

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

R.S., Appellant	)	
	)	
and	)	<b>Docket No. 19-0552</b>
	)	<b>Issued: September 6, 2019</b>
U.S. POSTAL SERVICE, COEUR D'ALENE	)	
POSTAL ANNEX, Coeur d'Alene, ID, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 14, 2019 appellant, through counsel, filed a timely appeal from a December 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 21, 2018; and (2) whether

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

appellant has met her burden of proof to establish continuing employment-related disability or residuals after February 21, 2018.

### **FACTUAL HISTORY**

On February 10, 2017 appellant, then a 55-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on January 30, 2017, she slipped on a linoleum floor inside the annex and strained her left knee and ankle while in the performance of duty. OWCP accepted the claim for left ankle and knee strains.<sup>3</sup> On May 4, 2017 OWCP expanded acceptance of the claim to include a left knee medial meniscus tear, and on September 25, 2017 it accepted strain of other muscles and tendons at lower left leg and sprain of unspecified ligament of the left ankle. Appellant stopped work on January 30, 2017, and has not returned. OWCP paid wage-loss compensation on the supplemental rolls effective March 18, 2017, and on the periodic rolls effective April 30, 2017.

Appellant continued to receive medical care from her treating physicians, Dr. Brian S. Mitchell, Board-certified in orthopedic surgery, and Dr. Patrick Greis, Board-certified in orthopedic surgery and sports medicine. She also continued to receive physical therapy for her accepted conditions.

On June 22, 2017 OWCP referred appellant to Dr. Kenneth Bode, a Board-certified orthopedic surgeon, for a second opinion examination to determine the status of the accepted conditions and associated work restrictions.

In a report dated September 21, 2017, appellant's attending physician Dr. Stephanie Stoke, Board-certified in occupational medicine, related left knee findings on examination, noting that she had full range of motion of the knee, but had tenderness over the patellar tendon, pain along the medial aspect on valgus stress testing, and pain with Lockman's maneuver. She related a diagnosis of tear of the medial meniscus left knee and recommended that appellant return to work for four hours a day with restrictions. Dr. Stoke also completed a duty status report (Form CA-17) on September 21, 2017 noting appellant's work restrictions and that she could return to work for four hours a day.

In an October 13, 2017 second opinion examination report, Dr. Bode noted appellant's history of injury and treatment. He performed a physical examination and found that she had no findings of posterior horn medial meniscal tear despite findings on a magnetic resonance imaging (MRI) scan. Dr. Bode found osteoarthritis, lateral iliotibial (IT) band tendinitis, and decreased range of motion. He explained that appellant had experienced a temporary aggravation of left knee osteoarthritis. Dr. Bode determined that no further treatment was warranted, other than a home exercise program, over-the-counter medications, and activity modification. He noted that, based on her decreased range of motion and her osteoarthritis, appellant would only be able to perform light-duty work on a permanent basis.

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<sup>3</sup> Appellant had preexisting or concurrent medical conditions, including a gunshot wound to left knee with reconstructive surgery in 2005.

On October 23, 2017 appellant accepted an offer of modified assignment as a limited-duty rural carrier associate.

On October 25, 2017 OWCP requested that Dr. Bode clarify his opinion with regard to whether appellant's permanent work restriction was due to the accepted work-related conditions or the preexisting knee injury, and whether the temporary aggravation of osteoarthritis had resolved.

In a November 30, 2017 addendum report, Dr. Bode opined that appellant's current symptoms were due to preexisting osteoarthritis of the left knee, and not the accepted work-related conditions. He explained that the employment injury temporarily aggravated appellant's arthritis, but the aggravation had resolved.

In a report dated November 30, 2017, Dr. Stoke noted that appellant was seen for follow up of the left knee medial meniscus tear following a return to limited-duty employment. She indicated that appellant's condition had worsened since she returned to work, four hours per day, five days per week. Dr. Stoke completed a duty status report (Form CA-17) limiting appellant to work four hours per day, five days per week, and recommended ongoing physical therapy and hydrotherapy.<sup>4</sup>

On January 16, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, as the evidence of record established that she no longer had employment-related residuals or disability due to her accepted work-related medical conditions. It afforded her 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination of benefits.

OWCP subsequently received a December 28, 2017 progress note from Dr. Stoke who indicated that she had reviewed Dr. Bode's October 13, 2017 report. Dr. Stoke noted Dr. Bode's diagnosis of osteoarthritis and IT band tendinitis, and opined that no further medical treatment was recommended, but additional treatment would be needed in the future.

In a January 11, 2018 progress note, Dr. Stoke noted that appellant had obvious gross deformity of the left knee due to multiple reconstructive surgeries, and diagnosed tear of the medial meniscus of the left knee, current, unspecified tear-type, initial encounter. She recommended that appellant continue her home exercise program and work restrictions. In January 25 and February 13, 2018 progress notes, Dr. Stoke advised that appellant planned to pursue her claim and continue to gradually return to work. She indicated that appellant was likely to be released to full-duty work over the next couple of months.

OWCP received duty status reports (Form CA-17) dated December 20, 2017 and January 11 and 25, and February 13, 2018. Dr. Stoke listed the diagnosis as meniscus tear due to injury, but also listed a "prior knee injury" as a disabling condition.

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<sup>4</sup> On December 4, 2017 OWCP requested that Dr. Stoke review Dr. Bode's report and address whether she agreed with the findings regarding appellant's accepted conditions. However, Dr. Stoke did not respond.

On February 15, 2018 OWCP received a January 30, 2018 statement from appellant disputing the proposed termination of benefits. Appellant argued that Dr. Bode was not an appropriate specialist and did not conduct a thorough examination. She also argued that she was making progress, but her condition had not yet resolved. Appellant indicated that the employing establishment had stopped providing her with limited-duty work because of OWCP's proposed termination of benefits.

