

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

S.Y., Appellant	)	
	)	
and	)	<b>Docket No. 20-0959</b>
	)	<b>Issued: March 17, 2021</b>
<b>DEPARTMENT OF THE AIR FORCE, HILL</b>	)	
<b>AIR FORCE BASE, Davis, UT, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 27, 2020 appellant, through counsel, filed a timely appeal from a January 3, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the

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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> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, counsel asserted that oral argument should be granted because it presented the opportunity for questions to be asked and answered regarding the objective evidence that was supportive of appellant's claim that she had continuing residuals and disability due to the January 8, 2015 employment injury. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on October 5, 2017; and (2) whether appellant has met her burden of proof to establish continuing residuals or disability on or after October 5, 2017.

### **FACTUAL HISTORY**

On January 14, 2015 appellant, then a 51-year-old computer assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee on January 8, 2015 when she slipped and fell on black ice while in the performance of duty.<sup>4</sup>

Dr. Michael S. Dee, a Board-certified orthopedic surgeon, began treating appellant in February 2015 and requested authorization for a right total knee arthroplasty (TKA). Appellant began modified duty, based on restrictions provided by Dr. Dee.

On April 7, 2015 OWCP accepted the conditions of right knee anterior cruciate ligament tear, acute medial meniscus tear, loss body in knee, and defect of articular cartilage. In an April 20, 2015 report, Dr. Morley Slutsky, Board-certified in occupational medicine and serving as district medical adviser (DMA), advised that, based on appellant's significant preexisting arthritis that was aggravated by the January 8, 2015 fall at work, the only reasonable surgery would be right TKA. He indicated that the need for the surgery was directly related to the accepted work injury. OWCP authorized the surgery that was performed by Dr. Dee on June 4, 2015.

OWCP paid appellant compensation from the date of surgery and placed her on the periodic compensation rolls, effective June 28, 2015.

Dr. Dee provided follow-up care on June 15, July 14, and August 7, 2015. On September 24, 2015 he advised that appellant could return to modified-duty work on October 1, 2015, to begin five hours daily for three weeks and then full duty. On a September 29, 2015 work capacity evaluation (Form OWCP-5c), Dr. Dee indicated that appellant was able to perform sedentary work only for five hours a day and provided restrictions of no twisting, bending, stooping, pushing, pulling, lifting, squatting, kneeling, or climbing.

OWCP paid appellant wage-loss compensation on the periodic rolls until she returned to modified-duty work on October 1, 2015.<sup>5</sup> An October 19, 2015 light-duty job offer indicated that she could work five hours of sedentary duty daily with no twisting, bending, stooping, pushing,

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> A January 27, 2015 magnetic resonance imaging (MRI) scan of the right knee demonstrated severe medial compartment osteoarthritis, moderate-to-severe patellofemoral compartment osteoarthritis, and moderate lateral compartment osteoarthritis, chronic complete anterior cruciate ligament tear, small knee effusion, and a free body in the posterior medial compartment.

<sup>5</sup> By letter dated October 19, 2015, the employing establishment confirmed that appellant's position was within the restrictions provided by Dr. Dee.

pulling, lifting, squatting, kneeling, or climbing. A copy of Dr. Dee's September 29, 2015 Form OWCP-5c was attached.

OWCP thereafter paid appellant intermittent wage-loss compensation on the supplemental compensation rolls, based on claims for compensation (Form CA-7) filed by appellant.

