

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

C.C., Appellant)

and)

**DEPARTMENT OF AGRICULTURE, FOOD)
SAFETY INSPECTION SERVICE, Atlanta, GA,)
Employer)**

**Docket No. 16-0318
Issued: May 2, 2016**

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 December 10, 2015 appellant filed a timely appeal from an October 14, 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 appellant's wage-loss compensation and medical benefits effective August 24, 2014 because the accepted conditions had resolved with no residuals; and (2) whether appellant established that he had any continuing employment-related disability or condition after August 24, 2014 due to a September 8, 2003 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 2003 appellant, then a 51-year-old poultry inspector, filed a traumatic injury claim alleging that he injured his left knee when his foot was caught in a grate that day.² On November 19, 2003 OWCP accepted aggravation of osteoarthritis of the left knee. Appellant, who stopped work on the date of injury, did not return to work.

In November 2004 OWCP referred appellant for vocational rehabilitation and in September 2005 he moved from Whittier, North Carolina, to Sweetwater, Tennessee.

By decision dated October 28, 2005, OWCP reduced appellant's compensation benefits, effective October 30, 2005, based on his capacity to earn wages as a case worker or counselor. Appellant timely requested a hearing before an OWCP hearing representative. Following a preliminary review, on January 18, 2006 the OWCP hearing representative reversed the October 28, 2005 decision. He noted that appellant had both bachelor and master's degrees but testified that his degrees were worthless because he had a felony conviction in 1989 which meant that he could not pass a background check. The hearing representative further found that the rehabilitation counselor based her availability determination on appellant's previous residence in North Carolina rather than his current residence in Tennessee. He advised OWCP to reinstate appellant's compensation, retroactive to its reduction, and then determine whether the jobs of counselor and case worker were reasonably available in the Sweetwater, Tennessee, area, and to consider appellant's argument that his felony conviction prevented him from obtaining employment, to be followed by a *de novo* determination of his wage-earning capacity. Appellant was paid retroactive wage-loss compensation.

A rehabilitation counselor obtained current Tennessee labor market information and made some inquiries regarding the implications of appellant's felony conviction on job opportunities.

On May 18, 2006 OWCP reduced appellant's compensation benefits, effective June 11, 2006, based on his capacity to earn wages as a case worker or counselor. Appellant requested a hearing.³ By decision dated August 10, 2006, an OWCP hearing representative initially denied appellant's hearing request as untimely and advised him that the issue in the case could equally be addressed by requesting reconsideration with OWCP.

A hearing was held on January 12, 2007. The hearing representative conceded that appellant had timely requested a hearing. At the hearing appellant maintained that his felony record precluded obtaining a job in the selected position of case worker or counselor. He testified that, when he began the vocational rehabilitation process, he thought the felony conviction had been overturned.⁴

² Appellant was injured at a commercial poultry facility in Ellijay, Georgia.

³ Appellant indicated that it was his second hearing request.

⁴ A Commonwealth of Kentucky, Eleventh Judicial Circuit Order dated August 15, 2005 indicated that appellant's motion to set aside judgment of a felony conviction for theft by deception of over \$100.00 was denied.

By decision dated March 15, 2007, an OWCP hearing representative reversed the May 18, 2006 wage-earning capacity decision because it was based on an inaccurate history of the nature and status of appellant's criminal record. She indicated that appellant's wage-loss compensation was to be reinstated at the total disability rate, retroactive to June 11, 2006.

Appellant was returned to the periodic compensation rolls, retroactively to June 11, 2006.

In reports dated July 17, 2007, Dr. Gary J. Voytik, a Board-certified osteopath specializing in orthopedic surgery, noted seeing appellant in a follow-up visit for knee pain and arthritis. He advised that appellant's work restrictions were based on a March 2, 2004 functional capacity evaluation.⁵

On August 10, 2009 OWCP asked Dr. Voytik to provide an updated medical evaluation. An appended unsigned note revealed that appellant had not been seen since July 17, 2007.

