

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

R.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jersey City, NJ, Employer**

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**Docket No. 16-0365
Issued: March 17, 2016**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 21, 2015 appellant, through counsel, filed a timely appeal from a September 10, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits effective December 19, 2014; and (2) whether appellant has established continuing employment-related disability after December 19, 2014.

FACTUAL HISTORY

On June 28, 2013 appellant, then a 53-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on June 25, 2013 he sustained a knee injury while

¹ 5 U.S.C. § 8101 *et seq.*

kneeling in a tunnel to install central vacuum piping. On the claim form appellant indicated that he felt pain while standing up. The record indicates that appellant stopped working.²

With respect to medical evidence, appellant submitted a July 11, 2013 magnetic resonance imaging (MRI) scan from Dr. Rosemary Klecker, a radiologist, diagnosing right knee medial meniscus tear. In a report dated September 20, 2013, Dr. Vincent McInerney, a Board-certified orthopedic surgeon, reported that appellant was injured at work on June 25, 2013 when installing a central vacuuming system. He diagnosed right knee medial meniscus tear and also osteoarthritis of the right knee. Dr. McInerney indicated that there was no way to know how much osteoarthritis was in the knee before the employment injury. He also indicated that appellant would need surgery to repair the meniscus tear.

On September 16, 2013 OWCP accepted the claim for right knee medial meniscus tear. As of November 17, 2013, appellant received wage-loss compensation on the periodic rolls. On March 26, 2014 he underwent right knee partial medial meniscectomy surgery performed by Dr. McInerney.

Appellant submitted a May 29, 2014 report from Dr. McInerney, who indicated that appellant's right knee was doing well following surgery. Dr. McInerney indicated that appellant was now having problems with his left knee, which he reported was due in part to appellant shifting weight bearing from the right to left knee. He reported that appellant's symptoms were consistent with a left knee medial meniscus tear, and opined this was causally related to the original injury.

OWCP prepared a statement of accepted facts (SOAF) and referred appellant for a second opinion examination by Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon. It requested that Dr. Lakin provide an opinion as to whether appellant continued to have residual disability from the accepted right knee condition.

In a report dated September 2, 2014, Dr. Lakin provided a history, results on examination, and review of diagnostic tests. For the right knee he reported no effusion, no mediolateral joint line tenderness, negative patellofemoral grind, negative patellofemoral crepitus, negative McMurray's test, and negative Laségue's test. Dr. Lakin opined that appellant had no current objective findings, with excellent motion and no instability in the right knee. He opined that appellant had no disability related to the June 25, 2013 knee injury, and no need for further treatment.

By letter dated October 3, 2014, OWCP issued a notice of proposed termination of wage-loss compensation and medical benefits. It indicated that Dr. Lakin represented the weight of the medical evidence. Appellant was advised that the case would be held open for 30 days for submission of further medical evidence.

On November 4, 2014 appellant submitted an October 23, 2015 report from Dr. McInerney. In this report Dr. McInerney reported that appellant had done fairly well

² The claim form suggests that appellant had not stopped working, but a July 24, 2013 report from a Dr. Robert Kayal indicated that appellant had been off work "about a month."

following surgery but could not fully squat and had pain on kneeling. He wrote that it was expected that appellant would have discomfort while crawling, kneeling, or squatting, as appellant did not have his entire medial meniscus intact. Dr. McInerney opined that appellant could perform job duties with restrictions on bending, kneeling, or using a ladder, otherwise it would be difficult to perform full work duties.

On December 9, 2014 appellant submitted a November 24, 2014 report from Dr. McInerney with respect to the left knee. Dr. McInerney reported that the left knee was injured at the same time as the right knee. He reported that an MRI scan on June 3, 2014 showed a left knee medial meniscus tear. According to Dr. McInerney, appellant was more symptomatic initially with the right knee, and had more weight bearing on the left knee which exacerbated the condition.

By decision dated December 19, 2014, OWCP terminated compensation for wage-loss and medical benefits. It found the weight of the medical evidence was represented by Dr. Lakin.

On December 30, 2014 appellant, through counsel, requested a hearing before an OWCP hearing representative. Appellant submitted a brief note dated December 22, 2014 from Dr. McInerney which related that appellant was doing well with his right knee, with good range of motion, strength, and stability with only minimal swelling. Dr. McInerney reported that most of appellant's problems were with the left knee, and appellant could not squat without pain. He indicated that appellant would need left knee surgery.

A hearing was held on June 23, 2015. As to additional medical evidence, appellant submitted a February 2, 2015 report from Dr. McInerney. With respect to the right knee, Dr. McInerney reported that appellant was unable to fully squat and has trouble standing up from 2/3 squatting position due to the right knee pain medially. He reported that there was mild effusion with some crepitation with terminal knee extension, and otherwise relatively good range of motion of the knee. As to the left knee, Dr. McInerney reported that appellant had pain due to years of work at the employing establishment. He asserted that there was further aggravation from the right knee injury, as appellant put more weight on the left knee. Dr. McInerney found appellant was unable to work.

