

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

R.L., Appellant)	
)	
and)	Docket No. 20-1611
)	Issued: September 30, 2022
U.S. POSTAL SERVICE, ASHEVILLE)	
PROCESSING & DISTRIBUTION FACILITY,)	
Asheville, NC, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 8, 2020 appellant filed a timely appeal from a June 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 19, 2018, because he no longer had disability or residuals causally related to his accepted February 1, 2002 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals on or after April 19, 2018 causally related to his accepted February 1, 2002 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 1, 2002 appellant, then a 34-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date he twisted his right ankle when he dismounted a forklift while in the performance of duty. He stopped work on that date and returned on February 15, 2002. OWCP accepted appellant's claim for right knee medial meniscus tear and subsequently expanded the acceptance of his claim to include old disruption of right knee anterior cruciate ligament (ACL).² It paid him wage-loss compensation on the supplemental rolls, effective November 2, 2002, and on the periodic rolls, effective March 23, 2003.

Appellant continued to receive medical treatment and underwent multiple right knee surgeries.³

OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Nicholas A. Grimaldi, an osteopath Board-certified in orthopedic surgery, for a second opinion evaluation regarding the status of his employment-related conditions. In an August 3, 2017 report, Dr. Grimaldi reviewed appellant's history and noted that video surveillance conducted from May 2014 through February 2015 revealed that appellant had no signs of pain when carrying cases of drinks and ice, squatting, bending, or twisting.⁴ Dr. Grimaldi indicated that although appellant had MRI scan findings supporting his right knee medial meniscus tear, he also had multiple surgeries to repair these tears. He noted that the video surveillance demonstrated that the meniscal tear did not appear to have any effect on appellant's life. Upon physical examination, Dr. Grimaldi observed that appellant was able to walk on his toes and back of his heels. Posterior and anterior drawer tests and McMurray tests were negative to his bilateral knees. Dr. Grimaldi reported that appellant's right knee meniscal tear had resolved. Regarding appellant's ability to work, he reported: "in reviewing his videotape as well as his physical exam[ination], I see no reason to keep this claimant from work."

On September 1, 2017 appellant underwent a right knee MRI scan, which revealed postsurgical changes along with re-tear of the medial meniscus with a retained meniscal free fragment, moderate tricompartment osteoarthritis with chondromalacia, and an ACL repair that was not well preserved.

Appellant submitted an October 5, 2017 report by Dr. Carey McKain, a Board-certified orthopedic surgeon, who noted appellant's 2002 employment injury and recounted his complaints of persistent pain and recurrent exacerbations. Upon examination of appellant's right knee, he observed crepitus to compression in his patella, tenderness at the medial joint line greater than the

² A February 18, 2002 right knee magnetic resonance imaging (MRI) scan demonstrated intact right ACL reconstruction and findings suggestive of a small tear of the posterior horn of the medial meniscus.

³ On April 18, 2008 appellant retired from federal employment due to disability.

⁴ On June 2, 2017 OWCP received an investigative report by the employing establishment's Office of Inspector General (OIG), which indicated that appellant was observed performing activities outside of his work restrictions. Video surveillance of appellant showed him running, bending, jumping, walking with items such as large gas containers, bags of ice, and cases of beer, stooping, squatting, and climbing in and out of his boat repeatedly without difficulty.

lateral, and 2+ effusion. Dr. McKain asserted that Dr. Grimbaldi's examination was inadequate and noted his disagreement with Dr. Grimbaldi's conclusion that appellant had no work restrictions for his right knee.

OWCP found that a conflict in medical evidence existed between Dr. McKain, appellant's treating physician, and Dr. Grimbaldi, OWCP's second opinion examiner, with regard to the status of appellant's accepted injury. As such, it referred appellant, along with an updated SOAF, to Dr. John P. Evans, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict of medical evidence. The November 27, 2017 SOAF noted appellant's accepted condition as right torn medial meniscus.

In a January 4, 2018 report, Dr. Evans indicated that he had reviewed appellant's records and noted that appellant sustained a right knee torn medial meniscus as a result of a February 1, 2002 employment injury. He noted that a video recording of appellant showed him repeatedly getting in and out of a truck and boat without difficulty, fully flexing the right knee, and using the right leg for pushing and climbing, and carrying heavy gas cans. Dr. Evans recounted appellant's current complaints of right knee pain and instability. Upon examination of appellant's right knee, he observed diffuse tenderness with palpation, no tenderness over the incisions or portals, and slight medial instability with valgus stressing. Lachman's testing was +1. Dr. Evans diagnosed primary knee osteoarthritis. In response to OWCP's question about whether appellant's accepted right medial meniscus tear had resolved, he indicated that appellant's medial meniscus was not torn in the work incident. Dr. Evans reported that the ACL graft was torn, and subsequently reconstructed and found to be stable. He opined that appellant was capable of working his date-of-injury position.

On March 8, 2018 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits because his February 1, 2002 employment-related injury had resolved. It found that the special weight of medical evidence rested with the January 4, 2018 medical report of Dr. Evans, OWCP's impartial medical examiner (IME), who found that appellant no longer had any residuals or disability causally related to his accepted February 1, 2002 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

Appellant submitted a March 23, 2018 report by Dr. Gerald W. King, a Board-certified orthopedic surgeon, who recounted appellant's complaints of right knee pain since a 2002 work injury. Dr. King reviewed appellant's history and provided right knee examination findings. He reported that appellant had traumatic arthritis of the right knee.

