



## ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective June 24, 2018, as she no longer had disability causally related to her accepted October 2, 2003 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability on or after June 24, 2018.

## FACTUAL HISTORY

On December 16, 2003 appellant, then a 34-year-old transportation security officer (TSO), filed a traumatic injury claim (Form CA-1) alleging that on October 2, 2003 she sustained left knee patella tendinitis and partial tear as a result of hitting her knee when pulling bag rollers while in the performance of duty. She stopped work on December 4, 2003 and returned on December 11, 2003. OWCP accepted appellant's claim for derangement of posterior horn of medial meniscus and subsequently expanded acceptance of her claim to include non-traumatic rupture of the left patellar tendon. Appellant subsequently underwent three OWCP-approved left knee surgeries.<sup>4</sup> OWCP paid her wage-loss compensation for intermittent periods of disability. On October 13, 2009 appellant returned to full-time, limited-duty work.<sup>5</sup>

According to a memorandum of telephone call (Form CA-110) dated September 21, 2010, the employing establishment informed OWCP that appellant was terminated from employment on September 16, 2010 due to administrative issues, and not due to her work injury.

In a June 21, 2012 letter, a human resource specialist for the employing establishment, informed OWCP that after a grievance process appellant was reinstated back to TSO position. She indicated that the employing establishment no longer had a position within appellant's restrictions and requested that appellant be placed on the periodic rolls. OWCP placed appellant back on the periodic rolls, effective September 23, 2012.

In a November 6, 2012 work capacity evaluation (Form OWCP-5c), Dr. Joseph B. Billings, an osteopath Board-certified in orthopedic surgery, indicated that appellant could work with restrictions of walking up to 30 minutes and no bending, stooping, squatting, kneeling, or climbing.

On September 28, 2012 OWCP referred appellant for vocational rehabilitation.

In a May 24, 2013 decision, OWCP reduced appellant's wage-loss compensation benefits, effective June 2, 2013, based on her ability to earn \$385.40 per week in wages in the constructed position of appointment setter (medical setting), *Dictionary of Occupational Titles* (DOT) No.

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<sup>4</sup> On February 11, 2004 appellant underwent left knee arthroscopic medial meniscectomy surgery. On February 15, 2005 she underwent patellar tendon reconstruction surgery. On April 16, 2009 appellant underwent left knee patellofemoral replacement surgery.

<sup>5</sup> On July 7, 2010 OWCP granted appellant a schedule award for three percent left lower extremity permanent impairment. The award ran for 8.64 weeks from October 13 to December 12, 2009. On May 5, 2011 OWCP granted appellant an additional 22 percent left lower extremity permanent impairment, for a total of 25 percent left lower extremity permanent impairment. The award ran for 63.36 weeks from March 1, 2011 through May 17, 2012.

237.367-010.<sup>6</sup> It found that the physical and vocational requirements of the position conformed to her medical restrictions and prior work experience. OWCP applied the *Shadrick*<sup>7</sup> formula and thereafter paid appellant wage-loss compensation benefits at the new rate of \$633.36.

In a May 2, 2016 report, Dr. James A. Bynum, a Board-certified orthopedic surgeon, recounted appellant's complaints of left knee pain for the past 11 years after an October 2003 job injury. He reviewed appellant's history and noted left knee examination findings of full active and passive range of motion, normal sensation, stable varus, valgus, and Lachman's test. Dr. Bynum diagnosed lumbar radiculopathy, left knee osteoarthritis, left knee pain, and swelling of limb. He authorized appellant to work full duty.

In reports and state workers' compensation forms dated December 14, 2016 through December 18, 2017, Dr. Bynum indicated that appellant was seen for follow up of left knee pain. He conducted an examination and diagnosed lumbar radiculopathy, left knee osteoarthritis, left knee pain, and swelling of limb. Dr. Bynum noted that appellant could work full duty.

In a January 30, 2018 letter, OWCP requested that Dr. Bynum clarify whether appellant was able to perform the duties of her date-of-injury position. It also asked that Dr. Bynum address the status of appellant's October 2, 2003 employment injury and her ability to work.

Dr. Bynum indicated, in a March 5, 2018 report, that appellant was seen for follow up of ongoing left knee pain. Upon examination of appellant's left knee, he observed moderate tenderness to palpation of the medial joint line with no swelling and minimal effusion. Range of motion (ROM) testing was full. Dr. Bynum assessed lumbar radiculopathy, osteoarthritis of the left knee, unspecified problems related to employment, swelling of the limb, and left knee pain. In response to OWCP's questions, he indicated that appellant had severe post-traumatic arthritis on x-ray scan. Dr. Bynum reported objective symptoms such as McMurray's test to support posterior horn of medial meniscus tear. He noted that appellant could work full duty.

