

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

M.M., Appellant)	
)	
and)	Docket No. 19-0061
)	Issued: November 21, 2019
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION NY HARBOR)	
HEALTH CARE SYSTEM, Brooklyn, NY,)	
Employer)	
)	

Appearances:
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 9, 2018 appellant, through counsel, filed a timely appeal from April 20 and 24, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions casually related to the accepted February 12, 2015 employment injury; (2) whether appellant has met his burden of proof to establish total disability for the period March 27 through July 18, 2015 causally related to his accepted February 12, 2015 employment injury; (3) whether OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits effective February 3, 2017; and (4) whether appellant has met his burden of proof to establish continuing employment-related residuals or disability after February 3, 2017 causally related to the accepted February 12, 2015 employment injury.

FACTUAL HISTORY

On February 13, 2015 appellant, then a 32-year-old staff pharmacist, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2015 he sustained bilateral knee injuries when a coworker pushed his chair and caused his knees to strike against sharp edges of drawers on a cabinet while in the performance of duty. He stopped work on February 20, 2015 and received continuation of pay benefits.

On February 25, 2015 appellant began treating with Dr. Kenneth McCulloch, a Board-certified orthopedic surgeon. On initial examination Dr. McCulloch noted evidence of traumatic osteochondral damage, patellofemoral syndrome, traumatic patellar tendinitis, and possible meniscus pathology, and deep peroneal nerve neuropraxia including nerve contusion extending into both lower extremities. In a March 10, 2015 disability note, he opined that appellant was totally disabled from February 20 through March 26, 2015 from chondromalacia of patella, tendinitis, and medial meniscus tear.

A March 2, 2015 magnetic resonance imaging (MRI) scan of the right knee revealed mild joint effusion; a March 2, 2015 MRI scan of the left knee revealed small focal tear of the medial meniscus and joint effusion; and an April 15, 2015 electromyogram (EMG) revealed compression neuropathy in both peroneal nerves affecting mainly sensory fibers.

On June 12, 2015 OWCP accepted the claim for bilateral knee contusions.

In examination reports, disability notes, and duty status reports (CA-17) forms from March 25 through July 13, 2015, Dr. McCulloch opined that appellant was unable to work due to

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 24, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

bilateral knee contusions, compartment syndrome, osteochondrial damage, and deep peroneal nerve neuropathy, chondromalacia of patella, tendinitis, medial meniscus tear, and nerve symptoms, bilateral knee pain, chondropathy, and radiculopathy. He also opined that appellant was totally disabled from July 13 through August 26, 2015 due to his bilateral knee patellofemoral injuries.

In a May 11, 2015 report, Dr. Arthur Hryhorowych, a Board-certified physiatrist, noted appellant's history of injury. He diagnosed bilateral knee arthropathies and "rule[d] out" compression neuropathy.

In a June 17, 2015 duty status report, Dr. Dorothy J. Norwood, an internist, opined that appellant could resume work. She opined that appellant's neuropathic symptoms and balance problems were inconsistent with the February 12, 2015 employment injury and that the small left medial meniscus tear should have resolved after four months.

In a July 8, 2015 report, Dr. Hryhorowych opined that appellant had persistent compression neuropathy of both peroneal nerves affecting mainly sensory fibers.

In a July 23, 2015 state workers' compensation form report, Dr. Charlene Scheim, an osteopathic physician specializing in neurology, opined by checking a box marked "yes" that the incident appellant described was the competent medical cause of his knee sprain/strain. She also opined that he was totally disabled.

On July 24, 2015 appellant submitted a wage-loss compensation claim (Form CA-7) alleging total disability for the period March 27 to July 18, 2015.

An August 4, 2015 EMG revealed mild peroneal neuropathy involving the left lower extremity.

By decision dated September 11, 2015, OWCP denied appellant's claim for wage-loss compensation for the period March 27 through July 18, 2015. It found that the medical evidence of record did not contain a rationalized medical explanation as to how his accepted bilateral knee contusions caused total disability.

In a September 29, 2015 report, Dr. Jill Bressler, a Board-certified neurologist, diagnosed bilateral peroneal neuropathies, right worse than left, due to bilateral knee trauma.

