup> In certain situations, however, if the medical evidence is sufficient to meet OWCP's burden of proof to terminate benefits, the same evidence may also negate a loss of wage-earning capacity such that a separate evaluation of the existing wage-earning capacity determination is unnecessary.<sup>11</sup> OWCP's burden to demonstrate no further disability is effectively the same, irrespective of whether there is an existing determination in place finding loss of earning capacity.<sup>12</sup> In this case, as the Board finds that OWCP properly terminated benefits, no further analysis on the modification of the wage-earning capacity is necessary.<sup>13</sup>

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 and medical benefits effective June 11, 2015.

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<sup>9</sup> A wage-earning capacity determination remains in effect until it is properly modified. *See Katherine T. Kreger*, 55 ECAB 633 (2004); *see P.Y.*, Docket No. 09-2293 (issued September 1, 2010) and *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

<sup>10</sup> *George W. Coleman*, 38 ECAB 782 (1987); *Ernest Donelson, Sr.*, 35 ECAB 503 (1984).

<sup>11</sup> *A.P.*, *supra* note 9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board