

disability or residuals causally related to the accepted August 6, 2014 employment injury; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after October 27, 2015, due to the accepted August 6, 2014 employment injury.

FACTUAL HISTORY

On August 7, 2014 appellant, then a 63-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2014 she injured her right knee when she twisted to get into her vehicle while in the performance of duty.³ She stopped work on September 11, 2014. OWCP initially accepted appellant's claim for right knee patellar strain. It paid her wage-loss compensation for disability from work on the supplemental rolls, commencing September 22, 2014.

On May 18, 2015 OWCP expanded its acceptance of appellant's claim to include right knee lateral meniscus tear.

On May 20, 2015 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Gilbert D. Beauperthuy-Rojas, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent and degree of any remaining disability due to her August 6, 2014 work-related injury.

Dr. Beauperthuy-Rojas, in a June 26, 2015 report, noted appellant's history of injury on August 6, 2014 and his review of the SOAF and medical evidence of record. He discussed findings on physical examination and obtained weight-bearing x-rays. Dr. Beauperthuy-Rojas diagnosed advanced degenerative arthropathy of the right knee consistent with appellant's subjective complaints and objective findings on physical examination and weight-bearing x-ray. He noted that the diagnosed condition was most probably secondary to a progression of a degenerative tear, which appellant exhibited preinjury. Dr. Beauperthuy-Rojas advised that appellant was unable to perform her city carrier duties, but she could perform sedentary work with restrictions, eight hours per day. He further advised that appellant's accepted conditions of right knee lateral meniscal tear and patellar strain had resolved. Dr. Beauperthuy-Rojas maintained that her prognosis related to her right knee advanced degenerative arthropathy was poor without surgical intervention, which included total knee replacement. He opined that the diagnosed right knee condition was not secondary to appellant's August 6, 2014 employment injury. In an accompanying work capacity evaluation (Form OWCP-5c) dated June 26, 2015, Dr. Beauperthuy-Rojas reiterated appellant's work capacity and listed permanent work restrictions.

By notice dated August 21, 2015, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Beauperthuy-Rojas' opinion that the August 6, 2014 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

³ Appellant has a prior claim under OWCP File No. xxxxxx278, for a traumatic left knee injury. OWCP accepted that claim for medial meniscal tear. It administratively combined OWCP File No. xxxxxx278 and the current claim under OWCP File No. xxxxxx410, with the latter serving as the master file.

OWCP subsequently received medical evidence, including reports by Dr. Edward Lazzarin, an orthopedic surgeon, who provided a preoperative diagnosis of complex tear lateral meniscus and postoperative diagnoses of complex tear of the right lateral and medial meniscus, medial and lateral femoral chondromalacia, hyperplastic synovitis, and adhesions. Dr. Lazzarin recommended physical therapy for both knees. On December 2, 2014 he performed right knee arthroscopic surgery with partial medial and lateral meniscectomy, partial synovectomy, medial and lateral femoral chondroplasty, and lysis adhesions.

Appellant responded to OWCP's August 21, 2015 proposed termination notice in a letter dated September 21, 2015. She contended that the SOAF reviewed by Dr. Beauperthuy-Rojas was inaccurate as it did not include her claim for a left knee injury under OWCP File No. xxxxxx278 and indicated that she stopped work on September 26, 2014 rather than on September 11, 2014. Additionally, appellant contended that Dr. Beauperthuy-Rojas' opinion on causal relationship was speculative and unsupported by medical rationale. She also asserted that he was asked leading questions regarding her work capacity by OWCP.

By decision dated October 27, 2015, OWCP terminated appellant's wage-loss and medical compensation benefits effective that date, finding that the medical evidence submitted was insufficient to outweigh Dr. Beauperthuy-Rojas' opinion that she no longer had residuals or disability due to her August 6, 2014 employment injury.

OWCP received additional medical evidence, including an office visit note dated November 26, 2014 by Dr. Barbara M. Muina, an internist. Dr. Muina noted that appellant presented for a regular follow-up visit. She reported examination findings and diagnosed, among other things, knee osteoarthritis. Dr. Muina advised that appellant was in optimal medical condition to undergo knee surgery with moderate risk.

On November 3, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the October 27, 2015 decision.

OWCP continued to receive medical evidence, including an August 11, 2016 letter in which Dr. Muina noted that appellant's severe bilateral knee osteoarthritis for which she underwent surgery in 2014 was probably accelerated by working many years as a mail carrier. Dr. Muina advised that appellant was currently unable to work.

