

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

A.T., Appellant

and

**U.S. POSTAL SERVICE, QUEENS VEHICLE
PLANT FACILITY, Jamaica, NY, Employer**

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**Docket No. 20-0334
Issued: October 8, 2020**

Appearances:

Stephen Larkin, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 29, 2019 appellant, through counsel, filed a timely appeal from a July 22, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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 December 7, 2018, as he no longer had

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.

² 5 U.S.C. § 8101 *et seq.*

residuals or disability causally related to his accepted March 24, 2017 employment injury; and (2) whether appellant has met his burden of proof to establish continuing employment-related disability or residuals, on or after December 7, 2018.

FACTUAL HISTORY

This case has previously been before the Board on the issue of expansion.³ The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On March 24, 2017 appellant, then a 50-year-old auto technician mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on that day, he injured his knees, shin, and chest while in the performance of duty.⁴ He stopped work on March 27, 2017 and has not returned to work. In an accompanying March 29, 2017 narrative statement, appellant related that on March 24, 2017 he and a coworker had loaded a vehicle bumper into his truck, and as he went to move his truck, his pants caught onto the bumper. He contended that he went flying down onto the bumper hitting both of his knees, the left side of his chest, and right shin.

On July 12, 2017 OWCP accepted appellant's claim for abrasion and contusion of the left knee.

By decision dated July 13, 2017, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions of bilateral osteoarthritis and tear of the meniscus of the knee, right knee rupture of the ACL ligament, and bilateral knee sprain of the ACL joint. In reports dated November 28, 2017 and January 15, 2018, Dr. Steven Touliopoulos, an attending Board-certified orthopedic surgeon, opined that appellant was totally disabled and was unable to return to work until further notice.

On January 18, 2018 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a set of questions, to Dr. Timothy Henderson, a Board-certified orthopedic surgeon, for a second opinion to determine whether he continued to suffer from residuals of his accepted work-related conditions.

Dr. Henderson, in a report dated February 2, 2018, reviewed appellant's history of injury and medical records, and provided examination findings. He advised that his work-related conditions had not resolved as there was evidence to support that these conditions were still active and causing noted objective findings. Dr. Henderson advised that additional medical recovery should be expected as maximum medical improvement (MMI) had not been obtained. He advised that appellant's prognosis was fair and that he was a candidate for left total knee replacement followed by six weeks of postoperative physical therapy treatment, three times a week if medical

³ Docket No. 19-0294 (issued May 29, 2019).

⁴ Appellant has filed prior claims before OWCP. In OWCP File No. xxxxxx447, OWCP accepted his September 10, 2004 traumatic injury claim for a left knee sprain. In OWCP File No. xxxxxx468, it accepted appellant's September 8, 2009 traumatic injury claim for a lumbar sprain. In OWCP File No. xxxxxx804, OWCP accepted his June 2, 2012 traumatic injury claim for a left shoulder impingement and cervical strain. Appellant had a nonwork-related history of left knee arthroscopy performed approximately 18 years ago and bilateral knee osteoarthritis.

clearance could be obtained as he was overweight. Dr. Henderson found that, based on clinical presentation, he was not currently capable of returning to his date-of-injury job as an auto technician mechanic. However, appellant could return to work with restrictions in a sedentary position. In an accompanying work capacity evaluation (Form OWCP-5c), Dr. Henderson listed appellant's work restrictions.

By letter dated February 13, 2018, OWCP requested that Dr. Henderson submit a supplemental report, but his opinion remained unchanged.

OWCP received additional reports dated February 27 and March 27, 2018 by Dr. Touliopoulos who continued to reiterate his clinical impressions and opinions regarding causal relationship of additional medical conditions and appellant's total disability.

OWCP, by letter dated April 4, 2018, again requested that Dr. Henderson clarify his February 14, 2018 opinion that the accepted March 24, 2017 employment injury had aggravated appellant's preexisting left knee osteoarthritis. On April 16, 2018 it was informed that Dr. Henderson was no longer practicing medicine.

