



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to the instant appeal are set forth below.

On August 15, 2008 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2008 she sprained her right leg and left knee when she fell down icy stairs. She stopped work on March 24, 2008. The employing establishment controverted the claim, noting that appellant had not notified her supervisor about the injury for almost five months.

In an April 9, 2008 work status report, Dr. Susan M. Sarran, a Board-certified family practitioner, found that appellant was unable to work from March 31 to April 10, 2008 but could return to work on April 11, 2008 with restrictions. In April 10 and May 17, 2008 treatment notes, Dr. Kevin Moore, a chiropractor, related that appellant experienced right leg and lower back symptoms and recommended work restrictions.<sup>4</sup>

On September 11, 2008 Dr. Samuel S. Park, a Board-certified orthopedic surgeon, diagnosed knee osteoarthritis and found that appellant could resume her usual employment beginning September 15, 2008.

Appellant, in a September 26, 2008 statement, advised that she slipped descending steps while delivering mail on March 18, 2008 and landed on her back and her right side. She informed her supervisor of the incident when she returned to her work location but did not file a claim because she thought she would recover. In a September 19, 2008 eyewitness statement, F.E., a resident, asserted that she saw appellant fall down icy steps on or around March 19, 2008.

By decision dated October 2, 2008, OWCP denied appellant's claim as the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted March 18, 2008 employment incident.

On April 21, 2010 appellant, through counsel, requested reconsideration.

On April 27, 2009 OWCP received a January 19, 2008 report from Dr. Chadwick C. Prodromos, a Board-certified orthopedic surgeon. Dr. Prodromos diagnosed left knee chondromalacia and noted that appellant had full motion with no effusion.

In May 17 and June 9, 2008 form reports, Dr. Moore diagnosed sacroiliac and iliotibial band injuries resulting from a fall down stairs. He indicated that the symptoms first occurred on March 24, 2008. In July 25 and October 24, 2008 reports, Dr. Moore related that appellant fell in February or March 2008 injuring the right sacroiliac joint and iliotibial band injuries and

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<sup>3</sup> Docket No. 11-1232 (issued January 9, 2012).

<sup>4</sup> Dr. Moore continued to submit reports finding work restrictions from April 28 to September 25, 2008.

experiencing left knee pain. The knee condition worsened when appellant attempted to walk on her delivery route. Dr. Moore diagnosed left patellar tendinitis, joint derangement, and effusion.

On September 29, 2008 Dr. Prodromos indicated that he was examining appellant at the request of Dr. Moore. He diagnosed severe chondromalacia patellae. Dr. Prodromos provided a history of left knee pain that increased gradually, especially with climbing. In an August 17, 2009 report, he related that appellant injured her left knee lifting a heavy package at work. On examination, Dr. Prodromos observed effusion and patellofemoral crepitus and diagnosed severe left knee chondromalacia. He noted that appellant believed that she could “get by at work.”

Dr. Prodromos, on February 15, 2010, discussed appellant’s complaints of left anterior and medial knee pain. On examination he found left medial joint line tenderness, effusion, patellofemoral crepitus, and a positive patellar compression test. Dr. Prodromos diagnosed left knee pain secondary to patellofemoral and medial compartment arthrosis. On March 25, 2010 he performed a lateral release and chondroplasty of the left knee.

In an August 11, 2010 report, Dr. Prodromos related:

“[Appellant] had an injury that resulted in a full[-]thickness articular cartilage defect of her knee. While she had definite wear and tear of her knee, this injury represented a more severe injury to an area that had some wear in which articular cartilage was damaged such that a divot of articular cartilage resulted in bone being exposed.”

On April 1, 2011 OWCP denied modification of its October 2, 2008 decision. It found that the reports from Dr. Prodromos were insufficient to establish that the diagnosed condition was causally related to the March 18, 2008 work incident.

In a report dated June 13, 2011, Dr. Prodromos clarified, “[Appellant] first experienced left knee pain following a fall that occurred on March 18, 2008. She was delivering mail on her route and slipped on stairs on ice and fell onto her left knee and she suffered a painful injury.” He noted that appellant took off work but did not improve. Dr. Prodromos found that her “left knee pain began from this work-related injury.”

Appellant appealed to the Board. By decision dated January 9, 2012, the Board affirmed the April 1, 2011 decision.<sup>5</sup> The Board found that appellant had not submitted rationalized medical evidence demonstrating that she sustained an injury due to the March 18, 2008 work incident.

On January 30, 2012 appellant, through counsel, requested reconsideration.

On May 15, 2012 OWCP vacated its October 2, 2008 and April 1, 2011 decisions and accepted appellant’s claim for left knee chondromalacia patellae.

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<sup>5</sup> *Supra* note 3.

On June 18, 2012 appellant filed a claim for compensation (Form CA-7) for intermittent periods of disability from April 14, 2008 to May 28, 2012. In a July 17, 2012 response, OWCP requested that she submit medical evidence from a physician supporting disability for the period claimed.

