United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 16-0933**
	)	**Issued: December 9, 2016**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 31, 2016 appellant filed a timely appeal from a March 9, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 properly terminated appellant's wage-loss compensation and medical benefits effective March 9, 2016 as she no longer had any residuals or disability causally related to her accepted employment-related injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 9, 2014 appellant, then a 47-year-old parole program specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 30, 2014 she sustained a right knee injury when a heavy box fell on her knee. OWCP accepted the claim for right knee contusion. Appellant stopped work on October 7, 2014 and did not return. She received medical and wage-loss compensation payments for total disability on the supplemental rolls from November 14, 2014 to June 27, 2015, and on the periodic rolls from June 28, 2015 to March 8, 2016.

Appellant's treating physicians, Dr. Shaheer Yousaf, a Board-certified orthopedic surgeon, and Dr. Daniel R. Ignacio, a Board-certified physiatrist, continued to opine that appellant was totally disabled as a result of her work injury. The records indicate that appellant had also been diagnosed with internal derangement of the right knee, torn medial meniscus right knee, right medial collateral ligament strain, chondromalacia of the right knee, and right patellar tendinopathy.

In order to determine appellant's current condition and her ability to return to full-time employment, on April 23, 2015 OWCP referred appellant, a copy of her medical records, a statement of accepted facts (SOAF) and a list of questions to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Hanley was also asked to opine whether appellant had sustained any other medical conditions as a result of the incident, including a meniscal tear.

In a May 21, 2015 report, Dr. Hanley noted appellant's history of injury and his review of her medical records. He indicated that an October 14, 2014 magnetic resonance imaging (MRI) scan did not show internal derangement, evidence of an effusion, or a tear of the meniscus. Dr. Hanley noted that the second MRI scan was reported to show evidence of a linear tear of the medial meniscus. He found that the mechanism of injury was inconsistent with a meniscal tear, and found the MRI scan diagnosis unfounded, as there was no clinical correlation for the diagnosis. Dr. Hanley noted that appellant was referred to Dr. Ignacio who practiced a form of pain management and that she was not working while she was awaiting approval for aqua therapy and referral for an orthopedic surgeon.

Dr. Hanley observed that appellant used the cane in the wrong hand and, while walking, she did not offload the right knee as much as the left knee. He stated that her walking ability was limited and that her weight might have more to do with her knee pain than anything else. Dr. Hanley opined that the work-related contusion of the right knee had resolved and appellant was no longer disabled from work as a result. He indicated that her continuing symptoms represented an arthralgia due to her inactivity and weight as opposed to any specific injury. Dr. Hanley stated that he did not believe that the findings on the second MRI scan were valid. He explained that the contusion was a soft tissue-type injury and that there was no evidence of any anatomic change in the structures, which would lead to the persistent pain appellant was reporting. Dr. Hanley indicated that ongoing medical care (aquatic therapy and injection management) were not necessary and the use of Motrin should manage her complaints. He stated that appellant may be more susceptible to ongoing pain in the future if she did not condition her extremities more properly and approach ideal body weight.

On June 6, 2015 OWCP issued a notice of proposed termination of medical benefits and wage-loss compensation to appellant. It found that Dr. Hanley's second opinion established the weight of the medical opinion evidence that she no longer had any residuals of her accepted work-related condition or continued disability from work as a result of the September 30, 2014 injury. Appellant was afforded 30 days in which to submit additional evidence or argument.

Numerous reports from Dr. Ignacio dated from June 2015 through February 26, 2016 were received. Some of Dr. Ignacio's reports were supplemented by physical therapy reports signed by physical therapists. In a July 14, 2015 report, Dr. Ignacio reported that appellant had been under his care for medical conditions sustained at work on September 30, 2014. He stated that the MRI scan of the right knee demonstrated multiple injuries to the right knee with evidence of tear of the medial meniscus and partial tear of the patella articular surface with bone edema and joint effusion and that the follow-up MRI scan confirmed the multiple injuries to the ligament along the right knee. Dr. Ignacio provided an impression of postcontusion/crush injury to the right knee, torn medial meniscus of the right knee, medial collateral ligament strain, bursitis of the right knee, traumatic chondromalacia of the right knee, and right patellar tendinopathy. He indicated that appellant would be kept on pain management and would proceed with a rehabilitation program, with referral to an orthopedic surgeon.