On April 17, 2018 OWCP referred appellant, a SOAF, the medical record, and a set of questions, to Dr. Andrew E. Farber, a Board-certified orthopedic surgeon, for a second opinion.

In an April 30, 2018 report, Dr. Farber reviewed the SOAF and appellant's medical records. He also noted his current complaint of left knee pain. On physical examination, Dr. Farber reported diffuse tenderness and a palpable effusion about both knees. There was no gross instability. Flexion and extension were 5/5 bilaterally globally. There was 0 degrees of extension and 100 degrees of flexion on the right and 0 to 95 degrees on the left with discomfort in just about any motion (normal was 0 to 150 degrees). A Lachman test did not reveal a firm end point on either knee although the examination was somewhat limited secondary to discomfort. A McMurray's test was equivocal due to discomfort. Dr. Farber reviewed a magnetic resonance imaging (MRI) scan of the left knee which showed nondisplaced peripheral tear of the body of the medial meniscus, segments of chondral thinning and fissuring involving the medial femoral condyle and lateral tibial plateau, diffuse patellar chondral thinning and deep fissuring involving the medial and lateral patellar facets and segment of full-thickness chondral loss within the femoral trochlea centrally, small joint effusion, synovitis beneath the ITB, and minimal inflammatory changes of the pes anserine bursa. He noted that at the conclusion of the examination appellant stepped down with discomfort from the examination table and used a cane for ambulation. Dr. Farber indicated that he was treated with a significant course of conservative treatment, including physiotherapy and viscosupplementation, which failed to provide relief. He related that appellant's subjective complaints corresponded with objective findings. Dr. Farber advised that the accepted work-related conditions of left knee contusion and left knee abrasion had resolved and that no further medical treatment was indicated. He explained that there was no evidence to support that the work condition was still active and causing objective findings. Dr. Farber found that appellant could work in a sedentary capacity as he had moderate disability not related to his accepted conditions. In an accompanying Form OWCP-5c, he found that appellant was unable to perform his usual job, but he could work eight hours per day with specific restrictions.

On May 29, 2018 OWCP requested that Dr. Farber provide a supplemental report clarifying whether the additional conditions of bilateral knee osteoarthritis, tear of the meniscus, and sprain of the ACL, and right knee rupture of the ACL were caused or aggravated by the March 24, 2017 work injury.

In a response letter dated June 1, 2018, Dr. Farber opined that, based on the history provided and the SOAF, appellant fell on his left knee loading a bumper into a truck. He related that there was no objective evidence to support an additional diagnosis other than left knee contusion and left knee abrasion. Dr. Farber noted that appellant had a history of prior left knee arthroscopy and additional work injuries involving the left knee with a diagnosis of sprain. He concluded that an additional diagnosis would not be in relation to this work injury.

In a June 26, 2018 report, Dr. Touliopoulos reiterated his opinion that appellant was indefinitely totally disabled from work.

On July 19, 2018 OWCP updated the SOAF⁵ and requested that Dr. Farber review it and provide a supplemental report indicating whether it impacted his prior responses.

Dr. Farber, in a letter dated July 26, 2018, related that upon his review of the updated SOAF, the medical record, and appellant's history, his previously submitted determination remained unchanged. He noted that appellant had preexisting osteoarthritis. There were underlying degenerative changes in his knees. Dr. Farber continued to opine that appellant's work-related conditions had resolved and that he could return to work in a sedentary position.⁶

In a September 25, 2018 form report, Dr. Touliopoulos conducted an examination and reiterated his bilateral knee, right leg, and right shoulder diagnoses and opinion that appellant remained totally disabled from his prior employment due to his March 24, 2017 employment injury.

By notice dated October 22, 2018, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on Dr. Farber's opinion that the March 24, 2017 accepted conditions had ceased without residuals or disability. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received a September 25, 2018 narrative report, wherein Dr. Touliopoulos noted that appellant had been treating with him for injuries sustained in a March 24, 2017 work-related motor vehicle accident. Dr. Touliopoulos advised that he was totally disabled and that he could not return to work until further notice.

⁵ The SOAF contained an updated history of the March 24, 2017 employment injury.