In a July 23, 2012 treatment note, Dr. Prodromos opined that appellant sustained an injury on March 18, 2008 when “she fell down 25 steps and she fell on her right side and left knee.” She obtained treatment from another physician in April 2008 before receiving treatment with his clinic. On examination, Dr. Prodromos found tenderness at the medial joint line and opined that appellant was disabled.

On August 23, 2012 OWCP received a copy of a purported January 19, 2008 report from Dr. Prodromos. The date January 19, 2008 was redacted and the date January 19, 2009 inserted over the redacted date.

By decision dated September 27, 2012, OWCP denied appellant’s claim for compensation from April 14, 2008 to May 28, 2012. On October 2, 2012 counsel requested a telephone hearing before an OWCP hearing representative.

Following a preliminary review, on December 12, 2012 an OWCP hearing representative vacated the September 27, 2012 decision. She noted that Dr. Prodromos had treated appellant for a knee condition in January 2008 and had not mentioned a work injury until July 2011. The hearing representative indicated that the most current medical report of record, obtained by Dr. Sarran obtained three weeks after the March 18, 2008 incident, did provide a history of an injury on that date. She remanded the case for OWCP to request that Dr. Prodromos address why he did not mention the work injury before July 2011 and why he found three years later that it caused her condition.

By letter dated December 18, 2012, OWCP asked that Dr. Prodromos explain why he had not discussed appellant’s work injury until July 2011, whether he had treated her before the work incident, and why he found more than three years later that it had caused chondromalacia patella of the left knee.

In a response dated January 11, 2013, Dr. Prodromos related:

“I saw [appellant] for the first time on September 29, 2008 for an injury that occurred at work. She fell down stairs while at work. [Appellant] was employed as a letter carrier. She injured her left knee at that time. [Appellant] had no prior history of left knee injury or pain.

“I wish to make it clear that although [appellant] sustained her work injury on March 18, 2008, I did not see her until September 29, 2008. It was my oversight in dictation to not have included in the note from her initial visit that this injury occurred at work.”

Dr. Prodromos asked OWCP to contact him if it had further questions about appellant’s history.

By decision dated April 3, 2013, OWCP denied appellant's claim for compensation from April 14, 2008 to May 28, 2012. It noted that Dr. Prodromos had treated appellant on January 19, 2008 for left chondromalacia patella two months before the March 18, 2008 work incident. OWCP further found that Dr. Prodromos failed to adequately explain why he had not addressed causation for three years.

On April 9, 2013 counsel requested a telephone hearing. At the telephone hearing, held on August 13, 2013, appellant related that Dr. Prodromos had not evaluated her prior to March 18, 2008 and that the report predating her injury was a typographical error. She maintained that she did not receive any treatment for a knee condition prior to March 2008.

In a decision dated October 30, 2013, OWCP's hearing representative set aside the April 3, 2013 decision. She found that OWCP had not properly considered Dr. Prodromos' January 9, 2008 treatment note or why there was no other contemporaneous evidence supporting a work injury in March 2008. The hearing representative remanded the case for OWCP to review all evidence to determine if appellant had sustained a work injury to her left knee on March 18, 2008 prior to adjudicating her request for wage-loss compensation.

By decision dated March 3, 2014, OWCP denied appellant's claim for disability compensation as the medical evidence of record failed to establish that she was unable to work due to her accepted March 18, 2008 employment injury.<sup>6</sup>

Counsel on March 21, 2014 requested a telephone hearing. Following a preliminary review on September 11, 2014, OWCP's hearing representative vacated the March 3, 2014 decision. She found that OWCP had failed to address whether appellant sustained a medical condition due to the March 18, 2008 incident but instead again addressed disability.

On March 20, 2015 OWCP issued a notice of proposed rescission advising appellant that it proposed to terminate her medical benefits as the medical evidence failed to establish a work injury causally related to the accepted employment incident.

Counsel on April 6, 2015 asserted that OWCP proposed terminating medical benefits rather than rescinding acceptance of the claim and argued that it had not met its burden of proof to rescind.

By decision dated April 29, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective April 29, 2015. It found that Dr. Prodromos failed to address his treatment of her for chondromalacia on January 19, 2008, two months before her injury. OWCP further found that his January 11, 2013 report finding that she had no prior history of a left knee condition conflicted with his January 19, 2008 report diagnosing left chondromalacia patella prior to the work incident. It additionally noted that Dr. Prodromos failed to discuss why there was no contemporaneous medical evidence reflecting a history of a knee injury from a fall at work. OWCP concluded that the weight of the evidence established that appellant's condition was not related to the accepted employment incident and rescinded acceptance of her claim.

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<sup>6</sup> Appellant submitted a December 23, 2013 impairment evaluation.

On May 6, 2015 appellant, through counsel, requested a telephone hearing. At the telephone hearing, held on December 9, 2015, she again related that she did not see Dr. Prodromos on January 19, 2008 and that the report contained a typographical error.