In an August 29, 2016 decision, an OWCP hearing representative affirmed the October 27, 2015 decision. He found that Dr. Muina's August 11, 2016 report was insufficiently rationalized to outweigh Dr. Beauperthuy-Rojas' opinion that appellant no longer had employment-related residuals or disability.

On August 9, 2017 appellant, through her representative, requested reconsideration.

OWCP thereafter received correspondence dated June 26, 2017 from Dr. Muina. Dr. Muina noted her history of treating appellant for over 20 years. She believed that her diagnosed condition of bilateral knee osteoarthritis or degenerative osteoarthritis was causally related to her physical work duties as a mail carrier that she had performed for over 30 years since November 26, 1984. Dr. Muina opined that appellant's 1995 employment-related left knee injury under OWCP File No. xxxxxx278 and 2014 employment-related right knee employment injury

under the current file, OWCP File No. xxxxxx410, which required surgery, both contributed to her osteoarthritis. She further opined that appellant's current left knee problems should be considered consequential to her employment-related right knee injury.

On September 21, 2017 OWCP determined that there was a conflict in the medical opinion evidence between Dr. Muina, the attending physician, and Dr. Beaupertuy-Rojas, OWCP's referral physician, as to whether appellant sustained an aggravation of arthritis in her left knees as a consequence of her August 6, 2014 employment injury and whether she had continuing disability related to her August 6, 2014 work injury. In order to resolve the conflict, it referred appellant, together with a SOAF and the medical record, to Dr. Peter Millheiser, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on causal relationship, and the extent of disability. This SOAF noted that it superseded all previously-issued SOAFs.

In a December 12, 2017 report, Dr. Millheiser noted his review of the SOAF and the medical evidence of record. He described the August 6, 2014 employment injury and noted that appellant's claim was accepted for right knee lateral meniscal tear and patella sprains. Dr. Millheiser also noted that she retired from the employing establishment in November 2015. On physical examination he reported that appellant was in no acute distress. Appellant had a halting shuffling gait. She walked with her knees kept in a very stiff position with minimal bending of the knees and used a three-pronged cane. The right knee was more valgus than the left knee. There were well-healed scars on both knees. Range of motion was minus 5 to 90 degrees on both knees. There was mild medial and lateral joint line tenderness. There was no significant effusion. Motion of the knees caused mild discomfort with mildly positive Apley tests bilaterally. A Lachman test was negative. There was no varus-valgus instability. There was crepitus in both knees. Appellant did not use an orthosis. Dr. Millheiser indicated that an x-ray examination of the right knee showed moderate patellofemoral degenerative changes with moderate degenerative changes in the lateral and medial compartments, and narrowing of the medial compartment. An x-ray examination of the left knee showed marked patellofemoral degenerative changes with very marked medial compartment narrowing and marked medial degenerative changes with moderate lateral degenerative changes and moderate narrowing of the lateral compartment. Dr. Millheiser diagnosed bilateral knee osteoarthritis, the accepted conditions of lateral meniscal tear of the right knee, and medial meniscal tear of the left knee, and post-arthroscopy of both knees. He related that appellant's bilateral knee arthritis was obviously a preexisting problem as osteoarthritis is a condition that takes years to develop, especially with the amount of arthritis she had in the right knee. Dr. Millheiser also noted that she was 22 years status post left knee surgery, which was performed in 1995 regarding a work-related left knee injury. He maintained that appellant's bilateral knee osteoarthritis was not caused by the August 6, 2014 employment injury. Dr. Millheiser noted that her left knee osteoarthritis may have been exacerbated when excess pressure was put on it due to her right knee employment injury and subsequent surgery, but this would not materially affect the underlying arthritis of the left knee. He opined that appellant's preexisting right knee osteoarthritis was temporarily aggravated by her August 6, 2014 work injury. Dr. Millheiser indicated that, although the torn meniscus was removed and chondroplasty was performed, the knee would have deteriorated due to the osteoarthritis. In response to the questions posed by OWCP, he related that appellant's bilateral knee osteoarthritis worsened due to the natural history of the condition. Dr. Millheiser concluded that appellant was unable to perform her date-of-injury city carrier position due to her worsening nonwork-related bilateral

knee osteoarthritis and set forth her physical restrictions. In an accompanying Form OWCP-5c dated December 12, 2017, he reiterated his opinion regarding appellant's work capacity.

OWCP, by decision dated January 24, 2018, denied modification of the August 29, 2016 decision, finding that the special weight of the medical evidence rested with Dr. Millheiser's impartial medical opinion that appellant no longer had residuals or disability causally related to her August 6, 2014 employment injury.