⁶ On October 1, 2018 OWCP received a request for authorization of a total left knee arthroplasty for appellant. By decision of even date, it denied his request for authorization of a total left knee arthroplasty. OWCP found that the weight of the medical evidence rested with the opinion of Dr. Farber that his accepted March 24, 2017 employment injury had resolved without residuals or disability.

On November 24, 2018 appellant, through counsel, appealed OWCP's August 16, 2018 decision to the Board.

By decision dated December 6, 2018, OWCP terminated appellant's wage-loss and medical compensation benefits effective December 7, 2018, finding that the medical evidence submitted was insufficient to outweigh Dr. Farber's opinion.

Thereafter, OWCP received a November 8, 2018 report by Dr. Charles DeMarco, a Board-certified orthopedic surgeon. Dr. DeMarco noted a history of the March 24, 2017 employment injury and discussed findings on physical and x-ray examination. He provided impressions of left knee meniscal tear and chondral injuries and progression of underlying degenerative joint; right knee ACL tear, medial meniscal tear, chondral injuries, and progression of underlying degenerative joint disease; right leg injury, rule out muscle fascia defect versus post-traumatic fibroma versus further derangement; and consequential right shoulder impingement syndrome, rule out labral, capsular and rotator cuff injuries consequentially related to a fall caused by his right knee injury (gave out). Dr. DeMarco concluded that appellant remained totally disabled from work due to his March 24, 2017 employment injury.

On December 21, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding the December 6, 2018 termination decision.

In reports dated December 18, 2018 and March 5, 2019, Dr. Touliopoulos related a history of the March 24, 2017 employment injury and discussed findings on physical and x-ray examination. He provided impressions of left knee meniscal tear and chondral injuries and progression of underlying degenerative joint; right knee ACL tear, medial meniscal tear, chondral injuries, and progression of underlying degenerative joint disease; right leg injury, rule out muscle fascia defect versus post-traumatic fibroma versus further derangement; and consequential right shoulder impingement syndrome, rule out labral, capsular and rotator cuff injuries consequentially related to a fall caused by his right knee injury (gave out). Dr. Touliopoulos noted that appellant remained totally disabled from his prior employment due to his March 24, 2017 employment injury.

OWCP received a copy of Dr. Nicholas' June 6, 2017 report and Dr. Milbauer's May 24, 2017 left knee MRI scan report.

By decision dated July 22, 2019, an OWCP hearing representative affirmed the December 6, 2018 termination decision as the opinion of Dr. Farber constituted the weight of medical evidence that appellant had no continuing employment-related residuals or disability.⁷

⁷ In his July 22, 2019 decision, OWCP's hearing representative noted that the case was returned to OWCP for further development as indicated by the Board's May 29, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁸ After it has determined that an employee has 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 the employment.⁹ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹¹ 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.¹²

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 December 7, 2018, as he no longer had residuals or disability causally related to his accepted March 24, 2017 employment conditions.

OWCP referred appellant to Dr. Farber for a second-opinion evaluation to determine the status of his accepted conditions and his work capacity. In his April 30, 2018 report and June 1 and July 26, 2018 supplemental reports, Dr. Farber described appellant's March 24, 2017 employment injury and noted that his claim was accepted for abrasion and contusion of the left knee. He indicated that appellant's physical examination revealed no objective findings of the accepted conditions or additional left knee conditions causally related to the accepted injury. Dr. Farber opined that the accepted work-related conditions had resolved, that appellant could return to sedentary work as he had moderate disability not related to the accepted conditions, and that there was no need for further medical treatment.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Farber. Dr. Farber based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. He provided a well-

⁸ See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁹ See *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

¹⁰ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹¹ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹² *K.W.*, *supra* note 10; see *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's March 24, 2017 employment injury. Accordingly, OWCP properly relied on Dr. Farber's second opinion report in terminating appellant's wage-loss compensation and medical benefits.¹³

The remaining evidence submitted prior to OWCP's termination of appellant's wage-loss compensation and medical benefits is insufficient to overcome the weight afforded to Dr. Farber as the second opinion physician. Appellant submitted a September 25, 2018 report from Dr. Touliopoulos noting that appellant had been treating with him for injuries sustained in a March 24, 2017 work-related motor vehicle accident. Dr. Touliopoulos advised that appellant was totally disabled and that he could not return to work until further notice. In reports dated November 28, 2017 and January 15, 2018, he restated the opinion that appellant was totally disabled. However, Dr. Touliopoulos did not offer a rationalized opinion as to whether appellant's disability was causally related to the accepted employment injury. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale.¹⁴

The Board finds, therefore, that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective December 7, 2018.

