

FACTUAL HISTORY

On July 30, 2016 appellant, then a 66-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that he experienced left knee pain when on that date his left knee buckled, causing him to lose control and fall on the floor while in the performance of duty. He stopped work on the date of injury.²

By decision dated September 22, 2016, OWCP accepted left knee sprain (medial collateral ligament).

In a report dated August 25, 2016, Dr. Lawrence A. Feiwell, a Board-certified orthopedic surgeon, examined appellant's left knee and noted that he was wearing his knee brace backwards. Appellant had a slight limp, but there was no instability to varus or valgus stress. He had moderate medial joint line tenderness without effusion. Dr. Feiwell diagnosed unilateral primary osteoarthritis of the left knee, sprain of medial collateral ligament of left knee, as well as spinal stenosis, and other intervertebral disc degeneration of the lumbar region. He recommended appropriate use of knee brace and opined that appellant was totally disabled from work.

On September 22, 2016 Dr. Feiwell found that appellant's had persistent knee pain at all times and had not benefited from pain medication. A physical examination revealed varus alignment, slight effusion, and 1+ laxity to valgus stress. Patellar crunch testing was positive and range of motion was 0 to 124 degrees with pain. Dr. Feiwell diagnosed end-stage osteoarthritis of the left knee and recommended a left total knee replacement.

OWCP referred appellant to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his accepted employment-related conditions. In his October 18, 2016 report, Dr. Einbund reviewed a statement of accepted facts (SOAF), history of injury, and the medical evidence of record. He conducted a physical examination and found that the left knee revealed severe pain medially. Appellant's range of motion measured from approximately 0 degrees to approximately 115 degrees. There was no sign of motor weakness or instability. There was tenderness medially. Appellant ambulated with a significant limp. There was no obvious motor weakness in his lower extremity musculature. X-rays of the left knee revealed bone-on-bone medially and there was no evidence of fracture or dislocation. Dr. Einbund opined that the work injury of July 30, 2016 did not cause or contribute to appellant's underlying osteoarthritic left knee condition. He explained that on July 30, 2016 appellant suffered a twisting injury to the left knee which resulted in a simple strain. Dr. Einbund concluded that there were no injury-related factors of disability and the factors of disability which were present at that time all related to his preexisting, underlying left knee osteoarthritis. He

² The present claim was assigned OWCP File No. xxxxxx021. Appellant had a previous claim under OWCP File No. xxxxxx686, accepted for right knee strain and meniscal tear due to stepping sideways onto a catwalk on March 5, 1995. OWCP authorized a partial medial meniscectomy and debridement of the medial femoral condyle, as well as the undersurface of the patella, on November 17, 1995. Appellant also had a previous claim under OWCP File No. xxxxxx561, accepted for left shoulder impingement, right foot contusion, right knee contusion, and aggravation of right knee osteoarthritis due to stepping on a drain plate and falling at work on March 15, 2003. OWCP further authorized a left shoulder arthroscopy on July 14, 2003, a right total knee replacement on March 5, 2004, and an irrigation and debridement of subcutaneous hematoma of the right knee on March 17, 2004. Appellant's claims have not been administratively combined.

asserted that appellant's osteoarthritis condition was consistent with age-related changes and his simple sprain injury was immobilized and had improved. There was no noted edema present and the acute pain had diminished. Dr. Einbund noted that the total left knee replacement had already been recommended in 2012 long before appellant's injury of July 30, 2016. He concluded that appellant's accepted left knee sprain had resolved and did not require any further medical treatment. Dr. Einbund opined that appellant's need for left total knee replacement was not work related. He found that the medical records revealed the deterioration and natural progression of the left knee osteoarthritis. Dr. Einbund determined that appellant had reached maximum medical improvement and was capable of limited-duty work with restrictions of lifting, pushing, and pulling no more than 10 pounds.

On November 7, 2016 appellant underwent an unauthorized left total knee replacement surgery, performed by Dr. Feiwell.

In a February 7, 2017 letter, OWCP, relying on Dr. Einbund's October 18, 2016 second opinion report, notified appellant that it proposed to terminate his wage-loss compensation and medical benefits as his accepted condition had ceased without residuals. It afforded him 30 days to submit additional evidence or argument.