On November 6, 2015 Dr. Dee noted appellant's complaint of increased pain. He diagnosed osteoarthritis of the right knee, and indicated that she had full knee extension, flexion to 150 degrees, stable to examination, and a healing incision. Dr. Dee indicated that appellant could work six hours of light duty per day. On January 8, 2016 he noted appellant's complaint of continued right knee pain. Dr. Dee reported that her right knee showed a healed incision and mild swelling, but that the knee was stable to examination with full extension and flexion of 125 degrees. Right knee x-ray demonstrated a TKA with no evidence of loosening. Dr. Dee noted that he thought the majority of her symptoms were from weak quadriceps muscles. He recommended continued physical therapy and advised that she continue working five hours daily. On March 18, 2016 Dr. Dee reported that appellant's postoperative course had been complicated by severe right knee neuropathic pain. Right knee range of motion was 0 to 130 degrees, stable examination, with a healed incision, and hypersensitivity to the lateral knee. X-rays demonstrated a right TKA. Dr. Dee diagnosed osteoarthritis of the knee, and complex regional pain syndrome of the lower extremity. He discussed treatment methodologies and, if no improvement over the next months, recommended referral to pain management. Appellant was to continue working five hours daily with current restrictions. On May 13, 2016 Dr. Dee reported that appellant had increasing right knee pain and had trouble kneeling down at work to plug in telephone wires. He reported right knee full extension and definite tenderness to light touch and paresthesia over the lateral knee. Dr. Dee advised that appellant should continue light duty with current restrictions including no lifting greater than 20 pounds.

On June 1, 2016 OWCP referred appellant to Dr. Todd A. Fellars, a Board-certified orthopedic surgeon, for a second opinion evaluation. It asked Dr. Fellars to determine if appellant had continuing residuals of the employment injury and whether she had work limitations.

In a July 14, 2016 report, Dr. Fellars noted appellant's complaint of achy right knee pain, numbness, and burning when standing, walking, and climbing stairs. He described her medical and surgical history and noted that she had multiple back injuries associated with three automobile accidents. Appellant described the January 8, 2015 employment injury and indicated that she was currently working five hours daily, but that the job was more demanding than described, noting that she was out in the field most of the day working on individual's computers, that she had to walk long distances on uneven surfaces, and had to lift computers, and at times would kneel and bend, but was unable to kneel at present. She reported that her knee had not improved since the injury. Dr. Fellars noted his review of the medical record including the statement of accepted facts (SOAF) and that appellant had a minimally antalgic gait on the right. He advised that she could only perform 25 percent of a squat-and-rise maneuver due to pain at the infrapatellar aspect of her knee. Dr. Fellars measured right knee range of motion with a goniometer, noting that despite complaints of pain, her range of motion was symmetric bilaterally from 0 to 110 degrees with active range of motion and 0 to 112 with passive range of motion. He described right calf atrophy of 38 centimeter (cm) when compared to 41 cm on the left. Strength testing for knee flexion and extension was 5/5 bilaterally, and bilateral patellar and Achilles reflex testing was hyporeflexive. Right knee sensation was decreased in the distribution of the infrapatellar branch of the saphenous nerve. Dr. Fellars found that, on inspection, appellant had normal alignment with no evidence of

malalignment of the right knee, and that appellant stood with her right knee flexed approximately 20 inches. He indicated that she reported that when she tried to extend it fully when standing, she had a sharp pain in the back of her knee, but could extend it fully when not weight bearing. Stability testing revealed her knee was stable to varus and valgus stress with no gapping and no mid-flexion instability. Dr. Fellars found that on palpation, appellant had diffuse pain in the infrapatellar region and at the lateral femoral condyle on the right. He indicated that the July 14, 2015 MRI scan of the right knee showed that the TKA components were in good position with no evidence of loosening or complication. Dr. Fellars noted the diagnoses found in the statement of accepted facts and that appellant was status post right TKA on June 4, 2015 with complaints of numbness in the infrapatellar branch of the saphenous nerve, which was expected almost 100 percent of the time after a TKA. He opined that this should not be limiting, and noted subjective complaints of ongoing pain, not supported by objective evidence.