In an October 7, 2015 report, Dr. McCulloch noted that appellant's initial MRI scans had not demonstrated significant damage. He ordered repeat MRI scans as he was not responding to conservative measures. An October 29, 2015 MRI scan of the left knee demonstrated a small peripheral tear within the medial meniscus and mild joint effusion. An October 30, 2015 MRI scan of the right knee was compatible with grade 4 chondral damage, as compared to the March 2, 2015 MRI scan. Mild joint effusion was also noted. On November 16, 2015 Dr. McCulloch released appellant to return to work with restrictions and recommended a second opinion.

Appellant returned to full-time, light-duty work on November 30, 2015.

In his July 11, 2016 report, Dr. McCulloch noted that appellant reported no previous history to his knees prior to the February 12, 2015 work-related injury where he incurred direct trauma, which resulted in patellofemoral symptoms bilaterally, a small peripheral tear of the medial meniscus of the left knee, and right knee grade 4 chondral damage. He noted that appellant had permanent impaired function accompanied by superimposed prepatellar bursitis of the right knee. Dr. McCulloch opined that appellant reached maximum medical improvement (MMI) and had a permanent partial disability.

In a July 12, 2016 report, Dr. Leon Sultan, a Board-certified orthopedic surgeon serving as an OWCP second opinion physician, reviewed the medical record and the statement of accepted facts (SOAF).⁴ He opined that examination of appellant's knees was unremarkable and that appellant's accepted knee conditions had resolved with no ongoing work-related disability or residuals. Dr. Sultan opined that there was no correlation between appellant's examination and the bilateral knee MRI scan readings. He opined that appellant was able to perform his regular work duties in a full-time, full-duty capacity.

In a July 18, 2016 report, Dr. Mehul Shah, an orthopedic surgeon, specializing in sports medicine, noted the history of appellant's February 12, 2015 employment injury. Other than joint line tenderness, he found appellant's physical examination unremarkable. Dr. Shah indicated that bilateral knee x-rays were not significant for degenerative joint disease, the MRI scan of the right knee had possible small full thickness cartilage defect medial patellar facet, and the MRI scan of the left knee had possible tiny peripheral medial meniscal tear. He provided an assessment of patellofemoral syndrome of the bilateral knees. Bilateral knee x-rays dated July 18, 2016 were reported as essentially normal.

In a July 28, 2016 report, Dr. Russel H. Silver, a Board-certified physiatrist, diagnosed left knee meniscus tear, right knee damage within the medial patella facet, and bilateral knee pain. He opined that if the history of the occurrence was correct, then the February 12, 2015 "accident is the competent producing cause of appellant's existing pathology."

On August 31, 2016 appellant, through counsel, requested reconsideration of OWCP's September 11, 2015 decision. OWCP received statements from appellant and counsel, along with physical therapy reports.

In an August 23, 2016 report, Dr. Shah noted that when appellant was seen approximately 19 months after his injury, he had reached MMI, he had permanent partial disability, and the physical examination was consistent with bilateral knee patellofemoral pain. He opined that, given the described mechanism of injury and the fact that he did not have knee complaints prior to the accident, appellant's bilateral knee patellofemoral pain, chondral damage of the patella, and subsequent inability to work "seems causally related to [appellant's] work-related injury."

By decision dated November 21, 2016, OWCP denied modification of its September 11, 2015 decision. It found that there was no rationalized medical opinion which explained how appellant's accepted bilateral knee contusion caused him total disability during the period claimed.

⁴ The SOAF is not of record.

OWCP further found that there was no rationalized medical opinion which explained how the additional diagnoses were caused or aggravated by the February 12, 2015 employment injury.

On December 7, 2016 OWCP noted that appellant was currently in receipt of medical benefits, but proposed to terminate appellant's entitlement to wage-loss compensation and medical benefits, finding that Dr. Sultan's July 12, 2016 report represented the weight of the medical evidence.

OWCP received January 2 and 3, 2017 letters from counsel and statements from appellant dated December 23, 2015 and December 14, 2016. Appellant argued that his grade 4 chondral damage was directly caused by his employment-related injury.