By notice dated April 23, 2018, OWCP proposed to terminate appellant's wage-loss compensation benefits because she no longer had disability causally related to her accepted October 2, 2003 employment injury. It found that the weight of the medical evidence rested with the reports of Dr. Bynum who indicated that appellant could work full duty.

In a May 9, 2018 report and state workers' compensation form, Dr. David E. Eichten, an osteopath who specializes in orthopedic surgery, recounted appellant's complaints of ongoing knee pain for several years and discomfort in the medial aspect of the left knee. Upon physical examination, he observed that appellant ambulated with minimal to moderate pain. Dr. Eichten reported left knee examination findings of swelling, moderate pain with full ROM, and tenderness in the medial joint line.

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<sup>6</sup> In an April 3, 2013 vocational rehabilitation closure memorandum, the vocational rehabilitation counselor identified the occupations of front desk clerk/receptionist and appointment scheduler/appointment clerk as medically and vocationally appropriate for appellant's preexisting and work-related medical conditions. She also noted that appellant did not obtain employment because she alleged that she was unable to work due to nonwork-related conditions.

<sup>7</sup> *Albert C. Shadrick*, 5 ECAB 376 (1953).

In a May 10, 2018 report, Dr. Bynum recounted appellant's complaints of continued left knee pain in the medial and lateral aspect of the left knee. He conducted an examination and assessed that appellant still had significant knee pain related to her underlying arthritis. Dr. Bynum reported work restrictions of no climbing and squatting.

By decision dated June 7, 2018, OWCP finalized the termination of appellant's wage-loss compensation benefits, effective June 24, 2018. It found that the weight of the medical opinion evidence rested with the March 5, 2018 report of Dr. Bynum who indicated that appellant was no longer disabled from work as a result of her October 2, 2003 employment injury.<sup>8</sup>

On June 14, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 28, 2018. Counsel argued that appellant still had problems with her left knee that required additional surgery and prevented her from working full duty.

Appellant submitted a June 27, 2018 left knee magnetic resonance imaging (MRI) scan report, which revealed mildly diffuse thinning and low-grade fissuring of the articular cartilage of the medial femoral condyle, thickening of the patellar tendon proximately likely representing patellar tendinosis, moderate knee joint effusion, and no evidence of meniscal tear.

In reports dated July 13 through December 5, 2018, Dr. Eichten discussed the medical treatment that appellant had received, including cortisone injections and surgeries, for her ongoing knee pain. He provided examination findings and noted medical problems of lumbar radiculopathy, left knee osteoarthritis, swelling of the limb, and left knee pain. Dr. Eichten also completed work status notes and state workers' compensation forms, which noted diagnoses of left knee pain and left knee osteoarthritis. He indicated that appellant could work with restrictions of no squatting or climbing.

By decision dated January 24, 2019, an OWCP hearing representative affirmed the June 7, 2018 decision.

On June 25, 2019 appellant, through counsel, requested reconsideration.

Appellant submitted a February 9, 2019 letter by Dr. Eichten who indicated that appellant developed knee pain due to arthritis advancing in the medial and lateral compartments. Dr. Eichten explained that he disagreed with appellant's release to full duty due to "possible poly wear of the patellofemoral implant and worsening of the patient's arthritis in the medial and lateral compartments." He also provided reports, work status notes, and state workers' compensation forms dated February 22, 2019 through February 27, 2019, which noted left knee examination findings and work restrictions of no climbing or squatting.

In a June 9, 2019 letter, Dr. Eichten noted that appellant's duties as a TSO required standing for up to three hours and lifting and/or assisting another individual to lift from the ground an object weighing up to 70 pounds. He indicated that he had seen appellant on multiple occasions since May 2018 and opined that she could not do her full duties as a TSO. Dr. Eichten reported

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<sup>8</sup> OWCP further found that, since it determined that appellant no longer had disability from work due to her accepted work-related injury, a formal modification of her LWEC determination was unnecessary since the medical evidence sufficient to meet OWCP's burden of proof to terminate wage-loss compensation benefits "would also be sufficient to negate an LWEC decision on the basis of a material change in the medical condition."

that appellant had significant arthritis in other compartments of her left knee (medial and lateral), which would continue to progress with repetitive stress if she worked with no restrictions on the knee.