In a September 15, 2015 report, Dr. Ignacio noted that appellant saw Dr. Nigel Azer, a Board-certified orthopedic surgeon, who suggested surgical exploration and repair of the right knee, but that she was waiting approval for the arthroscopic surgery. He provided an impression of chronic right knee strain, chronic internal derangement of the right knee with torn medial meniscus, chronic medial collateral ligament strain, chronic chondromalacia of the right knee, chronic right patellar tendinopathy, and chronic right peroneal neuropathy. Dr. Ignacio also continued to opine that appellant was totally disabled.

Reports from Dr. Azer dated August 17 and December 28, 2015, and February 24, 2016 were received.[2] In his August 17, 2015 initial report, he noted the history of injury, appellant's medical treatment, and that she had continued to have pain and mechanical symptoms. Dr. Azer noted that a February 2, 2015 MRI scan showed a horizontal oblique tear of the posterior horn and medial third of the medial meniscus with extension to the inferior surface. He reported examination findings and noted x-rays of both knees showed some arthritic changes at the patellofemoral joint with good preservation of the tibiofemoral articulation. Dr. Azer provided an impression of traumatic chondromalacia of the right knee and medial meniscus tear of the right knee and recommended an arthroscopy of the right knee. He also found that appellant had a traumatic aggravation of the arthritis in her right knee, for which she may need further treatment.

In his December 28, 2015 report, Dr. Azer diagnosed traumatic chondromalacia of the right knee, medial meniscus tear of right knee, and an aggravation of chondromalacia left knee with possible meniscus tear. He opined that surgical intervention was necessary and recommended a diagnostic and therapeutic arthroscopy of the right knee. Dr. Azer also indicated that appellant's left knee had been bearing a significant amount of force over the past 16 months

[2] In a November 21, 2015 letter, appellant requested authorization to transfer her medical care to Dr. Azer, which OWCP authorized on December 21, 2015.

and she might have a meniscus tear in her left knee as a result of her altered gait. He intended to submit an authorization request for surgery for her right knee, due to the September 30, 2014 work injury.

In his February 24, 2016 report, Dr. Azer reviewed a February 17, 2016 MRI scan of the left knee, which showed a nondisplaced longitudinal tear of the middle third of the medial meniscus. There also appeared to be a second tear of the medial meniscus posterior horn and inflammation around the bursa of the medial collateral ligament with mild cartilage degeneration at the patellofemoral joint. Dr. Azer diagnosed chondromalacia left knee, medial meniscus tear left knee, and contusion left knee. He opined that those conditions were a direct consequence of appellant's altered gait related to the September 30, 2014 right knee injury.