Dr. Fellars noted that OWCP had accepted that the preexisting osteoarthritis seen on appellant's MRI scan had been aggravated by the January 8, 2015 employment injury and this aggravation led to the TKA. He advised that, per the documented evidence and radiology images, appellant had no complication associated with her TKA. Dr. Fellars noted appellant's continued subjective complaints of pain, indicating that although TKA was a very successful surgery, there were individuals who were outliers and continued to have pain after a TKA. He found that, based on all objective measures, appellant had no evidence of infection or loosening and, therefore, there was no objective evidence as to why she had complaints of ongoing pain. Dr. Fellars indicated that appellant's complaints of pain were more consistent with nerve complaints, and not complaints associated with a painful knee implant, but also noted that there was no specific-named nerve that ran in that anatomic region. He advised that she was numb in the region innervated by the infrapatellar branch of the saphenous nerve, but that was expected, and often unavoidable, as a result of the TKA and opined was not a limiting factor. Dr. Fellars indicated that, on a purely objective standard, there was no reason that appellant could not work eight hours per day, finding no objective evidence to support her subjective complaints of pain. He also found that, since she was one year post-surgery and had not made significant improvement over the past few months, she was likely at maximum medical improvement (MMI) for this condition. Dr. Fellars wrote that the only thing further that could be done was a bone scan to assess loosening of the TKA components, but noted that appellant's complaints of pain did not correlate with aseptic loosening. In response to specific OWCP questions, he opined that, within reasonable medical probability based on objective findings, appellant had no continuing residuals as a result of the accepted work-related conditions, noting that her knee prosthesis was in excellent position with no evidence of loosening, and that she had excellent range of motion. Dr. Fellars indicated that, based on objective medical evidence, appellant's conditions have resolved to the point that she was at MMI, and no further treatment would be expected to provide specific clinical and functional benefit, noting that further skilled physical therapy intervention would not provide a functional benefit that would surpass a home exercise program.

As to appellant's work capacity, Dr. Fellars noted that the cover letter indicated that the demands of appellant's computer assistant position were listed as primarily sedentary in nature with occasional periods of walking, standing, bending, and carrying light items such as paper or small parts, but that appellant reported that she spent minimal time sitting down and when she did sit, it was at other's desks, and that she had to walk out onto the flight line and on uneven surfaces, and walk up and down stairs. He indicated that appellant reported that she did this constantly, not intermittently. Dr. Fellars noted that this difference between the official job description and what

appellant reported as her job duties would need to be rectified prior to his offering an opinion as to whether she could return to work without restrictions, but indicated that, based on the job description he had been given, appellant could return to work at full duty for eight hours per day, finding that she was subjectively limiting herself due to her reports of pain with no objective evidence that she could not work eight hours daily.

April 31, and September 9, 2016 memoranda of telephone call (Form CA-110) indicated that OWCP contacted the employing establishment to ask appellant's supervisor what appellant's position entailed on a daily basis so that the physical duties of the position could be established.

In a September 13, 2016 e-mail, A.E., appellant's supervisor, indicated that parts of appellant's statements were correct and in compliance with her position description. He noted that her work area was spread over 33 buildings, which involved driving and walking to provide computer assistance. A.E. indicated that appellant's position description contained occasional periods of walking, standing, and bending and it also indicated that her work was performed in an office setting or warehouse setting and that some travel could be required for mission accomplishment or training. He continued that there would be occasional stairs, but questioned the definition of "occasional." A.E. wrote that he disagreed with appellant's assertion regarding that she consistently did this and questioned the definition of "consistently." He noted that he would need to sit down with appellant and see where she was working to confirm her story, indicating that he saw her the majority of the time in their office. A.E. wrote that he thought appellant's claims came down to the definition of "occasionally" and "consistently," and maintained that the duties were nowhere near the "consistently" side. He acknowledged that she lifted small pieces of computer equipment such as laptops, desktops, and printers, but was unsure of the definition of "small parts."

In a Form CA-110 dated October 11, 2016, OWCP informed the employing establishment that clarification of appellant's actual job duties was needed.

On August 26, 2016 Dr. Dee advised that appellant's right knee was slightly warm to touch and she was tender to palpation about the medial lateral joint lines with full extension flexion 130 degrees and a stable ligamentous examination. He diagnosed complex regional pain syndrome of the lower extremity and referred her for a consultation regarding her continued right knee pain.