In a November 25, 2016 report, Dr. Silver diagnosed bilateral knee capsulitis, bilateral knee traumatic arthritis, meniscus tear, and joint effusion caused by the February 12, 2015 employment incident. He also opined that appellant was able to work with permanent restrictions which stemmed from the February 12, 2015 employment injury. Handwritten notes by Dr. Silver, dated January 4, 2017, were also submitted.

By decision dated February 3, 2017, OWCP terminated appellant's entitlement to wage-loss compensation and medical benefits, effective February 3, 2017. Determinative weight was accorded to Dr. Sultan's July 12, 2016 report.

OWCP subsequently received brief handwritten notes dated February 3 and March 3, 2017 from Dr. Silver.

In a March 10, 2017 progress report, Dr. Scheim noted that appellant was working full time without restrictions. She diagnosed unspecified synovitis and tenosynovitis and lesion of an ulnar nerve of an unspecified upper limb. Dr. Scheim opined, by checking a box, that the diagnosed conditions were causally related to the February 12, 2015 employment injury.

In a June 19, 2017 report, Dr. Scheim diagnosed bilateral knee joint dysfunction and "rule out" peroneal neuropathy. She opined that the February 12, 2015 trauma caused direct injury and damage to appellant's left medial meniscus, right medial patellar facet, and left peroneal nerve. Appellant also developed a small focal tear of the left knee medial meniscus, right knee grade 4 chondral damage within the medial patellar facet likely secondary to trauma, and left peroneal nerve neuropathy. Dr. Scheim concluded that the injuries he sustained to his bilateral knees were permanent injuries directly causally related to the February 12, 2015 employment injury and that he was totally disabled "as a result of his injuries" from February 12 through November 30, 2015. She also indicated that appellant was partially disabled from November 30, 2015 to the present.

On November 14 and December 1, 2017, and January 23, 2018 appellant, through counsel, requested reconsideration of OWCP's decisions dated November 21, 2016 and February 3, 2017.⁵ He argued that OWCP had failed to accept all injuries and conditions sustained as a result of the

⁵ Counsel's January 23, 2018 letters separately requested review of OWCP's November 21, 2016 and February 3, 2017 decisions.

February 12, 2015 employment injury as compensable and that the medical evidence of record established employment-related disability during the period March 27 through July 18, 2015.

By decision dated April 20, 2018, OWCP denied modification of its February 3, 2017 termination decision.

By decision dated April 24, 2018, OWCP also denied modification of its November 21, 2016 decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶ To establish causal relationship between the condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional diagnosed conditions casually related to the accepted February 12, 2015 employment injury.

OWCP accepted appellant's claim for bilateral knee contusions. It denied expansion of the acceptance of his claim to include additional diagnosed conditions as his physicians had not provided sound medical rationale which explained how the February 12, 2015 employment injury caused or contributed to the additional conditions.

Appellant submitted a series of reports from Dr. McCulloch. In his initial report of February 25, 2015, and in subsequent reports and disability notes from March 10 through July 11, 2016, Dr. McCulloch opined that there was evidence of traumatic osteochondral damage, patellofemoral syndrome, traumatic patellar tendinitis, possible meniscus pathology, deep peroneal nerve neuropraxia including nerve contusion extending into both lower extremities, and disability arising therefrom. However, he did not offer medical rationale explaining how the

⁶ See *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ See *T.E.*, *id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

⁸ See *T.E.*, *id.*; *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

accepted employment injury caused the diagnosed conditions.⁹ Dr. McCulloch did not explain how the mechanism of injury would have physiologically caused or aggravated the diagnosed conditions.¹⁰ In his July 11, 2016 report, he opined that the February 12, 2015 employment-related injury resulted in patellofemoral symptoms bilaterally, and a small peripheral tear of the medial meniscus of the left knee and right knee grade 4 chondral damage, all of which was accompanied by superimposed prepatellar bursitis of the right knee. While Dr. McCulloch noted that appellant had no history prior to the accepted employment injury, an opinion that a condition is causally related to an incident because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹¹ For these reasons, the Board finds that Dr. McCulloch's reports are insufficient to meet appellant's burden of proof.

In May 11 and July 8, 2015 reports, Dr. Hryhorowych noted the history of injury and diagnosed bilateral knee arthropathies and compression neuropathy of both peroneal nerves. However, he failed to provide an opinion that the accepted February 12, 2015 employment injury caused or aggravated appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² These reports, therefore, are insufficient to establish appellant's claim.