OWCP determined that there was a conflict in medical opinion evidence between Dr. Azer, appellant's attending physician, and Dr. Hanley, the second opinion physician, regarding the nature and extent of appellant's September 30, 2014 work-related injury, including current work restrictions and capabilities, and a work-related basis for surgical repair. It referred her to Dr. Mohammed H. Zamani, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 23, 2016 report, Dr. Zamani noted the history of injury, his review of the medical records and SOAF, and presented examination findings. In discussing appellant's medical history, he stated, in pertinent part, that her initial MRI scan showed no tear of the meniscus and, in his opinion, it was unnecessary to repeat MRI scanning. Dr. Zamani indicated that she had minor trauma and a bruise in the soft tissue above the knee and that the mechanism of injury was not capable of producing any internal derangement or tear of the meniscus that was provided by MRI scans. He stated that the MRI scan findings of collateral ligament minor synovitis were not as a result of contusion of the knee; rather appellant had arthritis and patellofemoral arthritis, which was well documented on x-ray. Dr. Zamani agreed with Dr. Hanley that the work-related contusion had resolved and that arthroscopic surgery as a result of the work injury was not required. He reiterated that mechanism of injury was not capable of producing a meniscus tear. Dr. Zamani found appellant overweight, had preexisting patellofemoral arthritis as demonstrated by x-rays prior to the work-related injury, and that the mechanism of injury had produced only a minor contusion. He noted that there had been no report of a serious contusion, such as a cut, bleeding, laceration, black and blue discoloration, or hematoma, nor was there any such evidence of that in the records. Based on examination and x-ray findings, the objective finding was that appellant was overweight and had patellofemoral arthritis. Dr. Zamani opined that the accepted contusion had resolved and treatment beyond three weeks was totally unnecessary.

Dr. Zamani explained that, after the first MRI scan, appellant should have been given assurance that nothing was serious and that no damage was done. He also indicated that she should have been allowed to return to work, given some home exercises and some anti-arthritic medications, and advised on weight loss. Dr. Zamani stated that appellant experienced a very minor trauma, which fully subsided, and that she was capable of working and doing all activities without restriction. He indicated that there was no reasonable medical basis for ongoing medical care and that there was a serious question about the treatment provided by Dr. Ignacio as it was unnecessary, unethical, unjust, and unreasonable. Dr. Zamani further opined that appellant

required no arthroscopic surgery and the repeat MRI scanning was unrelated to the above-dated accident. Since the initial MRI scan reported no meniscus tear, no further treatment was required. Dr. Zamani stated that if there was a nondisplaced tear, since appellant was overweight and had early arthritic changes, further removal of the meniscus would guarantee that the knee would develop increased severe arthritis, and she would become more disabled. He also discussed Dr. Azer's left knee findings and found that this symptomatology was unrelated to the claim.

By decision dated March 9, 2016, OWCP terminated appellant's medical and wage-loss compensation benefits effective the same date. Special weight was accorded to Dr. Zamani's impartial medical opinion that she no longer had any residuals related to her accepted work-related medical condition or continued disability from work as a result of the September 30, 2014 work injury.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[3] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4] Furthermore, 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 that requires further medical treatment.[5]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[6] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[7] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the

[3] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[4] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[5] *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

[6] 5 U.S.C. § 8123(a).

[7] 20 C.F.R. § 10.321.

purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8]

ANALYSIS

OWCP accepted appellant's claim for right knee contusion. It eventually retained her on the periodic compensation rolls. In a report dated May 21, 2015, Dr. Hanley, OWCP's second opinion physician, opined that appellant no longer had any residuals of her accepted work-related condition or continued disability from work as a result of the September 30, 2014 employment injury. Dr. Azer, appellant's treating physician, continued to diagnose right knee conditions requiring surgery and left knee conditions resulting from her altered gait due to the September 30, 2014 work injury. OWCP properly found a conflict of medical opinion existed between Dr. Hanley and Dr. Azer, which required referral to an impartial medical examiner.

OWCP referred appellant to Dr. Zamani, the impartial medical specialist, to address the conflict in medical opinion evidence. It found that termination of her medical and wage-loss compensation benefits were justified based on the impartial medical opinion of Dr. Zamani. The burden is on OWCP to support the termination of appellant's compensation benefits.[9]

The Board finds that Dr. Zamani's report is entitled to the special weight of the medical opinion evidence and establishes that appellant's employment-related condition of right knee contusion and any disability from her accepted condition had resolved. Dr. Zamani's report further establishes that her other diagnosed medical conditions are not causally related to or a consequence of the September 30, 2014 work-related incident.