In a March 12, 2018 duty status report (Form CA-17) Dr. Stoke released appellant to work on March 17, 2018 without restrictions.

By decision dated March 22, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits effective February 21, 2018. It found that the opinion of Dr. Bode established that appellant had no further residuals or disability due to her accepted employment-related injuries.

On April 12, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

During the telephonic hearing, held on September 18, 2018, appellant indicated that she was released to work full time on March 17, 2018.

OWCP thereafter received a June 15, 2018 report from Dr. Lucas Anderson, a Board-certified orthopedic surgeon, who diagnosed primary osteoarthritis and degenerative joint disease of the left knee. Dr. Anderson noted that appellant reported pain of two years duration and a work injury on January 30, 2017. He indicated that appellant would need a total knee replacement at some point.

By decision dated December 3, 2018, OWCP's hearing representative affirmed the March 22, 2018 decision. She found that the opinion of Dr. Bode constituted the weight of the evidence and established that appellant had no further disability or residuals of her accepted employment-related conditions.

### **LEGAL PRECEDENT**

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

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<sup>5</sup> *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

the employment.<sup>6</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>8</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>9</sup>

### *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 February 21, 2018.

On October 13, 2017 Dr. Bode, an OWCP second opinion physician, noted appellant's history of injury and treatment and provided physical examination findings. He noted that appellant had no findings of posterior horn medial meniscal tear, despite findings on MRI scan, and explained that appellant had a temporary aggravation of left knee osteoarthritis and no further treatment was warranted. Dr. Bode advised that appellant would only be able to perform light duty work, as she had osteoarthritis.

On October 25, 2017 OWCP requested that Dr. Bode clarify his opinion with regard to whether appellant's permanent work restriction was due to the accepted work-related conditions, or the preexisting knee condition, and whether appellant's temporary aggravation of osteoarthritis had resolved. In a November 30, 2017 addendum, Dr. Bode explained that appellant's current symptoms were due to preexisting osteoarthritis of the left knee, not the accepted employment-related conditions. He further opined that the employment injury had temporarily aggravated appellant's arthritis, but the aggravation had resolved.

The Board finds that Dr. Bode provided a thorough report, with rationale to explain his findings.<sup>10</sup> Consequently, Dr. Bode's opinion is entitled to the weight of the evidence, and establishes that appellant no longer had residuals or disability due to her January 30, 2017 accepted employment injury.

The evidence submitted by appellant prior to termination of benefits is insufficient to establish that she no longer had disability or residuals due to her accepted employment-related conditions. Dr. Stoke noted that appellant was seen in follow up for left knee medial meniscus tear. On physical examination she noted that appellant had full range of motion of the left knee,

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<sup>6</sup> *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>7</sup> *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

<sup>8</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>9</sup> *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>10</sup> *O.S.*, Docket No. 18-1549 (issued February 7, 2019).

but subjective pain complaints. Dr. Stoke initially allowed appellant to return to work for four hours a day, with restrictions. She also provided a January 25, 2018 progress note advising that appellant was likely to be released to full duty over the next couple of months. A March 12, 2018 duty status report (Form CA-17) released appellant to work without restrictions. OWCP also received duty status reports dated December 20, 2017, January 11 and 24, and February 13, 2018 from Dr. Stoke which noted the diagnoses and a prior disability. The Board finds that Dr. Stoke's reports are of limited probative value. These reports listed a diagnosis of a meniscus tear due to injury, but also listed a "prior knee injury" as a disabling condition. Dr. Stoke failed to specifically address whether appellant's current left knee complaints and any resulting disability were attributable to her accepted employment injury or due to her preexisting conditions. Absent a rationalized opinion of this issue, Dr. Stoke's findings are of limited probative value.<sup>11</sup>

The Board finds that the weight of the evidence, as represented by the second opinion specialist, Dr. Bode, establishes that appellant no longer had employment-related residuals or disability as of February 21, 2018, the date OWCP terminated her wage-loss compensation and medical benefits.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP properly terminates compensation benefits, the burden of proof shifts to the claimant to establish that she has continuing disability or residuals causally related to the accepted employment injury.<sup>13</sup> To establish causal relationship between the disability claimed and the employment injury, the claimant must submit rationalized medical evidence or opinion based on a complete medical and factual background supporting causal relationship.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals after February 21, 2018.

Following the termination of benefits, appellant submitted a June 15, 2018 report from Dr. Anderson who diagnosed primary osteoarthritis and degenerative joint disease of the left knee. Dr. Anderson noted that appellant reported pain of two years' duration and a work injury on January 30, 2017. He indicated that appellant would need a total knee replacement at some point. However, Dr. Anderson did not address the relevant issues of appellant's disability on and after February 21, 2018, or whether appellant required medical treatment as of February 21, 2018

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<sup>11</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Daniel E. Kern, Sr.*, Docket No 04-1427 (issued October 14, 2004).

<sup>12</sup> *Id.*

<sup>13</sup> *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

<sup>14</sup> *A.M.*, Docket No. 17-1192 (issued September 19, 2018).

causally related to her accepted January 30, 2017 employment injury. Therefore, his report is of diminished probative value.<sup>15</sup>

The Board thus finds that appellant has not met her burden of proof to establish continuing residuals or disability after February 21, 2018.<sup>16</sup>

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 February 21, 2018. The Board further finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals after February 21, 2018, due to her accepted employment injury.

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<sup>15</sup> *L.B.*, Docket No. 18-0560 (issued August 20, 2018).

<sup>16</sup> *Supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2019  
Washington, DC

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

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

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