

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

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L.W., Appellant )  
and ) Docket No. 18-1372  
DEPARTMENT OF THE NAVY, NAVAL ) Issued: February 27, 2019  
MEDICAL CENTER, San Diego, CA, Employer )  
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)

*Appearances:*  
Appellant, *pro se*  
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 July 6, 2018 appellant filed a timely appeal from a June 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 22, 2018 as he no longer had disability or residuals causally related to the August 2, 1996 employment injury.

**FACTUAL HISTORY**

On August 5, 1996 appellant, then a 41-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on August 2, 1996 he sustained a right knee injury when his right knee popped while he was sitting on the floor taping base boards. OWCP accepted the claim for right

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

knee internal derangement and right knee sprain. Appellant stopped work and received wage-loss compensation on the periodic rolls.

On September 4, 1997 appellant underwent OWCP-approved right knee arthroscopy and synovectomy with his treating physician, Dr. Stephen C. Shoemaker, a Board-certified orthopedic surgeon. He was released to limited duty on September 22, 1997.<sup>2</sup>

On April 22, 1998 the employing establishment terminated appellant's employment, effective April 27, 1998, because he was unable to perform the position of a painter.

On June 7, 2001 OWCP found that appellant was no longer totally disabled and finalized the reduction of his wage-loss compensation based upon his capacity to earn wages of \$217.42 per week as a motor vehicle dispatcher. The loss of wage-earning capacity (LWEC) determination found that the position fairly and reasonably represented his wage-earning capacity.<sup>3</sup>

Appellant continued to seek treatment with Dr. Shoemaker for his right knee injury. In a November 11, 2013 medical report, Dr. Shoemaker reported that appellant sustained an injury to his right knee while working as a painter at the Naval Hospital in the late 1990's. Appellant was treated for a medial meniscus tear for which he underwent arthroscopy. He returned to work, but reinjured himself shortly thereafter and was diagnosed with a patellar tendon strain. Dr. Shoemaker diagnosed right knee pain secondary to patellofemoral tendinitis and an element of pes bursitis. He reported that these symptoms were not related to the original meniscus injury and subsequent knee arthroscopy and meniscectomy. Dr. Shoemaker concluded, however, that appellant's symptoms relative to his right knee arose out of and during the course of employment due to a specific injury. He concluded that appellant was capable of working in a modified capacity with restrictions.

In a November 21, 2014 report, Dr. Shoemaker noted that his history, subjective symptoms, and physical examination findings remained unchanged. He diagnosed patellofemoral pain, tendinitis. Dr. Shoemaker reported that appellant's initial condition was that of a meniscus tear for which he underwent arthroscopy. He explained appellant's present symptoms stemmed from an outgrowth of the surgery and continued to hamper his ability to seek gainful employment. Dr. Shoemaker further reported that appellant's current condition was not related to a preexisting condition.

After the claim lay dormant for several years, on March 15, 2018, OWCP referred appellant, the case file, a series of questions, and a statement of accepted facts (SOAF) to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion evaluation and determination regarding his disability status.

In a March 15, 2018 medical report, Dr. Einbund noted review of appellant's medical history, diagnostic testing, and physical examination findings. He reported that physical

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<sup>2</sup> The record reflects that, on November 12, 1997, appellant sustained a right patellar tendon strain after he tripped over a patient and came down hard on his right leg. OWCP assigned File No. xxxxxx070 to this claim. Appellant was released to limited duty on November 26, 1997.

<sup>3</sup> By decision dated June 18, 2004, OWCP granted appellant a schedule award for five percent permanent impairment of the right lower extremity.

examination revealed mild tenderness over the anterior medial joint with no swelling or instability. Dr. Einbund noted full range of motion with normal right knee extension and normal right knee flexion. In addition, he reported that x-rays of the right knee revealed no evidence of fracture or dislocation with minimal narrowing of the medial joint which was normal for appellant's age. Dr. Einbund reported that these objective findings were reasonably attributable to age-related changes. He opined that appellant's prognosis was excellent and he did not continue to suffer from residuals of his work-related injury. Dr. Einbund noted that accepted injuries dated back to the mid 1990's and that appellant's current symptoms did not relate to any injury which occurred 20 years ago. He concluded that appellant's examination findings were within normal limits and that his degeneration was minimal and corresponded to his age.