In a September 25, 2019 decision, OWCP denied modification of its prior decision.

On December 5, 2019 appellant, through counsel, requested reconsideration.

Dr. Eichten continued to treat appellant and provided reports, work status notes, and state workers' compensation forms dated October 4 through November 18, 2019. He provided examination findings and diagnosed left knee pain, osteoarthritis, patellar tendonitis, and effusion. Dr. Eichten reported work restrictions of no climbing or squatting.

In a November 18, 2019 letter, Dr. Eichten noted a date of injury of October 2, 2003. He clarified that his previous work restrictions were not merely "preventive" in nature. Dr. Eichten explained that his examination findings had consistently shown swelling and tenderness in appellant's left knee. He indicated that these were chronic problems, which would prevent appellant from performing her job as a TSO, which included standing up to 3 hours and lifting items weighing up to 70 pounds due to her current knee condition.

By decision dated March 4, 2020, OWCP denied modification of its prior decision.

On June 1, 2020 appellant, through counsel, requested reconsideration. He asserted that Dr. Eichten had provided several opinion letters, which explained the seriousness of appellant's medical condition and the reasoning behind his opinion that her restrictions and limitations prevented her from working full duty.

In a May 20, 2020 letter, Dr. Eichten noted that this would be the fourth time he had written his opinion regarding the issue of appellant's work restrictions. He reiterated that appellant had a painful and swollen knee directly related to her accepted medical condition and advancing arthritis in her left knee medial and lateral compartments. Dr. Eichten explained that appellant's restrictions, which had been for the duration of her treatment, should be to avoid standing for more than two hours, squatting, climbing, and lifting heavy weights such as required by employing establishment employees.

In a July 16, 2020 decision, OWCP denied modification of its prior 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 compensation benefits.<sup>9</sup> It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>10</sup>

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<sup>9</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>10</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

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

### ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective June 24, 2018.

In November 2012, appellant was released to work with restrictions of walking up to 30 minutes and no bending, stooping, squatting, kneeling, or climbing. OWCP subsequently referred her for vocational rehabilitation. In a May 24, 2013 decision, it reduced appellant's wage-loss compensation benefits, effective June 2, 2013, based on her ability to earn wages in the constructed position of appointment setter. By decision dated June 7, 2018, OWCP terminated appellant's wage-loss compensation benefits based on the opinion of Dr. Bynum, appellant's treating physician, who indicated in a March 5, 2018 report that appellant could work full duty.

In a March 5, 2018 report, Dr. Bynum recounted appellant's complaints of continued significant anterior knee pain and intermittent swelling. Upon examination of appellant's left knee, he observed moderate tenderness to palpation of the medial joint line and minimal effusion. Dr. Bynum assessed lumbar radiculopathy, osteoarthritis of the left knee, unspecified problems related to employment, and left knee pain. He noted that appellant was capable of returning to full duty.

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.<sup>12</sup> Herein, the Board finds that Dr. Bynum did not provide any medical reasoning or explanation for why appellant's employment-related disability had ceased. Dr. Bynum did not explain how appellant was able to return to full duty despite objective examination findings of moderate tenderness and effusion and continued complaints of increased left knee pain. Medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.<sup>13</sup> Moreover, Dr. Bynum later indicated in reports dated May 9 and 10, 2018, that appellant had work restrictions of no climbing or squatting. The Board has found that inconsistent and contradictory reports from the same physician lack probative value and cannot constitute competent medical evidence.<sup>14</sup> Thus, the Board finds that Dr. Bynum's opinion on disability is conclusory in nature and lacks sufficient medical rationale to justify termination of appellant's wage-loss compensation benefits.<sup>15</sup>

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<sup>11</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>12</sup> *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *J.J.*, Docket No. 15-0475 (issued September 28, 2016).

<sup>13</sup> *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>14</sup> *J.O.*, Docket No. 19-0850 (issued October 22, 2020); *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987).

<sup>15</sup> *See L.D.*, Docket No. 19-0308 (issued July 24, 2019); *see also S.W.*, Docket No. 18-0005 (issued May 24, 2018).

The Board thus finds that OWCP has not met its burden of proof to establish that appellant was no longer disabled, effective June 24, 2018, due to her accepted October 2, 2003 employment injury.<sup>16</sup>

**CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective June 24, 2018.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 16, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 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

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<sup>16</sup> In light of the Board's disposition of the Issue 1, Issue 2 regarding appellant's continuing disability is rendered moot.