On January 19, 2019 appellant, through her representative, requested reconsideration. In support of her reconsideration request, she submitted a November 12, 2018 report from Dr. Julian Naranjo, a Board-certified anesthesiologist specializing in pain medicine. Dr. Naranjo noted a history that appellant's bilateral knee pain began four years ago. He also noted a history of her medical treatment. Dr. Naranjo reported examination findings and provided assessments of pain in the right and left knee and low back, other chronic pain, and bilateral knee osteoarthritis.

By decision dated April 12, 2019, OWCP denied modification of the January 24, 2018 decision, finding that Dr. Naranjo's November 12, 2018 report was insufficient to establish that appellant had continuing residuals of her accepted August 6, 2014 employment-related conditions or that she sustained a left knee condition as a consequence of the August 6, 2014 employment injury.

On March 14, 2020 appellant, through her representative, again requested reconsideration. She submitted a narrative report and bilateral knee x-ray reports dated July 11, 2019 from Dr. Alexander van der Ven, a Board-certified orthopedic surgeon. Dr. van der Ven noted appellant's history of bilateral knee pain that had worsened over the past 10 years and resultant medical treatment. He provided findings on physical and x-ray examination of both knees. Dr. van der Ven provided assessments of right and left knee osteoarthritis, and right and left knee pain.

In a decision issued on June 10, 2020, OWCP denied modification of its April 12, 2019 termination 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.⁴ 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

⁴ See *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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).

the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁹ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 27, 2015, as she no longer had residuals or disability causally related to the accepted August 6, 2014 employment injury.

OWCP found that a conflict in medical opinion existed between Dr. Muina, appellant's treating physician, who opined that appellant had bilateral knee osteoarthritis resulting from both her accepted 1995 employment-related left knee injury under OWCP File No. xxxxxx278 and her employment-related right knee injury under OWCP File xxxxxx410, and Dr. Beauperthuy-Rojas, OWCP's second opinion physician, who found that appellant no longer suffered residual disability, or a consequential injury, due to her August 6, 2014 right knee employment injury. The Board finds, however, that Dr. Beauperthuy-Rojas did not reference appellant's work-related left knee injury in her claim under OWCP File No. xxxxxx278, while Dr. Muina referenced appellant's work-related bilateral knee conditions in her claims under OWCP File Nos. xxxxxx278 and xxxxxx410. Consequently, the Board finds that the probative value of Dr. Beauperthuy-Rojas' opinion is of diminished probative value and not of equal weight to create a conflict in medical opinion with Dr. Muina.

⁵ See *D.G., id.*; *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *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).

⁷ *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).

⁸ *K.W.*, *supra* note 6; see *A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

⁹ 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁰ *D.B.*, *supra* note 4.

OWCP had referred appellant to Dr. Millheiser for an impartial medical examination, however, as no true conflict existed in the medical evidence at the time of the referral to Dr. Millheiser, the Board finds that his report may not be accorded the special weight of an impartial medical specialist and should instead be considered for its own intrinsic value.¹¹ The referral to Dr. Millheiser is, therefore, considered to be that of a second opinion evaluation.¹²

Dr. Millheiser, in his December 12, 2017 report, noted appellant's history, and his review of the SOAF, and medical evidence of record. He described the August 6, 2014 employment injury and noted appellant's accepted conditions of right knee lateral meniscal tear and patella sprain. Dr. Millheiser found essentially normal findings on examination of both knees and diagnosed bilateral knee osteoarthritis, the accepted conditions of lateral meniscal tear of the right knee and medial meniscal tear of the left knee, and post-arthroscopy of both knees. He opined that appellant's bilateral knee osteoarthritis was not caused by the August 6, 2014 employment injury. Dr. Millheiser explained that the natural history of the osteoarthritis was that it worsened over time. He attributed appellant's inability to perform her date-of-injury city carrier position and resultant work restrictions to her worsening nonwork-related preexisting bilateral knee osteoarthritis.

The Board finds that a conflict in medical opinion exists between Dr. Muina and Dr. Millheiser regarding the issues of a consequential injury resulting from appellant's August 6, 2014 employment injury and whether she had disability or residuals causally related to the same work injury.¹³ Thus, OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 27, 2015.¹⁴

¹¹ See *L.G.*, Docket No. 20-0611 (issued February 16, 2021); *F.R.*, Docket No. 17-1711 (issued September 6, 2018).

¹² See *L.G.*, *id.*; *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); see also *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the impartial medical specialist was not afforded the special weight of the evidence, but instead considered for its own intrinsic value as he was a second opinion specialist).

¹³ See *R.M.*, Docket No. 20-0452 (issued March 4, 2021); *C.R.*, Docket No. 19-1132 (issued October 1, 2020).

¹⁴ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 5, 2021
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