By letter dated October 25, 2016, M.R., an injury compensation specialist with the employing establishment, responded to appellant's assertions regarding her job duties. She wrote that appellant's supervisor A.E. indicated that her work was primarily sedentary in nature. M.R. referred to appellant's position description and A.E.'s description of appellant's job duties, noting that it could be more active at times, and that appellant did not currently have flight line access to the best of his knowledge, but that she may have to perform work out at the flight line at times. A.E. noted that since appellant's work was performed in a warehouse environment, she would always be traversing uneven surfaces. M.R. reported that A.E. maintained that the majority of appellant's tasks were sedentary and could be performed with minimal exertion, but the level could raise based on the workload. A.E. related that when an employee called for assistance, appellant would need to go out which would involve periods of substantial walking, standing, bending, and carrying light objects as outlined in her position description. M.R. attached copies of October 2016 e-mails from A.E. who noted that appellant provided assistance to a higher-graded computer technician. A.E. further indicated that some of appellant's work could be accomplished at her desk

such as completing reports, telephone calls, and imaging. He noted that appellant was currently working four-hour days and was being accommodated.

In a December 9, 2016 report, Dr. Dee noted appellant's complaint of continued severe burning right knee pain. Examination showed full extension flexion with a stable ligamentous examination and significant tenderness to palpation about the anterolateral knee joint. X-rays that day demonstrated a stable-appearing right TKA with no evidence of acute complication.

In correspondence dated January 23, 2017, M.R. asked that OWCP schedule another second opinion evaluation to address whether appellant could work full time and whether she could perform some of the physical duties required as part of her sedentary job.

On February 13, 2017 OWCP referred appellant to Mark Hedrick, a rehabilitation counselor, for vocational rehabilitation services. On March 27, 2017 OWCP received a March 1, 2017 job analysis form for a computer assistant position from Mr. Hedrick.<sup>6</sup> Mr. Hedrick indicated that job analysis assistance was provided by A.E., and that the computer assistant position was classified as light with a 20-pound lifting requirement. It noted that physical demands were primarily sedentary with occasional periods of walking, standing, bending, and carrying of light items, such as paper or small parts. The work environment would require some travel for mission accomplishment or training. It indicated that appellant would not be required to lift any weight over about 20 pounds per her restriction and that a laptop computer, keyboard, computer mouse, and monitor all weighed 10 pounds or less, and that some computers, monitors, printers, and miscellaneous equipment weighed between 10 and 20 pounds or as much as 50 pounds, but that appellant would not be required to lift anything above 20 pounds. The report indicated that the items to be pushed included desk drawers, doors, and carts, occasionally, intermittently, for one second to a few minutes at one time and required the use of one hand. Items to be pulled included desk drawers, doors, and computer cables, occasionally, intermittently, for one second to a few minutes at one time and required the use of one hand. Driving was to a location to perform assistance, occasionally, intermittently, for two to three minutes at one time. Kneeling was occasionally, intermittently, for two to three minutes at one time; crawling, occasionally, intermittently, for a few seconds at one time; crouching, occasionally, intermittently, could be avoided with body mechanics; climbing, occasionally, intermittently with average use of stairways is approximately 10 times per day and maximum use of stairways approximately 20 times per day. It was noted that the stairways typically had 7 steps, some had 10 or 15 steps, and the maximum observed was a stairway with 25 steps with at least two to three minutes before returning to a stairway to descend or ascend. Sitting averaged approximately six hours per day with at least three hours at the computer assistant's desk in a chair with lumbar support and armrests. Many times, the computer assistant would have the option to sit or stand at a customer's desk. Standing was occasionally, intermittently at a maximum of 15 minutes at one time, and 2 hours in a working day on carpet, asphalt, or cement floor. Walking was occasionally, intermittently at a maximum of five minutes at one time, typically one to three minutes at one time with a maximum of two hours in a working day, on carpet, asphalt, or cement floor and stairs with cement floor, and occasionally on uneven sidewalks or outdoors on a ramp with a slight incline. Most walking was performed indoors where the surfaces were flat, and walking outside would be in a parking lot and on

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<sup>6</sup> It appears that March 1, 2016 is a typographical error as the correct date is March 1, 2017.

sidewalks intermittently for one to two minutes at one time and would require stepping up onto sidewalks on occasion. Walking on gravel or rocks was not required.<sup>7</sup>

In a report dated April 14, 2017, Mr. Hedrick noted that he met with appellant at the employing establishment on March 23, 2017 and she disagreed with many of A.E.'s descriptions. On March 24, 2017 he reviewed appellant's comments with A.E.