Dr. Bressler, in her September 29, 2015 report, provided an assessment of bilateral peroneal neuropathies which she opined was due to the bilateral knee trauma. However, she failed to offer medical rationale explaining how appellant's diagnosed conditions were caused or aggravated by the February 12, 2015 accepted employment injury. As noted, the failure to provide medical rationale in support of a causation finding results in the determination that Dr. Bressler's report is insufficient to establish appellant's burden of proof.¹³

In his July 18, 2016 report, Dr. Shah provided an assessment of patellofemoral syndrome bilateral knees, but failed to provide an opinion that the accepted February 12, 2015 employment injury caused or aggravated appellant's diagnosed condition.¹⁴ In his August 23, 2016 narrative report, he opined that appellant's chondral damage of the patella and his subsequent inability to work "seemed" causally related to his work-related injury. While Dr. Shah diagnosed chondral damage of the patella, his opinion on causality was speculative. The Board has held that medical

⁹ See *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (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).

¹⁰ See *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *C.F.*, *id.*; *R.R.*, Docket No. 16-1901 (issued April 17, 2017).

¹¹ See *F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

¹² See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

¹⁴ See *supra* note 10.

opinions that are speculative or equivocal in character are of diminished probative value.¹⁵ For these reasons, his reports are insufficient to meet appellant's burden of proof.

Dr. Scheim diagnosed knee sprain/strain, in her July 23, 2015 initial report, and unspecified synovitis and tenosynovitis and lesion of an ulnar nerve of an unspecified upper limb in her March 10, 2017 report. In both reports, she opined by checking a box marked "yes" that the diagnoses were casually related to the February 12, 2015 employment injury. However, a mere conclusion without the necessary rationale explaining how work activities could result in the diagnosed conditions is insufficient to meet the employee's burden of proof.¹⁶ A report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment injury caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.¹⁷

In her June 19, 2017 report, Dr. Scheim opined that the February 12, 2015 employment injury caused direct injury and damage to appellant's left medial meniscus, right medial patellar facet, and left peroneal nerve. However, the Board notes that she merely offered a conclusion. No supporting medical rationale was provided to explain her conclusory opinion regarding the relationship between the diagnosed conditions and the accepted February 12, 2015 employment injury.¹⁸ Dr. Scheim did not explain how specific employment factors physiologically caused any of the diagnosed conditions. Without explaining how physiologically the movements involved in appellant's February 12, 2015 employment injury caused or contributed to his diagnosed condition, her opinion on causal relationship is insufficiently rationalized and is of limited probative value.¹⁹

The handwritten notes and medical reports from Dr. Silver also failed to provide medical rationale explaining how the February 12, 2015 employment injury resulted in the additional conditions. In his July 28, 2016 report, Dr. Silver diagnosed left knee meniscus tear, right knee damage within the medial patella facet, and bilateral knee pain. He opined that, if the history of the occurrence was correct, then the February 12, 2015 accident was the competent producing cause of appellant's existing pathology. However, no supporting medical rationale was given explaining Dr. Silver's conclusory opinion regarding the relationship between the diagnosed conditions and the accepted February 12, 2015 employment injury.²⁰ Likewise, while he also opined, in his November 25, 2016 report, that the diagnosed bilateral knee capsulitis, bilateral knee traumatic arthritis, meniscus tear and joint effusion were caused by the February 12, 2015 employment injury, he again offered a conclusory opinion without any supporting medical

¹⁵ See *T.H.*, *supra* note 10; *D.R.*, Docket No. 17-0971 (issued October 5, 2017); *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁶ See *D.P.*, Docket No. 17-0148 (issued May 18, 2017).

¹⁷ See *S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁸ See *V.P.*, Docket No. 17-1925 (issued March 1, 2018); *see also supra* note 13.

¹⁹ See *V.P.*, *id.*; *M.C.*, Docket No. 17-1579 (issued November 28, 2017).

²⁰ See *V.P.*, *id.*; *T.M.*, *supra* note 9; *Beverly A. Spencer*, 55 ECAB 501 (2004).

rationale.²¹ Thus, Dr. Silver's reports are insufficient to establish appellant's claim to expand the accepted conditions resulting from the February 12, 2015 employment injury.