By letter dated April 5, 2018, OWCP provided Dr. Shoemaker a copy of Dr. Einbund's March 15, 2018 second opinion report for review. It noted that the second opinion physician suggested that appellant no longer suffered from residuals of his August 2, 1996 employment injury. OWCP requested that Dr. Shoemaker provide a narrative medical report supported by objective medical rationale if he disagreed with the findings of the second opinion physician. No response was received.

On May 21, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as his work-related disability was found to have ceased. It found that the weight of the medical evidence rested with Dr. Einbund who, in a report dated March 15, 2018, found that appellant was not experiencing continued disability or residuals related to the August 2, 1996 employment injury as his conditions had ceased. OWCP explained that medical evidence of record was sufficient to meet OWCP's burden of proof to terminate benefits and was also sufficient to negate an LWEC determination on the basis of a material change in the medical condition. It provided appellant 30 days to submit additional information. No additional evidence was received.

By decision dated June 22, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective that same date, finding that the weight of the medical evidence rested with Dr. Einbund who found that appellant no longer had disability or residuals causally related to the accepted August 2, 1996 employment injury. It further found that, since it determined that he no longer had residuals of his accepted work-related conditions and was no longer disabled from work as a result of the accepted injury, formal modification of his LWEC determination was unnecessary.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup>

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<sup>4</sup> G.C., Docket No. 18-0842 (issued December 20, 2018); *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>5</sup> *Id.*

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</sup> 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.<sup>7</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

## ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 22, 2018, as he no longer had disability or residuals causally related to the August 2, 1996 employment injury.<sup>9</sup>

On March 15, 2018 OWCP referred appellant for a second opinion examination with Dr. Einbund.<sup>10</sup> In his March 15, 2018 report, Dr. Einbund noted review of appellant's medical history, diagnostic testing, and findings on physical examination. He opined that appellant's examination findings were within normal limits and he no longer suffered from residuals of the August 2, 1996 employment injury. The Board has carefully reviewed the opinion of Dr. Einbund and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue in the present case.<sup>11</sup> Dr. Einbund's opinion is based on a proper factual and medical history and he thoroughly reviewed the SOAF and medical records.<sup>12</sup> He provided medical rationale for his opinion by explaining that x-rays of the right knee revealed very minimal narrowing of the medial joint space which was associated with age-related changes. Dr. Einbund further reported that the right knee physical examination findings revealed full range of motion with no swelling or instability, explaining that objective findings did not provide support for residuals or disability from a right knee injury having occurred 20 years prior. Rather, his evaluation revealed degeneration of the right knee which was very minimal and corresponded to appellant's age. Dr. Einbund further reviewed appellant's prior medical history, noting that Dr. Shoemaker's November 11, 2013 and November 21, 2014 medical reports did not provide support for a continued work-related disability. He noted that Dr. Shoemaker diagnosed right knee patellofemoral tendinitis which he opined was unrelated to the original employment injury or arthroscopy. Given the above findings, Dr. Einbund opined that appellant's disability had ceased and he had no limitations as a result of his August 2, 1996 employment injury. As he provided a sufficiently rationalized explanation that appellant was no longer experiencing disability or

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<sup>6</sup> A.H., Docket No. 16-1828 (issued August 17, 2017); *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>7</sup> I.C., Docket No. 16-1062 (issued April 17, 2017); *Pamela K. Guesford*, 53 ECAB 726 (2002).

<sup>8</sup> T.P., 58 ECAB 524 (2007); *Furman G. Peake*, 41 ECAB 351 (1975).

<sup>9</sup> B.W., Docket No. 17-0972 (issued July 6, 2018).

<sup>10</sup> See 20 C.F.R. § 10.320.

<sup>11</sup> See R.W., Docket No. 12-375 (issued October 28, 2013).

<sup>12</sup> See M.H., Docket No. 17-0210 (issued July 3, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

residuals related to the August 2, 1996 employment injury, the Board finds that his opinion is entitled to the weight of the evidence.<sup>13</sup>

The Board finds that as appellant no longer has disability or residuals related to his accepted employment condition, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective June 22, 2018.<sup>14</sup> Accordingly, it has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.<sup>15</sup>

### **CONCLUSION**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 22, 2018, as he no longer had disability or residuals causally related to the August 2, 1996 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2019  
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

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<sup>13</sup> C.S., Docket No. 12-0163 (issued February 21, 2013).

<sup>14</sup> G.I., Docket No. 13-0019 (issued April 2, 2013).

<sup>15</sup> L.C., Docket No. 12-1177 (issued August 19, 2013); D.M., Docket No. 11-0386 (issued February 2, 2012); *Marshall E. White*, 33 ECAB 1666 (1982).