In February 2010 OWCP referred appellant to Dr. C. Sanford Carlson, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a March 11, 2010 report, Dr. Carlson noted the history of injury and his review of the medical record, including the statement of accepted facts with addendum. He advised that on January 14, 2010 appellant had a total left knee arthroplasty. Dr. Carlson indicated that he reviewed the operative note⁶ and also noted that appellant had a prior total right knee arthroplasty. He advised that appellant, who was being monitored by the surgeon who performed the arthroplasty, walked with a cane, was very obese, and had pain and swelling of the left knee. Dr. Carlson found the knee stable in all planes with a properly tracking patella, and that left knee x-ray demonstrated it to be in good position. He diagnosed bilateral knee total arthroplasty of arthritic knees, and morbid obesity. Dr. Carlson advised that appellant would reach maximum medical improvement when he obtained a satisfactory result from the left knee surgery, which could take months.

In February 2012 OWCP again referred appellant for a second opinion evaluation with Dr. Kirpal S. Sidhu, a Board-certified orthopedic surgeon. In an April 20, 2012 report, Dr. Sidhu noted the history of injury, and his review of the medical record, including the statement of accepted facts. He described physical examination findings including bilateral knee swelling, left more than right, with no gross collateral laxity in either extension or flexion, and noted appellant's obesity. Dr. Sidhu diagnosed status post bilateral total knee replacement, left side painful. He advised that there were no objective findings to support residuals or disability as a result of the September 8, 2003 employment injury, opining that aggravation of degenerative arthritis was temporary and had resolved. Dr. Sidhu concluded that appellant had reached maximum medical improvement and had permanent physical restrictions.

In May 2014 OWCP again referred appellant for a second opinion evaluation with Dr. Nicholas A. Grimaldi, a Board-certified osteopath specializing in orthopedic surgery. In his June 9, 2014 report, Dr. Grimaldi noted a chief complaint of left knee pain, swelling, and

⁵ The record contains a functional capacity evaluation dated March 3, 2004. It found that appellant would need a sedentary job because he was unable to tolerate prolonged standing due to his left knee.

⁶ The operative note from the January 14, 2010 surgery is not found in the case record before the Board.

instability. He reported the history of injury and his review of the statement of accepted facts and medical record. Knee examination demonstrated well-healed bilateral knees with good sensation and pulses and no effusion or cellulitis. There was no knee instability, and knee range of motion was equal bilaterally. Mild tenderness was present along the medial side of the left knee. Dr. Grimaldi diagnosed resolved degenerative joint disease by surgical intervention of total knee replacement with subjective continued pain. He advised the left knee was normal on examination with no objective findings that correlated with appellant's symptoms, noting no significant swelling, no instability, and no significant areas of tenderness. Dr. Grimaldi concluded that appellant had reached maximum medical improvement and that the original injury was no longer a reason to keep appellant from his job as poultry inspector.

On July 9, 2014 OWCP proposed to terminate appellant's medical benefits and monetary compensation. It found that Dr. Grimaldi's opinion that appellant's work-related condition had resolved constituted the weight of the medical evidence.

Appellant disagreed with the proposed termination. He stated that he was still being treated by two physicians for his left knee condition. Appellant provided no additional medical information.

By decision dated August 19, 2014, OWCP finalized the termination of wage-loss compensation and medical benefits, effective August 24, 2014 finding that the weight of the medical evidence rested with the opinion of Dr. Grimaldi who performed the second opinion evaluation.

On July 29, 2015 appellant, through counsel, requested reconsideration. Counsel submitted a May 1, 2015 report in which Dr. Brian S. Edkin, a Board-certified orthopedic surgeon, noted seeing appellant on September 2 and 30, 2014 and May 1, 2015 for a painful total left knee replacement. He noted his examination differed from that of Dr. Grimaldi. Dr. Edkin found effusion and mediolateral laxity present, stating this could be the cause of appellant's discomfort, as could scar tissue impingement. He recommended an arthrotomy procedure, and maintained that Dr. Grimaldi's evaluation ignored appellant's subjective complaints and ignored subtle physical findings. He opined that Dr. Grimaldi did not have the necessary experience to make a determination of appellant's left knee condition. Dr. Edkin concluded that appellant should have additional surgery as recommended by a revision specialist.

In a merit decision dated October 14, 2015, OWCP found that Dr. Edkin's report was insufficiently reasoned, noting that he did not discuss the September 8, 2003 employment injury or explain how and why the accepted aggravation continued. It found the weight of the medical evidence continued to rest with the opinion of Dr. Grimaldi and denied modification of the August 19, 2014 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation

without establishing that the disability ceased or that it was no longer related to the employment.⁷ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

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 require further medical treatment.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 24, 2014 because the accepted condition of aggravation of left knee osteoarthritis caused by a September 8, 2003 employment injury had resolved without residuals.