On May 24, 2017 OWCP reduced appellant's wage-loss compensation based on her actual earnings as a computer assistant. It noted that she worked an average of 22 hours a week at a salary of \$528.88 per week and applied the *Shadrick*<sup>8</sup> formula, finding net compensation of \$1,264.00 every four weeks.

In correspondence of same date, M.R. requested that OWCP issue a notice of proposed termination, based on Dr. Fellars' report. OWCP forwarded appellant a copy of this letter. In undated correspondence, appellant indicated that she continued to have work-related residuals.

B.S., an OWCP rehabilitation specialist, prepared a report on June 1, 2017. He indicated that the physical demands of appellant's computer assistant job matched the physical demands that Dr. Fellars used when he released appellant to perform her date-of-injury work. B.S. noted that Dr. Fellars indicated that appellant's physical demands were primarily sedentary, with occasional periods of walking, standing, bending, and carrying light items, and that Mr. Hedrick, the rehabilitation counselor, completed a job analysis on March 27, 2017 which confirmed each of the listed factors provided by Dr. Fellars. He indicated that, while appellant told Dr. Fellars that her physical demands were much more arduous, that she must walk constantly, Mr. Hedrick confirmed that she walked no more than two hours per day. B.S. reported that the job definitions provided to Dr. Fellars were accurate, and that appellant's descriptions were incorrect. He also noted that Dr. Fellars indicated that appellant had no continuing residuals and that her complaints of pain were not supported by objective evidence. B.S. maintained that this also supported appellant's full-duty work release.

On August 30, 2017 OWCP provided appellant with a notice of proposed termination of her wage-loss compensation and medical benefits because the medical evidence of record established that she no longer had any residuals or continuing disability due to the January 8, 2015 employment injury. It determined that the weight of the medical evidence rested with the July 14, 2016 report of Dr. Fellars. OWCP afforded appellant 30 days to submit additional evidence or argument. No additional evidence or argument was received within this time frame.

By decision dated October 5, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits effective that day. It found that the opinion of Dr. Fellars constituted the weight of the medical evidence and established that she had no further residuals or continuing disability causally related to her accepted right knee conditions.

On August 6, 2018 appellant, through counsel, requested reconsideration. Counsel maintained that appellant continued to have residuals of the accepted conditions, noting that her

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<sup>7</sup> Mr. Hedrick reported that appellant was unable to work at that time due to a motor vehicle accident.

<sup>8</sup> *Albert C. Shadrick*, 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403.

right knee had worsened in the last six months. He also asked that the acceptance of appellant's claim be expanded to include the conditions of chronic pain syndrome and lower back pain.

Counsel submitted a May 24, 2018 report of Dr. Betsy L. Reese, an employing establishment physician who is Board-certified in family and sports medicine, and advised that appellant was under her care and had many musculoskeletal disabilities that limited her ability to work, dating back to January 2015 when she fell at work, injuring her right knee. Dr. Reese noted that appellant continued to have chronic right knee pain to date. She also advised that appellant had developed low back pain due to her altered gait which exacerbated the degenerative changes seen on lumbar spine x-rays. Dr. Reese opined that appellant's activities of daily living were impacted by her chronic right knee and low back pain.

By decision dated October 31, 2018, OWCP denied modification of its October 5, 2017 decision. It noted that Dr. Reese did not provide physical examination findings, and found that the weight of the medical evidence continued to rest with Dr. Fellars' opinion.

On September 26, 2019 appellant, through counsel, again requested reconsideration. He noted that there was a difference of opinion between Dr. Fellars and Dr. Dee regarding appellant's right knee pain, which continued. Counsel reiterated that appellant continued to have right knee residuals and also had a consequential low back condition. He also indicated that, since Dr. Fellars advised that appellant had reached MMI, OWCP should schedule appellant an impairment evaluation for her. Counsel also indicated that appellant was requesting compensation for wage loss during the time she was off due to the TKA.

Counsel submitted a July 22, 2019 report in which Dr. Dee noted that appellant had severe problems following the work injury that required a TKA and continued to have severe right knee pain, likely neurogenic in nature due to the work injury. Dr. Dee advised that a bone scan did not show any obvious loosening with relative normal uptake, but that appellant had never improved to the point that she could function without difficulty, which was perhaps due to some hypersensitivity to the metal from her knee replacement *versus* chronic pain from neuralgia. He diagnosed traumatic arthropathy and chronic pain of the right knee.