OWCP also received several MRI scan reports of the knees as well as EMG studies which diagnosed appellant's lower extremity conditions, but failed to offer a medical opinion addressing whether the diagnosed conditions were caused or aggravated by the February 12, 2015 employment injury. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between his employment incident and a diagnosed condition.²²

Appellant has the burden of proof to submit rationalized medical evidence establishing that the acceptance of his claim should be expanded to include additional conditions.²³ He has not submitted such evidence and thus has not met his burden of proof to establish his claim.²⁴

LEGAL PRECEDENT -- ISSUE 2

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.²⁵ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.²⁶

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.²⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.²⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical

²¹ *Id.*

²² *See C.F.*, *supra* note 9; *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

²³ *See M.M.*, Docket No. 19-0951 (issued October 24, 2019) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, *supra* note 6.

²⁴ *T.C.*, Docket No. 18-1498 (issued February 13, 2019); *D.S.*, Docket No. 18-0061 (issued May 29, 2018).

²⁵ *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

²⁶ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

²⁷ *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²⁸ *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

background, supporting such causal relationship.²⁹ The opinion of the physician 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 employee.³⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish total disability for the period March 27 through July 18, 2015 causally related to his accepted February 12, 2015 bilateral knee contusions.

Dr. McCulloch, opined, in reports and disability notes from March 10 through July 11, 2016, that appellant was totally disabled due to bilateral knee contusions and his “bilateral knee patellofemoral injuries,” which included nonaccepted conditions. However, he did not explain why appellant was disabled during this time period due to objective medical findings of his accepted conditions. To establish a period of disability the medical evidence must provide a discussion of how objective medical findings attributable to the accepted conditions support a finding that appellant could not perform his job duties.³¹

None of the reports from Drs. Hryhorowych, Bressler, Shah, or Silver addressed the specific period of disability claimed. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.³²

While Dr. Schein opined, in her July 23, 2015 initial report, that appellant was totally disabled, she did not address any specific dates of disability or otherwise provide medical reasoning explaining why any current disability was due to the employment injury.³³ In her February 15, 2017 report, she did not address his disability during the period claimed.³⁴ In her June 19, 2017 report, Dr. Schein opined that appellant was totally disabled for the period February 12 through November 30, 2015 and that he was partially disabled on an ongoing basis commencing November 30, 2015. However, she did not relate his disability to the accepted employment injury and the opinion is therefore of no probative value.³⁵

²⁹ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

³⁰ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

³¹ See *W.E.*, Docket No. 17-0451 (issued November 20, 2017).

³² See *E.B.*, Docket No. 17-0875 (issued December 13, 2018); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³³ See *E.B.*, *id.*; *C.L.*, Docket No. 16-0004 (issued June 14, 2016).

³⁴ See *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

³⁵ See *E.B.*, *supra* note 32.

The Board therefore finds that the medical evidence of record does not support appellant's claim of total disability for the period March 27 through July 18, 2015 due to his accepted February 12, 2015 employment injury.

LEGAL PRECEDENT -- ISSUE 3

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify 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.³⁶ 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.³⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.³⁸ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.³⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits effective February 3, 2017.

In his comprehensive July 12, 2016 report, Dr. Sultan noted his review of the SOAF and medical record. He described the February 12, 2015 employment injury, appellant's complaints and his physical examination findings, which included unremarkable objective findings with no residual motion restriction, no ligamentous instability, and no disuse atrophy or patellofemoral crepitus in both knees. Dr. Sultan indicated that the ongoing subjective complaints in regard to both knees did not correspond with the objective examination findings. From an orthopedic point of view, he further found that there was no correlation between the objective examination and the bilateral knee MRI scan readings. Dr. Sultan opined that appellant had no ongoing residuals or disability of the accepted bilateral knee contusions as the accepted conditions had resolved, appellant was clinically stable, and he was at MMI. He further opined that appellant had no physical limitations due to the February 12, 2015 employment injury and that he could work in a full-time, full-duty capacity as a pharmacist.

