United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
and	)	**Docket No. 16-0522**
	)	**Issued: May 26, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Eagleville, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 27, 2016 appellant, through counsel, filed a timely appeal from an October 27, 2015 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.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective June 10, 2015; and (2) whether appellant established that he had work-related disability or need for medical treatment after June 10, 2015.

FACTUAL HISTORY

On May 28, 2014 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 27, 2014 he sustained injury when he twisted his left

[1] 5 U.S.C. § 8101 *et seq.*

knee and fell while performing his work duties, and landed on his right knee. OWCP accepted appellant's claim for tear of the posterior horn of the medial meniscus of his left knee. Appellant received disability compensation on the daily roll beginning July 12, 2014.[2]

In a May 28, 2014 report, Dr. David C. Raab, an attending osteopath and Board-certified orthopedic surgeon, indicated that appellant was last seen on May 16, 2014. He reported physical examination findings and provided new diagnoses of "contusion of knee & lower leg." Bilateral knee x-rays from June 3, 2014 showed "mild bi-compartmental joint space narrowing" of both knees and a June 27, 2014 magnetic resonance imaging (MRI) scan of the left knee revealed medial meniscal tear, moderate-to-severe medial degenerative joint disease, and mild-to-moderate chondromalacia patella. A June 27, 2014 MRI scan of the right knee showed "no evidence of meniscal, ligamentous, or tendinous injury," but did show moderate-to-severe patellofemoral articulation, degenerative joint disease, and minimal medial degenerative joint disease.

On a July 23, 2014 prescription pad note, Dr. Raab ordered physical therapy, noting a diagnosis of "[right] knee exacerbation [degenerative joint disease]/contusion." Later notes of Dr. Raab showed that he diagnosed "exacerbation of [degenerative joint disease]." On August 19, 2014 Dr. Raab performed OWCP-authorized left knee surgery, including partial medial and partial lateral meniscectomy. Appellant returned to full-time light duty on December 15, 2014. On February 3, 2015 Dr. Raab indicated, "Discussed with patient the need for total knee replacement due to continued pain from arthritis."

In March 2015, OWCP referred appellant to Dr. Steven J. Valentino, an osteopath and Board-certified orthopedic surgeon, for a second opinion examination and opinion regarding his work-related residuals. A September 26, 2002 MRI scan of appellant's left knee was part of the medical record provided to Dr. Valentino. The findings showed equivocal tear of the medial meniscus, small joint effusion, and a very small Baker's cyst. The October 14, 2002 report of appellant's right knee surgery was also part of the record provided to Dr. Valentino. An August 4, 2003 note from an attending physician revealed the presence of mild degenerative joint disease of his right knee at that time.

In a March 31, 2015 report, Dr. Valentino discussed appellant's factual and medical history, including his work-related injuries in 2001 and 2014. He noted that appellant underwent surgical arthroscopy of the right knee on October 14, 2002 and surgical arthroscopy of the left knee on August 19, 2014 and reported that he had reviewed the reports of these surgical procedures. Dr. Valentino also discussed the diagnostic testing of record, dated between 2002 and 2014, for both legs. He described his physical examination on March 31, 2015, including the results of gait, squat, and lower extremity range of motion evaluations. Dr. Valentino noted that appellant stood 5'5" and weighed 240 pounds, demonstrated a normal reciprocal gait pattern, and was able to perform half a squat complaining of bilateral knee pain. Examination of the lower extremities showed full range of motion in both hips, ankles, and feet, and bilateral

[2] OWCP previously accepted under a separate file that on August 18, 2001 appellant sustained a medial meniscus tear of his right knee. On October 14, 2002 appellant underwent OWCP-authorized subtotal medial meniscectomy and patellar chondroplasty surgery on his right knee. He later returned to regular duty for the employing establishment.

knee range of motion was recorded from 0 to 95 degrees. Dr. Valentino noted that patellofemoral compression and inhibition tests were negative, and that there was no evidence of synovitis or effusion. The neurologic examination revealed that deep tendon reflexes were intact and motor and sensory examinations were normal without pathologic reflexes. Dr. Valentino diagnosed resolved derangement of the posterior horn of the left medial meniscus and resolved right knee contusion. He found that appellant continued with ongoing symptoms secondary to preexisting degenerative arthritis of both knees instead of the 2001 or 2014 work injury. The need for a knee replacement was not a result of a work injury but rather was related to a chronic history of degenerative arthritis aggravated by his body habitus of being 5'5" and weighing 240 pounds. Dr. Valentino indicated, "Currently he has no residuals from the work-related injury of [May 27, 2014] but due to preexisting degenerative arthritis and possible need for knee replacement related to preexisting degenerative arthritis, he should be kept at a light-duty position. However, I find no restrictions that would be referable to residuals of his work-related injury."[3]

In an April 16, 2015 letter, OWCP advised appellant of its proposed termination of his wage-loss compensation and medical benefits, noting that the proposed action was justified by the well-rationalized opinion of Dr. Valentino, the OWCP referral physician. It afforded appellant 30 days to provide evidence and argument challenging the proposed termination action.