By decision dated January 3, 2020, OWCP denied modification of its October 31, 2018 decision.

### **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.<sup>9</sup> 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

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<sup>9</sup> *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *S.F.*, 59 ECAB 642 (2008).



the employment.<sup>10</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>11</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>12</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>13</sup>

The Department of Labor's *Dictionary of Occupational Titles* defines sedentary work as exerting up to 10 pounds of force occasionally or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs may be defined as sedentary when walking and standing are required only occasionally and all other sedentary criteria are met.<sup>14</sup>

### **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 5, 2017.

The Board finds that the July 14, 2016 opinion of Dr. Fellars, which served as the basis of OWCP's termination action, does not provide a well-rationalized, unequivocal opinion that appellant had no residuals or disability related to the accepted January 8, 2015 employment injury.

As to appellant's work capacity, OWCP relied on the June 1, 2017 report of its rehabilitation specialist B.R. Dr. Fellars, however, clearly indicated in his July 14, 2016 report that appellant's work capacity could not be determined at that time because her report of her job duties and those contained in her position description did not agree. The record indicates that appellant returned to modified duty on October 1, 2015 and that the modified job offer in place at the time of termination was that dated October 19, 2015. It was based on restrictions provided by Dr. Dee and provided that appellant should not twist, bend, stoop, push, pull, lift, squat, kneel, or climb. Dr. Dee never returned appellant to full duty.

In October 2016, A.E., appellant's supervisor, provided a thorough description of what he determined were appellant's job duties. He indicated that she had to climb stairs during each workday and perform other duties required to assist in computer maintenance. However, A.E. did not indicate that appellant's duties complied with Dr. Dee's restrictions attached to the job offer that indicated that appellant had specific physical restrictions. Moreover, OWCP did not ask

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<sup>10</sup> V.S., Docket No. 19-1792 (issued August 4, 2020); *I.J.*, 59 ECAB 408 (2008).

<sup>11</sup> A.C., Docket No. 19-1522 (issued July 27, 2020); *T.P.*, 58 ECAB 524 (2007).

<sup>12</sup> *D.B.*, *supra* note 9; *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>13</sup> *A.J.*, Docket No 18-1230 (issued June 8, 2020); *T.P.*, *supra* note 11.

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Vocational Rehabilitation Services*, Chapter 2.813, Exhibit 1 (February 2011).

Dr. Fellars to review the October 19, 2015 job offer or to review A.E.'s report of appellant's job duties and did not ask him to complete a work capacity evaluation.

For these reasons, the Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation on October 5, 2017.<sup>15</sup>

As to the termination of medical benefits, although both Dr. Dee and Dr. Fellars indicated that appellant had a good result from her TKA, Dr. Fellars described physical findings of right calf atrophy, decreased sensation, and arthritis which showed that appellant had continuing right lower extremity residuals. Although he explained that nerve loss was expected 100 percent of the time after a TKA, this would also be a residual. Thus, as the medical evidence indicates that appellant had continuing residuals, OWCP also did not meet its burden of proof to terminate appellant's medical benefits.<sup>16</sup>

On appeal counsel asserts that appellant should be additionally compensated for lost wages during her recovery from the TKA. The record indicates that appellant received full compensation on the periodic rolls until she returned to work on October 1, 2015 and thereafter received intermittent compensation based on the claim forms that she filed. OWCP continued to pay intermittent compensation until appellant's wage-loss compensation was terminated on October 5, 2017.<sup>17</sup>

### **CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on October 5, 2017.<sup>18</sup>

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<sup>15</sup> *M.R.*, Docket No. 20-0707 (issued November 30, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> Regarding counsel's request for expansion of the claim, which was made following the termination of appellant's compensation, the Board's jurisdiction is limited to the review of final adverse OWCP decisions issued under FECA. OWCP has not issued a final decision regarding expansion of the claim. 20 C.F.R. §§ 501.2(c) and 501.3. *See also S.H.*, Docket No. 20-0253 (issued June 17, 2020).

<sup>18</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 3, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 17, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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