The Board finds that OWCP properly accorded the weight of medical opinion to Dr. Sultan who reported that appellant no longer had residuals or disability as a result of the February 12, 2015 employment injury. Dr. Sultan based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion that he did not have residuals or work limitations as a result of the employment injury. Accordingly, OWCP

³⁶ See *J.D.*, Docket No. 18-0101 (issued August 27, 2018); *Jaja K. Asaramo*, *supra* note 6.

³⁷ See *J.D.*, *id.*

³⁸ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

³⁹ *Id.*; see also *Calvin S. Mays*, 39 ECAB 993 (1988).

properly relied on his second opinion report in terminating appellant's entitlement to wage-loss compensation and medical benefits.⁴⁰

Subsequent to Dr. Sultan's evaluation, appellant was evaluated by Dr. Shah on July 18, 2016 and Dr. Silver on July 28, 2016. As previously discussed, neither Dr. Shah, in his July 18 and August 23, 2016 narrative reports, nor Dr. Silver, in his July 28, 2016 report, provided a well-reasoned explanation as to why appellant continued to have residuals or disability for work due to the February 12, 2015 employment injury.

In response to OWCP's December 7, 2016 proposed termination, it received handwritten notes from Dr. Silver, dated November 21 and 25, 2016 and January 4, 2017, along with a November 25, 2016 narrative report. However, these reports offered no opinion or medical rationale as to why appellant continued to require work restrictions or ongoing medical care due to the accepted bilateral knee contusions.

The Board finds Dr. Sultan's opinion to be probative evidence and reliable and sufficient to justify OWCP's termination of wage-loss compensation and medical benefits for the accepted conditions of bilateral knee contusion. The remaining medical evidence of record is insufficient to overcome the weight accorded to Dr. Sultan's second opinion or to create a conflict.⁴¹

LEGAL PRECEDENT -- ISSUE 4

As OWCP met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits on February 3, 2017, the burden shifted to appellant to establish that he had continuing disability causally related to the accepted conditions.⁴² 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.⁴³

ANALYSIS -- ISSUE 4

The Board finds that appellant has not met his burden of proof to establish continuing residuals or disability after February 3, 2017 causally related to the accepted February 12, 2015 employment injury.

The handwritten notes of Dr. Silver, dated January 4, February 3, and March 3, 2017, fail to contain a diagnosis or provide discussion on disability causally related to the accepted bilateral

⁴⁰ *R.B.*, Docket No. 19-0204 (issued September 6, 2019).

⁴¹ *See J.D.*, *supra* note 36; *K.E.*, Docket No. 17-1216 (issued February 22, 2018).

⁴² *See J.D.*, *id.*; *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

⁴³ *See J.D.*, *id.*; *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

knee conditions.⁴⁴ Thus, they are of no probative value and insufficient to establish causal relationship.

OWCP also received reports from Dr. Scheim. As previously discussed, in her March 10, 2017 report, Dr. Scheim did not offer a definite diagnosis of a medical condition and her opinion was insufficient to establish causal relationship. She also did not address disability, but indicated that appellant was working without restrictions. In her June 19, 2017 report, Dr. Scheim opined that the February 12, 2015 employment injury caused direct injury and damage to his left medial meniscus, right medial patellar facet, and left peroneal nerve. She also opined that appellant was totally disabled from February 12 through November 30, 2015. However, Dr. Scheim did not address whether he had residuals or disability causally related to the accepted employment conditions. Thus, contrary to counsel's assertion on appeal, her June 19, 2017 opinion is insufficient to establish causal relationship.

As there is no medical evidence of record sufficient to establish that appellant continued to have residuals or disability after February 3, 2017 due to the accepted February 12, 2015 employment injury, the Board finds that he did not meet 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 appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions casually related to the accepted February 12, 2015 employment injury. The Board also finds that he has not met his burden of proof to establish total disability for the period March 27 through July 18, 2015 causally related to his accepted February 12, 2015 employment injury. Further, the Board finds that OWCP has met its burden of proof to terminate appellant's entitlement to wage-loss compensation and medical benefits effective February 3, 2017. The Board also finds that he did not meet his burden of proof to establish continuing employment-related residuals or disability after February 3, 2017 causally related to the February 12, 2015 employment injury.

⁴⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 24 and 20, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 21, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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