By decision dated April 18, 2018, OWCP finalized the proposed notice of termination of appellant's wage-loss compensation and medical benefits, effective April 19, 2018. It found that the special weight of medical evidence rested with Dr. Evans, the IME, who had determined in a January 4, 2018 report, that appellant did not have residuals or disability due to the February 1, 2002 employment injury.

On May 17, 2018 appellant requested reconsideration.

Appellant submitted an April 5, 2001 right knee MRI scan report, which showed advanced tricompartmental loss, extensive prior partial meniscectomy, and status-post ACL reconstruction with disrupted graft.

In a May 31, 2018 report, Dr. McKain indicated that appellant continued to have marked pain in his knee and wished to proceed with total right knee replacement surgery. He noted his disagreement with the determination that appellant was able to return to full duty and pointed out that, from a medical perspective, appellant had obvious marked impairment, persistent effusion, and debilitating pain. Dr. McKain opined that appellant remained totally disabled from work.

By decision dated August 7, 2018, OWCP denied modification of the April 18, 2018 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.⁵ It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.⁹

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.¹⁰ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹¹ When OWCP has referred the case to an IME for the purpose of resolving the conflict,

⁵ *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).

⁶ *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).

⁷ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁸ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹⁰ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹¹ *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *C.H.*, Docket No. 18-1065 (issued November 29, 2018); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.¹²

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 19, 2018.

OWCP terminated appellant's wage-loss compensation and medical benefits, effective April 19, 2018, based on the medical opinion of Dr. Evans, the IME, who had determined in a January 4, 2018 report, that appellant did not have residuals or employment-related disability due to the February 1, 2002 employment injury. However, the Board finds that OWCP improperly determined that a conflict in medical opinion evidence existed between Dr. McKain, appellant's treating physician, and Dr. Grimaldi, OWCP's second opinion examiner, regarding whether appellant's February 1, 2002 employment injury had resolved. In an August 3, 2017 report, Dr. Grimaldi indicated that although appellant had MRI scans supporting his right knee medial meniscus tear, he had multiple surgeries to repair these tears. He also noted that OIG video surveillance demonstrated that the meniscal tear did not appear to have any effect on appellant's life. Dr. Grimaldi opined that appellant's right knee meniscal tear had resolved and that appellant could return to work.

The Board finds that Dr. Grimaldi's August 3, 2017 report lacks sufficient medical rationale and is not of equal weight to Dr. McKain's reports.¹³ In determining the probative value of medical evidence, the Board has held that the weight of 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.¹⁴

In this case, the Board finds that Dr. Grimaldi did not provide any medical reasoning or explanation for why appellant's right knee injury and work-related disability had ceased. He merely relied on the fact that video surveillance showed that appellant's right knee medial meniscus tear had no effect on him. Dr. Grimaldi did not reference any specific examination findings to show that appellant's right knee condition had resolved or otherwise provide medical rationale in support of his opinion that appellant ceased to have employment-related residuals or disability. The Board has held that medical evidence that states a condition, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ The Board thus finds that this report lacks

¹² *S.S.*, Docket No. 19-0766 (issued December 13, 2019); *W.M.*, Docket No. 18-0957 (issued October 15, 2018); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹³ *See R.M.*, Docket No. 20-0452 (issued March 4, 2021).

¹⁴ *A.R.*, Docket No. 20-0335 (issued August 7, 2020); *R.C.*, Docket No. 14-1964 (issued January 22, 2015); *J.J.*, Docket No. 15-0475 (issued September 28, 2016).

¹⁵ *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

sufficient medical rationale to create a conflict in medical opinion with Dr. McKain.¹⁶ As there was no conflict in medical evidence between Dr. McKain and Dr. Grimaldi pursuant to 5 U.S.C. § 8123(a), the referral to Dr. Evans constitutes a second opinion examination.¹⁷ Accordingly, Dr. Evans' opinion is insufficient to carry the special weight of an IME and should instead be considered for its own intrinsic value.¹⁸

In a January 4, 2018 report, Dr. Evans indicated that he had reviewed the case record, including the OIG video surveillance. He noted right knee examination findings of diffuse tenderness with palpation, slight medial instability with valgus stressing, and +1 Lachman's testing. Dr. Evans diagnosed primary knee osteoarthritis. He opined that appellant's medial meniscus was not torn in the work incident, but that appellant's ACL graft was torn and subsequently reconstructed. Dr. Evans concluded that appellant no longer suffered residuals of the work-related condition and was capable of working his date of injury position.

The Board also finds that Dr. Evans' opinion is of diminished probative value as his opinion was not based on an accurate background or history. It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.¹⁹ OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.²⁰

In this case, the November 27, 2017 SOAF provided to Dr. Evans noted appellant's accepted condition as right torn medial meniscus, but failed to mention the accepted old disruption of right knee ACL condition. As Dr. Evans based his report on an incomplete SOAF, his report is of diminished probative value and is insufficient to be afforded the weight of the medical evidence.²¹

The Board therefore finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 19, 2018.²²

¹⁶ See *supra* note 11.

¹⁷ See *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 IME was not afforded the special weight of the evidence but was considered for its own intrinsic value as he was a second opinion specialist).

¹⁸ *F.R.*, Docket No. 17-1711 (issued September 6, 2018).

¹⁹ *A.M.*, Docket No. 19-1602 (issued April 24, 2020); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

²⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); see also *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

²¹ See *L.G.*, Docket No. 20-0611 (issued February 16, 2021); *M.G.*, Docket No. 19-1627 (issued April 17, 2020).

²² See *A.C.*, Docket No. 19-1522 (issued July 27, 2020); *Willa M. Frazier*, 55 ECAB 379 (2004).

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 19, 2018.²³

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 30, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.