Dr. Zamani provided an accurate history of injury, noting that a large box had fallen on appellant's right knee on September 30, 2014. He reviewed her medical history, her course of medical treatment, and provided his results on physical examination of her lower extremities. Dr. Zamani also noted that at the time of injury, appellant did not have a serious contusion, which produced a cut, bleeding, laceration, black and blue discoloration, or hematoma. He found minor trauma and a bruise in the soft tissue above the knee, but indicated that the mechanism of injury was not as such to produce any internal derangement or tear of the meniscus.

Dr. Zamani concluded that the MRI scan findings of collateral ligament minor synovitis were due to the knee contusion; rather appellant has arthritis and patellofemoral arthritis, which was well documented on x-ray. He opined that the accepted contusion had resolved and treatment beyond three weeks was totally unnecessary. Dr. Zamani indicated that, after the first MRI scan, appellant should have been given assurance that nothing was serious and no damage was done and that she should have been placed in work, given some home exercises, and some anti-arthritic medications and advised on weight loss. He opined that she had experienced a very minor trauma, which fully subsided, and that she was capable of working and doing all activities without restriction. Dr. Zamani found that the requested right knee surgery was medically

[8] *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

[9] *Supra* note 3.

unnecessary and unreasonable and not caused by the September 30, 2014 work injury. He also found Dr. Azer's left knee findings and symptomatology to be unrelated to this claim.

The Board finds that Dr. Zamani's determination that appellant's right knee contusion had resolved and that she could return to work without restrictions is sufficiently detailed and supported to constitute the special weight of the medical evidence.[10] Dr. Zamani also clearly explained and provided rationale as to why her other diagnosed conditions of the right and left knee were not related to the September 30, 2014 mechanism of injury and why medical treatment after the first MRI scan was not medically necessary. His opinion is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.[11]

The medical evidence appellant submitted prior to the termination is insufficient to overcome the special weight accorded to Dr. Zamani as an impartial medical specialist. The reports of Dr. Azer gave rise to the conflict in medical opinion, which Dr. Zamani resolved, and no additional reports from Dr. Azer were received. The Board has long held that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.[12]

While Dr. Ignacio indicated in several reports that appellant had ongoing work-related disability and/or remaining residuals of her accepted medical condition, his reports were not well rationalized and, as explained by Dr. Zamani, not based on objective medical evidence. A medical opinion which is not well rationalized and is not based on objective medical evidence is of limited probative value.[13]

The Board concludes that Dr. Zamani's opinion, that the residuals of appellant's accepted condition had resolved and that there is no residual disability or need for ongoing medical care, is entitled to the special weight accorded an impartial medical examiner.[14] OWCP therefore properly terminated her medical and wage-loss compensation benefits on March 9, 2016.

On appeal, appellant contended that her compensation abruptly ended on March 9, 2016. The Board notes that she received a proposed notice of termination of benefits on June 6, 2015. After appellant submitted reports from Dr. Ignacio and Dr. Azer, OWCP determined that a conflict existed in the medical evidence and referred her to Dr. Zamani for an impartial medical evaluation. Following Dr. Zamani's impartial medical report appellant's proposed termination

[10] *M.H.*, Docket No. 12-1865 (issued April 1, 2013).

[11] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

[12] *D.C.*, Docket No. 16-0430 (issued August 29, 2016).

[13] *See A.C.*, Docket No. 11-1339 (issued March 9, 2012).

[14] *See supra* note 11.

was finalized. OWCP's regulations at section 10.541 addresses whether a second notice of proposed termination of compensation is required in this situation. This regulation states:

> "(b) Evidence or argument which refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the beneficiary submits evidence or argument which fails to refute the evidence upon which the proposed action was based, but which requires further development, OWCP will not provide the beneficiary with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, [it] will either continue payment or issue a decision consistent with its prior notice."[15]

The Board therefore finds that OWCP properly followed the regulatory requirements and met its burden of proof to terminate compensation benefits.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 9, 2016 as she no longer had any residuals or disability causally related to her accepted employment-related injury.

[15] 20 C.F.R. § 10.541.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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