On appeal counsel contends that OWCP's hearing representative affirmed the termination of appellant's benefits despite an improper SOAF. The Board finds, however, that the SOAF relied upon by the hearing representative in terminating appellant's compensation benefits effective December 7, 2018 was updated on July 19, 2018 and it accurately described appellant's mechanism of injury on March 24, 2017 and listed his prior and current accepted employment injuries and nonwork-related surgery.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted injury.¹⁵ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.¹⁶

¹³ See *K.W., id.*; *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹⁴ See *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *M.H.*, Docket No. 17-0210 (issued June 3, 2018).

¹⁵ See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *J.R.*, Docket No. 17-1352 (issued August 13, 2018).

¹⁶ *Id.*

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish continuing employment-related disability or residuals, on or after December 7, 2018.

Following the termination of his wage-loss compensation and medical benefits, appellant submitted reports dated December 18, 2018 and March 5, 2019 from Dr. Touliopoulos who diagnosed left knee meniscal tear and chondral injuries and progression of underlying degenerative joint; right knee ACL tear, medial meniscal tear, chondral injuries, and progression of underlying degenerative joint disease; right leg injury, rule out muscle fascia defect versus post-traumatic fibroma versus further derangement; and consequential right shoulder impingement syndrome, rule out labral, capsular and rotator cuff injuries consequentially related to a fall caused by his right knee injury (gave out). Dr. Touliopoulos opined that appellant remained totally disabled from his prior employment due to his March 24, 2017 employment injury. While he provided an opinion on the issue of whether appellant was capable of a return to work, his report is merely conclusory in nature. Dr. Touliopoulos did not provide medical rationale explaining how the diagnosed conditions were disabling and causally related to the accepted employment injury.¹⁷ A medical opinion not fortified by medical rationale is of diminished probative value.¹⁸ Because Dr. Touliopoulos failed to provide sufficient medical rationale for his conclusion, his opinion is insufficient to meet appellant's burden of proof.

Likewise, Dr. DeMarco's November 8, 2018 report did not provide a rationalized medical opinion on causal relationship. He diagnosed: left knee meniscal tear and chondral injuries and progression of underlying degenerative joint; right knee ACL tear, medial meniscal tear, chondral injuries, and progression of underlying degenerative joint disease; right leg injury, rule out muscle fascia defect versus post-traumatic fibroma versus further derangement; and consequential right shoulder impingement syndrome, rule out labral, capsular and rotator cuff injuries consequentially related to a fall caused by his right knee injury (gave out). Dr. DeMarco opined that appellant remained totally disabled from work due to the March 24, 2017 employment injury. No supporting medical rationale was provided to explain his conclusory opinion regarding the relationship between the diagnosed conditions and disability and the accepted work injury.¹⁹ Dr. DeMarco's report, therefore, is insufficient to meet appellant's burden of proof.

Appellant has not submitted rationalized medical evidence establishing continuing employment-related disability or residuals on or after December 7, 2018 due to the accepted March 24, 2017 employment injury. As such, the Board finds that he has not met his burden of proof.

¹⁷ See *L.B.*, Docket No. 19-1380 (issued February 11, 2020); *V.D.*, Docket No. 19-0979 (issued February 5, 2020).

¹⁸ *Id.*; *T.W.*, Docket No. 18-1573 (issued July 19, 2019).

¹⁹ See *supra* notes 16 and 17.

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 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 December 7, 2018, as he no longer had residuals or disability causally related to his accepted March 24, 2017 employment conditions. The Board further finds that he has not met his burden of proof to establish continuing employment-related disability or residuals on or after December 7, 2018.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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