In response, appellant submitted a February 21, 2017 report from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, who noted that appellant was experiencing constant pain in the left knee, which increased with walking or standing, flexing and extending the knee, and climbing or descending stairs. Additionally Dr. Tauber also noted swelling, popping, and clicking. He opined that there was no question that his need for surgery was related to his work duties. Dr. Tauber explained that appellant's work duties of squatting, kneeling, bending, and twisting for 26 years contributed to the degeneration of the knee. Additionally, he opined that there was an overcompensation for appellant's work-related right knee conditions under OWCP File Nos. xxxxxx561 and xxxxxx686. Dr. Tauber opined that, given the fact that the right knee condition caused a left knee aggravation, appellant's left knee would, at a minimum from this one incident alone, be a consequential injury. He further opined that without question there was a work-related contribution to appellant's left knee condition.

By decision dated March 24, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of the evidence was represented by Dr. Einbund.

Appellant subsequently submitted a March 28, 2017 report from Dr. Feiwell, who diagnosed bilateral primary osteoarthritis of the knees and indicated that appellant clearly had end-stage osteoarthritis since 2012. Dr. Feiwell stated that he had not been authorized to treat appellant's left knee, but felt that should he develop increasing symptoms that he would be a candidate for total left knee replacement surgery on a work-related basis due to compensating for his previously accepted right knee condition under OWCP File No. xxxxxx686. He stated that he clearly established that appellant's need for a left total knee replacement before his injury on July 30, 2016, but performed the surgery on November 7, 2016 on a nonwork-related basis. Dr. Feiwell opined that appellant was temporarily totally disabled for six weeks, pending reevaluation, while recovering from his knee replacement surgery.

On April 7, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an August 23, 2017 letter, he requested a review of the written record in lieu of an oral hearing.

By decision dated October 10, 2017, an OWCP hearing repetitive completed a review of the written record affirmed the March 24, 2017 termination of appellant's wage-loss compensation and medical benefits, but found the evidence received after the termination decision, namely the report of treating physician, Dr. Feiwell, created a conflict in the medical opinion evidence with second opinion physician, Dr. Einbund. The case was remanded to OWCP for referral to a Board-certified specialist for a rationalized medical opinion regarding whether appellant's left knee osteoarthritis and subsequent total left knee replacement were causally related to the accepted employment incident; and, if so, to determine what periods he was disabled and provide work restrictions.

OWCP referred appellant to Dr. James M. Fait, a Board-certified orthopedic surgeon and impartial medical examiner (IME) to resolve the conflict in the medical opinion evidence. In his May 18, 2018 report, Dr. Fait reviewed a SOAF and appellant's medical history and records. He conducted a physical examination and found a mildly antalgic gait, favoring the left lower extremity. Appellant did not use a cane or assistive device. He did not wear a brace on the neck, back, or upper or lower extremities. There was diffuse tenderness to palpation throughout the entire lower lumbar spine on the right and left in the lower lumbar paravertebral musculature; however, no paraspinal spasm was noted. Straight-leg raise testing and Lasègue's testing were both negative bilaterally. Examination of both knees showed no varus or valgus malalignment of the right or left knee and no soft tissue swelling or effusion about the right or left knee was seen. There was no erythema or warmth noted about the right or left knee and the extensor mechanism was intact in both knees. Both knees demonstrated trace opening to varus-valgus and anteroposterior stress, all with stable end-points. There was no patellofemoral crepitation bilaterally and the patellae tracked centrally bilaterally. There was no significant medial or lateral joint line tenderness about the right or left knee and the calves were soft and nontender bilaterally. On standing assessment, there was slight loss of the plantar arch in both the right and left feet with slight valgus malalignment of the hindfoot on both and right and left. Otherwise, there was no significant deformity or abnormality of the lower extremities appreciated on examination. Dr. Fait opined that appellant's accepted July 30, 2016 employment injury caused a medial collateral ligament strain injury that did not result in the need for total knee replacement. He further opined that it did not aggravate, participate, or accelerate the need for knee replacement. Dr. Fait also opined that appellant's left knee osteoarthritis condition was not causally related to the accepted March 5, 1995 employment injuries to the right knee, left shoulder, and right foot. He found no indication that an injury to the left knee occurred as a result of this incident and no indication that it caused sufficient gait impairment to result in aggravation or acceleration of the osteoarthritis of the left knee. Dr. Fait concluded that there were no periods of disability with respect to the left knee for either the March 5, 1995 or July 30, 2016 work injuries. He opined that appellant did not continue to suffer residuals from his employment-related left knee condition and did not require additional physical limitations for work.

By decision dated September 10, 2018, OWCP denied modification of its prior decision. It found that the special weight of the evidence was represented by Dr. Fait who opined that

appellant's left knee osteoarthritis and subsequent surgery were not consequential injuries causally related to the accepted March 5, 1995 and July 30, 2016 employment injuries.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of proof to justify termination or modification of compensation benefits.³ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

Section 8123(a) of FECA provides in pertinent part: 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 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 When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the 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 -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 24, 2017, as he no longer had residuals or disability causally related to his accepted conditions.

