

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

G.B., Appellant)	
)	
and)	Docket No. 20-0750
)	Issued: October 27, 2020
U.S. POSTAL SERVICE, NEW AUGUSTA)	
POSTAL FACILITY, Indianapolis, IN, Employer)	
)	

Appearances:
Erik B. Blowers, 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 February 19, 2020 appellant, through counsel, filed a timely appeal from an October 2, 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 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 benefits, effective October 2, 2019, as he no longer had residuals or

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.*

disability causally related to his accepted January 11, 2018 employment injury; and (2) whether appellant has met his burden of proof to establish continuing residuals or disability, on or after October 2, 2019, causally related to his accepted January 11, 2018 employment injury.

FACTUAL HISTORY

On January 17, 2018 appellant, then a 56-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2018 his left knee popped when pushing the clutch pedal of his tractor while in the performance of duty. He stopped work on that date. On February 13, 2018 OWCP accepted appellant's claim for left knee sprain and temporary aggravation of primary osteoarthritis of the left knee. It paid appellant wage-loss compensation on the supplemental rolls, effective February 26, 2018.

In an April 23, 2018 report, Dr. Wesley Lackey, a Board-certified orthopedic surgeon, noted that appellant had increasing pain and stiffness in both knees. He indicated that appellant had been symptomatic for over a year and had failed nonoperative treatment. Dr. Lackey examined appellant and diagnosed end-stage, tricompartmental osteoarthritis of the knees. He requested staged bilateral total knee replacements.

In a letter dated July 3, 2018, Dr. Jerry Powell, a Board-certified family practitioner, noted that appellant's aggravation of primary osteoarthritis of the left knee was permanent. He opined that appellant's left knee condition would not improve without knee replacement surgery.

On September 12, 2018 OWCP requested that its district medical adviser (DMA) review a statement of accepted facts (SOAF) and provide an opinion regarding the medical necessity of the requested left knee replacement surgery.

In a report dated September 21, 2018, Dr. Todd Fellars, a Board-certified orthopedic surgeon, serving as the DMA, reviewed the SOAF and the medical record. He found that the requested left knee replacement was causally related to the accepted medical conditions. However, the DMA found that the requested left knee replacement was not medically necessary. He noted that it was not clear if appellant had a body mass index (BMI) under 40. The DMA noted that there was a high risk of complication if BMI is elevated above 40. As such, he indicated that surgery would not be medically necessary due to lack of information in the medical record.

On February 28, 2019 OWCP referred appellant, a SOAF, and a list of questions to Dr. Norman Mindrebo, a Board-certified orthopedic surgeon, for a second opinion evaluation. The SOAF noted appellant's job duties and listed the accepted conditions as sprain of the left knee and temporary aggravation of primary osteoarthritis of the left knee.

In his March 18, 2019 report, Dr. Mindrebo reviewed the SOAF and appellant's medical history. He examined appellant and noted left knee three-compartment tenderness consistent with underlying osteoarthritis. Dr. Mindrebo found that appellant "never had sustained a sprain of the collateral ligament of the left knee" and that the temporary aggravation of appellant's left knee osteoarthritis had resolved by March 1, 2018, the date of a magnetic resonance imaging scan of his left knee. He opined that appellant's morbid obesity was more than likely the underlying reason for the osteoarthritis that affected both of appellant's knees. Dr. Mindrebo further opined that

appellant's advanced osteoarthritis was not a direct result of his work-related injury. He advised that appellant should not have any type of knee replacement surgery because of his morbid obesity. Dr. Mindrebo indicated that appellant could not perform his duties as a tractor trailer operator without restrictions because he could not climb into or descend from his truck with his knee condition. He completed a work capacity evaluation (Form OWCP-5c) and determined that appellant could not work due to appellant's preexisting knee osteoarthritis caused by his morbid obesity.

On April 3, 2019 OWCP requested additional information from appellant's treating physician, Dr. Powell. It attached Dr. Mindrebo's second opinion report and asked whether Dr. Powell agreed with Dr. Mindrebo's opinion that appellant's medial collateral ligament sprain and osteoarthritis had resolved and that appellant was unable to safely undergo total knee replacement. No response was received.

On July 11, 2019 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Mindrebo's second opinion report. It afforded appellant 30 days to submit additional evidence and written argument if he disagreed with the proposed termination. No response was received.

By decision dated October 2, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of medical evidence rested with Dr. Mindrebo, the second opinion physician, who determined in his March 18, 2019 report that appellant no longer had continuing disability causally related to his accepted January 11, 2018 work injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.³ 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.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2019.

³ *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *A.R.*, Docket No. 20-0335 (issued August 7, 2020); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *V.S.*, Docket No. 19-1792 (issued August 4, 2020); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

OWCP accepted appellant's claim for left knee sprain and temporary aggravation of primary osteoarthritis of the left knee on February 13, 2018. Appellant's attending physicians, Drs. Lackey and Powell, recommended and requested total knee replacement surgery. In a July 3, 2018 letter, Dr. Powell opined that appellant's aggravation of primary osteoarthritis of the left knee was permanent. On February 28, 2019 OWCP referred appellant, a SOAF, and a series of questions to Dr. Mindrebo for a second opinion examination. In his March 18, 2019 report, Dr. Mindrebo advised that appellant had never sustained a left knee sprain and that the temporary aggravation of his left knee osteoarthritis had resolved by March 1, 2018. He opined that appellant's morbid obesity was more than likely the underlying reason for the osteoarthritis that affected both of his knees. Dr. Mindrebo found that appellant's osteoarthritis was not causally related to his work-related injury. By decision dated October 2, 2019, OWCP terminated appellant's wage-loss compensation benefits, based on Dr. Mindrebo's report.

The Board finds that Dr. Mindrebo's report was inconsistent with the SOAF. OWCP accepted that appellant's left knee sprain was work related. It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.⁶

As noted, in his March 18, 2019 report, Dr. Mindrebo found that appellant never sustained a left knee strain causally related to the accepted work injury. The Board has held that medical opinions based on an incomplete or inaccurate history are of diminished probative value.⁷ As Dr. Mindrebo did not rely on the SOAF regarding the accepted conditions, the Board finds his report to be of diminished probative value.

The Board further finds that Dr. Mindrebo's report was conclusory in nature and did not contain sufficient medical reasoning to establish that appellant was no longer disabled due to his accepted employment injury.⁸ The Board has held that the weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.⁹ Herein, Dr. Mindrebo's second opinion report failed to provide sufficient medical rationale to support his conclusory statements. He relied on a note from Dr. Lackey to conclude that appellant's morbid obesity was likely the cause of appellant's osteoarthritis because he was symptomatic prior to the employment injury. The Board finds that Dr. Mindrebo's opinion is conclusory in nature and lacks sufficient medical rationale to justify termination of appellant's wage-loss compensation benefits.

The Board therefore finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2019, as the

⁶ *D.B.*, *supra* note 3.

⁷ *Id.*

⁸ *A.R.*, *supra* note 4.

⁹ *Id.*

medical evidence of record is insufficient to establish that he no longer has disability or residuals causally related to his accepted January 11, 2018 employment injury.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 2, 2019.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 27, 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

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.