The medical evidence contemporaneous with the August 24, 2014 termination consisted solely of Dr. Grimaldi's June 9, 2014 report. OWCP referred appellant to Dr. Grimaldi, a Board-certified osteopath specializing in orthopedic surgery, in May 2014. In his June 9, 2014 report, Dr. Grimaldi noted appellant's complaint of left knee pain, swelling, and instability. He described the history of injury and indicated that he reviewed the statement of accepted facts and medical record. Dr. Grimaldi provided thorough examination findings. He diagnosed resolved degenerative joint disease by surgical intervention of total knee replacement with subjective continued pain. Dr. Grimaldi advised that appellant's left knee was normal on examination with no objective findings that correlated with his symptoms, finding no significant swelling, no instability, and no significant areas of tenderness. He concluded that appellant had reached maximum medical improvement and that the original injury was no longer a reason to keep appellant from his job as poultry inspector.

Appellant had not provided any medical evidence since Dr. Voytik's July 17, 2007 reports when the physician had referred to the most recent March 3, 2004 functional capacity evaluation.¹⁰ In 2009 it was reported that appellant had not been seen since July 17, 2007. In February 2010 Dr. Carlson, an OWCP referral orthopedic surgeon, reported that appellant recently underwent a left total knee replacement. The record contains no information about this procedure such as treatment notes before or after the operation or the operative report. In February 2012 Dr. Sidhu, also an OWCP referral orthopedist, advised that there were no objective findings to support residuals or disability as a result of the September 8, 2003 employment injury. He indicated that aggravation of degenerative arthritis was temporary and had resolved.

⁷ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ *Id.*

⁹ *T.P.*, 58 ECAB 524 (2007).

¹⁰ *Supra* note 6.

The Board finds that OWCP properly determined that the weight of the medical opinion evidence rested with the opinion of Dr. Grimaldi who provided a comprehensive report in which he outlined examination findings and provided a rationalized explanation for his opinion that appellant's accepted aggravation of left knee osteoarthritis had resolved. OWCP therefore met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on August 24, 2014, which was affirmed by OWCP in its later decision of October 24, 2015.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits on August 24, 2014, the burden shifted to him to establish any continuing disability causally related to the accepted condition.¹¹ Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS -- ISSUE 2

With his July 29, 2015 reconsideration request, appellant submitted a May 1, 2015 report in which Dr. Edkin noted seeing appellant on September 2 and 30, 2014 and May 1, 2015 for a painful left total knee replacement. Dr. Edkin noted his review of Dr. Grimaldi's report and advised that their physical examination findings differed. He found effusion and mediolateral laxity present, stating this could be the cause of appellant's discomfort, as could scar tissue impingement. Dr. Edkin recommended an arthroscopy procedure, and maintained that Dr. Grimaldi's evaluation ignored appellant's subjective complaints and ignored subtle physical findings. He opined that Dr. Grimaldi did not have the necessary experience to make a determination of appellant's left knee condition. Dr. Edkin concluded that appellant should have additional surgery as recommended by a revision specialist.

The Board finds this report of diminished probative value because Dr. Edkin failed to relate any disability after August 24, 2014 due to the September 8, 2003 employment injury.¹³ He did not explain why this injury caused continuing disabling residuals, especially considering that appellant had total knee replacement surgery that had not been authorized as due to the accepted aggravation of left knee osteoarthritis. Dr. Edkin exhibited no knowledge of the September 8, 2003 employment injury or when appellant stopped work. He did not explain how or why appellant's current physical examination findings were causally related to this injury.

Dr. Edkin's report submitted on reconsideration is therefore entitled to little probative value and is insufficient to meet an employee's burden of proof to establish that he continued to

¹¹ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

have work-related disability due to the accepted condition aggravation of osteoarthritis of the left knee, caused by a September 8, 2003 employment injury.¹⁴

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 wage-loss compensation and medical benefits effective August 24, 2014 as the medical evidence established that he had no residuals of the accepted aggravation of left knee osteoarthritis. The Board further finds that appellant did not establish that he had any continuing employment-related disability after that date causally related to the September 8, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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

¹⁴ S.S., 59 ECAB 315 (2008).