In an April 23, 2015 letter, appellant's counsel argued that appellant's continuing lower extremity problems were due to his accepted 2001 and 2014 work injuries. Appellant submitted an April 14, 2015 report in which Dr. Raab diagnosed "exacerbation of [degenerative joint disease]" and indicated that he had discussed with patient "the need for total knee replacement due to continued pain from arthritis."

In a May 8, 2015 report, Dr. Raab described appellant's May 27, 2014 injury and indicated that his clinical symptoms upon initial examination after that injury were consistent with the diagnosis of exacerbation of degenerative joint disease and a medial meniscal tear in his left knee. He detailed appellant's medical treatment and indicated:

> "With a reasonable degree of medical certainty [appellant] sustained a medial meniscus tear of his left knee and exacerbation of degenerative joint disease of both knees as a result of his work[-]related injury that occurred on [May 27, 2014]. As a result of left knee arthroscopy, [appellant's] clicking and popping symptoms related to his meniscus tear have resolved. Despite physical therapy, modification of daily activities, modified work duties, [nonsteroidal anti-inflammatory drugs], narcotics, and visco-supplementation (Orthovisc), [appellant] continues to experience symptoms related to the exacerbation of degenerative joint disease. Bilateral total knee arthroplasty will provide relief of his symptoms, improve his ability to perform activities of daily living, and improve his work tolerance."

[3] Dr. Valentino completed a work restrictions form on March 31, 2015, but indicated that the restrictions were due to preexisting bilateral knee degenerative joint disease and were not related to the May 27, 2014 work injury.

In a decision dated June 10, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 10, 2015 based on the opinion of Dr. Valentino. It found that appellant's ongoing medical condition was related to the natural progression of a preexisting degenerative condition, rather than the 2001 or 2014 work injury. OWCP indicated that Dr. Raab did not provide medical rationale in support of his opinion on causal relationship.

Appellant submitted a May 26, 2015 report in which Dr. Raab diagnosed "exacerbation of [degenerative joint disease]" and indicated, "Discussed with patient the need for total knee replacement due to continued pain from arthritis."

Appellant requested a hearing with an OWCP hearing representative. During the hearing held on September 14, 2015, appellant testified that he felt that Dr. Valentino's evaluation was inadequate as "he didn't look at nothing (sic)." Appellant's counsel indicated that the statement of accepted facts did not mention the October 14, 2002 meniscectomy and chondroplasty. Counsel argued that Dr. Valentino misstated the dates of appellant's early surgeries. He argued that Dr. Valentino only mentioned the 2002 and not the 2001 right knee surgeries. As such this was a "glaring deficiency in his report."

By decision dated October 27, 2015, the OWCP hearing representative affirmed OWCP's June 10, 2015 decision. She found that OWCP's termination of appellant's wage-loss compensation and medical benefits was justified and that appellant had not shown entitlement to compensation after June 10, 2015.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim, it has the burden of proof to justify termination or modification of compensation benefits.[4] OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5]

ANALYSIS -- ISSUE 1

OWCP accepted that on August 18, 2001 appellant sustained a medial meniscus tear of his right knee. On October 14, 2002 appellant underwent OWCP-authorized subtotal medial meniscectomy and patellar chondroplasty surgery on his right knee. OWCP also accepted that on May 27, 2014 he sustained a tear of the posterior horn of the medial meniscus of his left knee. On August 19, 2014 appellant underwent OWCP-authorized left knee surgery, including partial medial and partial lateral meniscectomy.

In a decision dated June 10, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 10, 2015 based on the March 31, 2015 opinion of Dr. Valentino, an osteopath and Board-certified orthopedic surgeon serving as an OWCP referral physician. On October 27, 2015 an OWCP hearing representative affirmed the June 10, 2015 decision.