OWCP accepted appellant's claims for left knee sprain due to turning and falling on the floor at work on July 30, 2016. It properly referred him to Dr. Einbund for a second opinion evaluation to determine the nature and extent of his accepted employment-related condition.

In his October 18, 2016 report, Dr. Einbund opined that appellant did not suffer residuals from his employment-related left knee condition and did not require additional work limitations. He accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his

³ *L.L.*, Docket No. 18-1426 (issued April 5, 2019); *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁴ *A.D.*, Docket No. 18-0497 (issued July 25, 2018). In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury. *See* 20 C.F.R. § 10.5(f).

⁵ *R.P.*, Docket No. 17-1133 (issued January 18, 2018).

⁶ 5 U.S.C. § 8123(a).

⁷ 20 C.F.R. § 10.321.

⁸ *K.S.*, Docket No. 19-0082 (issued July 29, 2019).

findings. The Board finds that Dr. Einbund's opinion is sufficiently well-rationalized and based on a proper factual and medical history such that his opinion is entitled to special weight in establishing that appellant had no ongoing employment-related disability or medical residuals.⁹

The remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the special weight accorded to Dr. Einbund. Appellant's treating physician, Dr. Feiwell, continued to opine that appellant's left knee condition was the compensable consequence of cumulative trauma at work. However, without more by way of medical rationale, his reports are insufficient to create a new conflict in medical opinion or to overcome the special weight properly accorded to Dr. Einbund.¹⁰ Thus, the Board finds that OWCP properly terminated appellant's wage-lost compensation and medical benefits effective March 24, 2017.

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 the claimant.¹¹ In order to prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had employment-related residuals or disability which continued on or after termination of compensation benefits.¹²

ANALYSIS -- ISSUE 2

The Board further finds that appellant has not met his burden of proof to establish continuing employment-related residuals or disability on or after March 24, 2017.

Following the termination of appellant's wage-loss compensation and medical benefits, an OWCP hearing representative properly determined that a conflict in medical opinion arose between appellant's treating physician, Dr. Feiwell, who opined in his March 28, 2017 report that appellant was temporarily totally disabled for six weeks while recovering from his knee replacement surgery, and Dr. Einbund, who opined that appellant had no ongoing medical residuals and required no additional physical limitations for work. OWCP properly referred appellant to Dr. Fait for an impartial medical examination to resolve the conflict.

In his May 18, 2018 report, Dr. Fait opined that appellant's accepted July 30, 2016 employment injury caused a medial collateral ligament strain injury that did not require the need for a total knee replacement. He further found that it did not aggravate, participate, or accelerate the need for a total knee replacement. Dr. Fait opined that appellant's left knee osteoarthritis condition was not related to the accepted March 5, 1995 employment injuries to the right knee, left

⁹ *Id.* See also *R.R.*, Docket No. 19-0173 (issued May 2, 2019).

¹⁰ *Supra* note 8.

¹¹ *B.W.*, Docket No. 18-0949 (issued July 23, 2019); *C.V.*, Docket No. 17-1159 (issued April 6, 2018); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹² *Id.*

shoulder, and right foot. He concluded that there were no periods of disability with respect to the left knee for either the March 5, 1995 or July 30, 2016 work injuries, and appellant did not require additional physical limitations for work. Dr. Fait accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which comported with his findings.

The Board finds that Dr. Fait's opinion is sufficiently well rationalized and based on a proper factual and medical history such that his opinion is entitled to special weight in establishing that appellant had no continuing employment-related disability or medical residuals on or after March 24, 2017.¹³

The remaining evidence is insufficient to overcome the special weight accorded to Dr. Fait. Appellant's treating physician, Dr. Feiwell, continued to opine that appellant's left knee condition was the compensable consequence of cumulative trauma at work. However, as he was on one side of the conflict, his reports, without more medical rationale, are insufficient to create a new conflict in medical opinion or to overcome the special weight properly accorded to Dr. Fait.¹⁴

The Board thus finds that appellant has not submitted sufficient medical evidence to establish that he has continuing residuals or disability on or after March 24, 2017 due to the accepted employment injury.¹⁵ Appellant, therefore, has not met his burden of proof.

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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 24, 2017, as he no longer had residuals or disability due to the accepted July 30, 2016 employment injury. The Board further finds that he has not met his burden of proof to establish continuing employment-related residuals or disability on or after March 24, 2017.

¹³ *Supra* note 8. *See also R.R., supra* note 9.

¹⁴ *Supra* note 8.

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 31, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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