In a report dated June 19, 2015, Dr. McInerney reported that appellant was aware that some of the pain that he had in his right knee when attempting to bend, squat, kneel, or climb was most likely related to the fact that he did not have a normal and complete medial meniscus that would act as a cushion between his femoral and tibial articulations of the medial aspect of his right knee. He indicated that appellant was aware that significant amount of kneeling, climbing, crawling, or climbing up and down the ladder would increase the force loads on his knee joint. By report dated August 25, 2015, Dr. McInerney provided results on examination and indicated that appellant needed left knee surgery.

By decision dated September 10, 2015, the hearing representative affirmed the December 19, 2014 termination decision. She found that the weight of the medical evidence rested with Dr. Lakin and OWCP met its burden of proof to terminate compensation.

LEGAL PRECEDENT -- ISSUE 1

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 employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.⁴

To be of probative value, the opinion of the physician must be based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale.⁵ The Board has held that medical rationale is a medically sound explanation for the opinion offered.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS -- ISSUE 1

In the present case, OWCP terminated compensation for wage-loss and medical benefits effective December 19, 2014. The accepted condition in the case is a right knee torn medial meniscus as a result of an employment incident on June 25, 2013. It is OWCP's burden of proof, with respect to the accepted condition, to terminate compensation.

The Board has reviewed the evidence of record before OWCP at the time of the December 19, 2014 decision and finds that OWCP met its burden of proof to terminate appellant's compensation for wage-loss and medical benefits. Appellant underwent right knee surgery on March 26, 2014. The attending physician, Dr. McInerney, indicated that in a May 29, 2014 report that appellant was doing well with the right knee.

The second opinion physician, Dr. Lakin, provided a complete report with a history, results on examination, and review of medical records. The physical examination results included no effusion, no mediolateral joint line tenderness, negative patellofemoral grind, negative patellofemoral crepitus, negative McMurray's test, and negative Laségue's test. Dr. Lakin provided a rationalized medical opinion that appellant had no objective findings, with excellent range of motion and no instability in the right knee.

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁶ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

⁷ *Supra* note 5.

Appellant submitted an October 23, 2014 report from Dr. McInerney. This report is of diminished probative value to the issue presented. Dr. McInerney does not provide results on examination, or document any objective findings. It is unclear whether he examined appellant on that date. He also does not clearly explain why he felt appellant had an employment-related disability. The right knee surgery occurred approximately seven months earlier and there is no rationalized medical opinion on disability. The November 24, 2014 report from Dr. McInerney refers primarily to the left knee.

The Board accordingly finds that the weight of the medical evidence rests with the complete report of Dr. Lakin. Dr. Lakin provided a rationalized medical opinion on the issue presented. The Board thus finds that OWCP met its burden of proof to terminate compensation with respect to the accepted right knee medial meniscus tear.

On appeal, appellant's counsel argues there was a conflict in the medical evidence between Dr. McInerney and Dr. Lakin. For the reasons discussed above, the Board finds the weight of the medical evidence was properly accorded to Dr. Lakin.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁸

ANALYSIS -- ISSUE 2

Appellant submitted additional medical evidence after the December 19, 2014 termination decision. A review of that evidence indicates that it is not of sufficient probative value to meet appellant's burden to establish a continuing employment-related disability or condition. In the brief report dated December 22, 2014, Dr. McInerney reported appellant was doing well with his right knee, with good range of motion, strength, and stability with only minimal swelling. This does not support a finding of disability casually related to the right knee injury.

In a February 2, 2015 report, Dr. McInerney indicates that appellant was having some trouble squatting and had some right knee pain. He also discusses the left knee, which has not been accepted. Dr. McInerney does not provide a rationalized medical opinion that appellant was disabled for work due to an accepted right knee injury.

In the June 19, 2015 report, Dr. McInerney refers to some pain in the right knee and the lack of a complete medial meniscus. It is unclear whether he was opining that appellant was now permanently disabled due to the medial meniscus tear and subsequent surgery. Dr. McInerney does not discuss prior reports that had indicated appellant was doing well with his right knee, or otherwise provide a reasoned medical opinion on disability for work. To the extent that he is

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

referring to a possible aggravation on returning to work, the possibility of a future injury does not constitute an injury under FECA.⁹

The Board accordingly finds that appellant has not established a continuing employment-related right knee disability after December 19, 2014.

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 compensation for wage-loss and medical benefits effective December 19, 2014. The Board further finds appellant has not established a continuing employment-related disability after December 19, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2015 is affirmed.

Issued: March 17, 2016
Washington, DC

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

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

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

⁹ *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).