[4] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[5] *Id.*

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective June 10, 2015 based on the March 31, 2015 opinion of Dr. Valentino. In his March 31, 2015 report, Dr. Valentino discussed appellant's factual and medical history, including both his work-related injuries of 2001 and 2014. He noted that appellant underwent surgical arthroscopy of the right knee on October 14, 2002 and surgical arthroscopy of the left knee on August 19, 2014 and reported that he had reviewed the reports of these surgical procedures. Dr. Valentino also discussed the diagnostic testing of record, dated between 2002 and 2014, for both lower extremities. He described his physical examination on March 31, 2015, including the results of gait, squat, and lower extremity range of motion evaluations. Dr. Valentino diagnosed resolved derangement of the posterior horn of the left medial meniscus and resolved right knee contusion, and found that appellant continued with ongoing symptoms secondary to preexisting degenerative arthritis of both knees instead of the 2001 or 2014 work injury. The need for a knee replacement was not a result of his work injury of May 27, 2014, but rather was related to a chronic history of degenerative arthritis aggravated by his body habitus of being 5'5" and weighing 240 pounds. Dr. Valentino indicated that appellant had no residuals of his work injuries but rather his continuing problems and possible need for knee replacement were related to preexisting degenerative arthritis. Appellant needed to work in a light-duty position, but any work restrictions were not due to a work-related injury."[6]

The Board has carefully reviewed the opinion of Dr. Valentino and notes that it has reliability, probative value, and convincing quality with respect to its conclusion that appellant ceased to have residuals of his 2001 and 2014 injuries by June 10, 2015. Dr. Valentino's opinion provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.[7] Dr. Valentino provided medical rationale for his opinion by explaining that appellant's continuing problems were due to his underlying degenerative condition.

On appeal, appellant's counsel argues that Dr. Valentino did not have adequate medical records regarding appellant's medical treatment after suffering the August 18, 2001 work injury to render a reasoned opinion. However, the Board finds that Dr. Valentino had adequate documents regarding this injury. The October 14, 2002 report for appellant's right knee surgery and other relevant documents were part of the record, a fact confirmed by Dr. Valentino's explicit reference to them in his March 31, 2015 evaluation.[8]

Further, counsel also argued that the reports of Dr. Raab, an attending osteopath and Board-certified orthopedic surgeon, showed that appellant still had residuals of his 2001 or 2014 work injuries at the time of the June 10, 2015 termination action. However, none of Dr. Raab's

[6] Dr. Valentino completed a work restrictions form on March 31, 2015 but indicated that the restrictions were due to preexisting bilateral knee degenerative joint disease and were not related to a work injury.

[7] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[8] Despite counsel's assertion at the hearing, Dr. Valentino properly indicated that the surgery occurred on October 14, 2002. The statement of accepted facts did not mention the October 14, 2002 surgery, but as noted, Dr. Valentino was provided a copy of the surgical report.

reports contains a rationalized opinion that appellant had such work-related residuals at that time. In a May 8, 2015 report, Dr. Raab described appellant's May 27, 2014 work injury and indicated that his clinical symptoms upon initial examination after that injury were consistent with the diagnosis of exacerbation of degenerative joint disease and a medial meniscal tear in his left knee. He noted that appellant continued to have work-related residuals and that, "with a reasonable degree of medical certainty, [appellant] sustained a medial meniscus tear of his left knee and exacerbation of degenerative joint disease of both knees as a result of his work-related injury that occurred on [May 27, 2014]." However, this report is of limited probative value regarding work-related residuals because Dr. Raab did not explain what particular findings showed a work-related aggravation of appellant's underlying degenerative condition and appellant's claim has not been accepted for such a condition. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[9]

For these reasons, the medical evidence does not show that appellant had continuing residuals of his 2001 or 2014 work injuries and OWCP properly terminated his wage-loss compensation and medical benefits effective June 10, 2015.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation 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 or she had an employment-related disability which continued after termination of compensation benefits.[10]

ANALYSIS -- ISSUE 2

After OWCP's June 10, 2015 decision terminating appellant's wage-loss compensation and medical benefits effective June 10, 2015, appellant submitted additional medical evidence which he felt showed that he was entitled to compensation after June 10, 2015 due to residuals of his 2001 and 2014 work injuries. Given that the Board has found that OWCP properly relied on the opinion of the OWCP referral physician, Dr. Valentino, in terminating appellant's compensation effective June 10, 2015, the burden shifts to appellant to establish that he is entitled to compensation after that date.

The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that he had residuals of his 2001 and 2014 work injuries after June 10, 2015. Appellant submitted a May 26, 2015 report in which Dr. Raab diagnosed "exacerbation of [degenerative joint disease]" and indicated that he had discussed with patient "the need for total knee replacement due to continued pain from arthritis." However, the submission of this report does not establish appellant's claim that he had residuals of his 2001

[9] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[10] *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

and 2014 work injuries after June 10, 2015 because the report does not contain an opinion on this matter. Appellant did not submit a rationalized medical report showing that he had work-related disability or need for medical treatment after June 10, 2015.

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 wage-loss compensation and medical benefits effective June 10, 2015. The Board further finds that appellant did not establish that he had work-related disability or need for medical treatment after June 10, 2015.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 26, 2016
Washington, DC

Christopher J. Godfrey, 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