In a decision dated February 19, 2016, OWCP's hearing representative affirmed the April 29, 2015 decision. He found that the evidence of record indicated that Dr. Prodromos had evaluated appellant before the claimed injury for left knee chondromalacia and that consequently Dr. Prodromos' January 11, 2013 report finding no history of a left knee condition was of diminished probative value. The hearing representative also noted that the physician did not include a history of the work injury until June 13, 2011. He concluded that appellant failed to meet her burden of proof to establish her claim due to her delay in filing the claim, the delay in her physicians providing an accurate history of injury, and the conflicting medical evidence.

### **LEGAL PRECEDENT**

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or application.<sup>7</sup> The Board has upheld OWCP's authority to set aside or modify a prior decision and issue a new decision under section 8128 of FECA.<sup>8</sup> The power to annul an award, however, is not an arbitrary one and an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>9</sup>

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud.<sup>10</sup> It is well established that, once OWCP accepts the claim, it has the burden of justifying the termination or modification of compensation benefits.<sup>11</sup> Its burden of justifying termination or modification of compensation holds true where it later decides that it has erroneously accepted a claim of compensation. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission.<sup>12</sup>

### **ANALYSIS**

On May 15, 2012 OWCP accepted that appellant sustained left knee chondromalacia patella due to a fall down icy stairs on March 18, 2008. In a decision dated April 29, 2015, it terminated her wage-loss compensation and authorization for medical benefits after finding that

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<sup>7</sup> 5 U.S.C. § 8128; *see also M.E.*, 58 ECAB 694 (2007).

<sup>8</sup> *John W. Graves*, 52 ECAB 160 (2000).

<sup>9</sup> *See* 20 C.F.R. § 10.610; *Cary S. Brenner*, 55 ECAB 739 (2004); *Stephen N. Elliott*, 53 ECAB 659 (2002).

<sup>10</sup> *L.C.*, 58 ECAB 493 (2007).

<sup>11</sup> *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

<sup>12</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *Delphia Y. Jackson*, 55 ECAB 373 (2004).

the evidence of record failed to establish a diagnosed condition due to the accepted work injury. OWCP rescinded acceptance of the claim.

OWCP bears the burden of proof to rescind acceptance.<sup>13</sup> In establishing that the prior acceptance was erroneous, it must provide a clear explanation of the rationale for rescission.<sup>14</sup> The Board finds, however, that it did not provide a clear rationale for its rescission.

OWCP based the rescission of acceptance of appellant's claim for left knee chondromalacia patellae on its finding that the medical evidence did not provide a history of her March 18, 2008 fall at work until June 13, 2011. There is medical evidence, however, containing a history of the March 2008 fall at work prior to June 13, 2011. In form reports dated May 17 and June 9, 2008, Dr. Moore provided a history of appellant falling down stairs in March 2008 and diagnosed sacroiliac and iliotibial band injuries.<sup>15</sup> On July 25 and October 24, 2008 Dr. Moore advised that appellant fell in either February or March 2008 and injured her left knee and right sacroiliac joint and iliotibial band. He diagnosed left patellar tendinitis, joint derangement, and effusion. OWCP's finding, therefore, that the medical evidence did not contain a history of the March 2008 fall at work until June 13, 2011 is flawed.

OWCP further provided as rationale for its rescission that Dr. Prodromos treated appellant for left knee chondromalacia in January 2008, two months before her work injury. The record contains a report dated January 19, 2008 from Dr. Prodromos diagnosing left knee chondromalacia. Subsequently, however, Dr. Prodromos submitted the same report clarifying that the date of January 19, 2008 should have been January 19, 2009. On January 11, 2013 he specified that he first treated appellant on September 29, 2008. Consequently, OWCP's finding that Dr. Prodromos evaluated her for left knee chondromalacia prior to her work injury is not supported by the record.

The Board finds that OWCP did not offer a clear explanation of its rationale for rescission.<sup>16</sup> The reasons provided by OWCP for its rescission are not supported by the evidence. Therefore, OWCP failed to meet its burden of proof to rescind acceptance of the claim.<sup>17</sup>

### **CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to rescind acceptance of appellant's claim for left knee chondromalacia patellae.

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<sup>13</sup> See *D.H.*, Docket No. 13-1885 (issued May 12, 2014).

<sup>14</sup> *Id.*; see also *S.R.*, Docket No. 14-1313 (issued January 22, 2015).

<sup>15</sup> Dr. Moore specified the date of injury as March 24, 2008.

<sup>16</sup> *Supra* note 13 (finding that OWCP did not meet its burden of proof to rescind acceptance when it based its rescission on a conclusory report from an OWCP medical adviser).

<sup>17</sup> See *R.B.*, Docket No. 12-0455 (issued February 25, 2013) (finding that OWCP had not met its burden of proof to rescind acceptance of an emotional condition when it was based on an investigative report that was of insufficient probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2016 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 6, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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