

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

C.H., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer

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**Docket No. 10-935
Issued: January 26, 2011**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 4, 2010 appellant filed a timely appeal from the August 17, 2009 merit decision of the Office of Workers' Compensation Programs terminating her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective August 17, 2009 on the grounds that she no longer had residuals of her accepted right knee conditions after that date.

FACTUAL HISTORY

The Office accepted that on August 14, 2006 appellant sustained internal derangement of her right knee when it twisted outwards while she was walking at work. It paid compensation for

periods of disability.¹ Appellant received medical treatment for her right knee condition beginning on August 15, 2006 from Dr. Mark J. Reiner, an osteopath and Board-certified orthopedic surgeon. In late August 2006, she was placed in a knee brace and instructed in a home exercise program.

The findings of September 5, 2006 magnetic resonance imaging scan testing of appellant's right knee showed mild chondral erosions of his posterior patella and medial joint space, small joint effusion and no definite evidence of internal derangement. On December 8, 2006 appellant returned to work for four hours a day in a limited-duty position. On August 21, 2007 Dr. Reiner noted that her right leg still gave way, that she continued to be restricted to limited-duty work and that her medical condition was stable. In January 8 and February 5, 2008 reports, he found that appellant's work-related right knee condition necessitated that she continue working in a limited-duty position.

The Office referred appellant to Dr. Zohar Stark, a Board-certified orthopedic surgeon, for a second opinion examination regarding whether she continued to have residuals of her August 14, 2006 right knee injury. In the April 3, 2008 statement of accepted facts and issues provided to Dr. Stark, it made reference to her August 14, 2006 employment injury but it did not make reference to a January 22, 1983 employment injury or any surgeries performed as a result of that injury.

In a May 13, 2008 report, Dr. Stark stated that examination of appellant's right knee revealed no effusion or atrophy but showed some tenderness over the patella borders. Range of motion of the knee was preserved with crepitation in the patellofemoral joint. There was no tenderness over the joint lines but there was some varus instability. Dr. Stark indicated that his physical examination and the medical records showed that appellant had internal derangement, patellar chondromalacia and medial compartment erosion of her right knee, but he determined that she did not have any continuing residuals of her August 14, 2006 employment injury. Appellant was able to return to her job as a clerk on a full-time basis with no restrictions.

In an October 14, 2008 report, Dr. Reiner determined that appellant was disabled due to her work-related right knee condition. He reported findings on physical examination of her right knee, including the presence of tenderness, crepitus and atrophy.

The Office determined that there was a conflict in medical opinion between Dr. Reiner and Dr. Stark concerning whether appellant had residuals of her August 14, 2006 employment injury. It referred her to Dr. Roy B. Friedenthal, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter. In the October 23, 2008 statement of accepted facts and issues for the referee medical specialist provided to Dr. Friedenthal, the Office made reference to appellant's August 14, 2006 employment injury but it did not make reference to her January 22, 1983 employment injury or any surgeries performed as a result of that injury.

¹ The Office had previously accepted that appellant sustained work-related right knee injuries on January 22, 1983, including joint derangement and a contusion, which necessitated multiple right knee surgeries.

In a March 6, 2009 report, Dr. Friedenthal indicated that appellant reported that she had an injury to her right knee in 1983 when a mail cart fell off a truck and struck her right leg. Appellant also reported that she sustained a dislocation of her right knee at that time which necessitated surgery, including pinning bones together, but that she was able to recover and return to work. She had further problems in 1985 that required surgery to remove her right fibular head and stated that “her surgery became infected” and she underwent 12 additional operations to clean out the joint. Dr. Friedenthal detailed the mechanism of appellant’s August 14, 2006 injury and reported findings on examination for her right knee. There was no collateral instability and the cruciate ligaments were clinically intact. Bilateral patellofemoral crepitus was observed, more on the right than the left. Medial joint line tenderness was reported on the right and lateral joint line tenderness was reported on the left. In the impression section of the report, Dr. Friedenthal diagnosed status post fibular head resection of the right knee, degenerative arthritis of the patellofemoral joint and medial compartment of the right knee and “status post sprain and strain injury [of the] right knee of August 14, 2006, by history.”

Dr. Friedenthal indicated that appellant showed evidence of patellofemoral arthrosis and medial compartment arthrosis, but there was no evidence that these preexisting conditions were made structurally worse by the August 14, 2006 injury. He indicated that the clinical findings reflected underlying and preexisting degenerative disease in the right knee, not causally related to injuries sustained on August 14, 2006. Dr. Friedenthal stated, “At most, temporary exacerbation of underlying and preexisting degenerative condition occurred with the reported twisting injury. That condition is resolved insofar as there is no measured muscle atrophy, no loss of motion, no joint effusion and no inflammatory change.” Dr. Friedenthal indicated that appellant was capable of performing the duties she had prior to the reported injury of August 14, 2006. Appellant would have the same limitations concerning squatting, kneeling, stair climbing and long periods of standing and walking, but could easily perform relatively sedentary duties on a full-time basis.

In a May 12, 2009 letter, the Office advised appellant of its proposed termination of her compensation. It indicated that the proposed action was justified by the well-rationalized opinion of Dr. Friedenthal, the impartial medical specialist. The Office provided appellant 30 days from the date of the letter to present evidence and argument contesting the proposed termination of her compensation.

In a June 6, 2009 letter, appellant argued that she continued to have residuals of her work-related right knee condition. She claimed that Dr. Stark and Dr. Friedenthal failed to take into consideration the effect of her January 22, 1983 work-related right knee injury on her current medical condition. Appellant indicated that she underwent numerous right knee surgeries as a result of her January 22, 1983 injury. In several reports dated in May and June 2009, Dr. Reiner stated that she continued to have residuals of her work-related right knee condition.

In an August 17, 2009 decision, the Office terminated appellant’s compensation effective August 17, 2009 on the grounds that she had no residuals of her August 14, 2006 employment injury after that date. It found that the weight of the medical opinion with respect to this matter rested with the opinion of the impartial medical specialist, Dr. Friedenthal.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.³ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ A medical opinion based on an incomplete statement of accepted facts is of diminished probative value.⁶

Section 8123(a) of the Act provides in pertinent part: "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."⁷ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

The Office accepted that on August 14, 2006 appellant sustained internal derangement of her right knee when her right knee twisted outwards while she was walking at work. It had previously accepted that she sustained work-related right knee injuries on January 22, 1983, including joint derangement and a contusion, which necessitated multiple right knee surgeries. The Office paid compensation for periods of disability. It terminated appellant's compensation effective August 17, 2009 based on the March 6, 2009 report of Dr. Friedenthal, a Board-certified orthopedic surgeon.

The Office determined that a conflict in medical opinion arose between Dr. Reiner, an attending osteopath and Board-certified orthopedic surgeon, and Dr. Stark, a Board-certified orthopedic surgeon acting as an Office referral physician, on the issue of whether appellant continued to have residuals of her August 14, 2006 employment injury. Dr. Reiner produced several reports in 2008 expressing his belief that she continued to have residuals of her work-related right knee condition. In a May 13, 2008 report, Dr. Stark indicated that appellant was suffering from internal derangement, patellar chondromalacia and medial compartment erosion

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minmiss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁴ *Id.*

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *Henry J. Smith, Jr.*, 43 ECAB 892 (1992).

⁷ 5 U.S.C. § 8123(a).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

of her right knee, but he determined that she did not have any continuing residuals of her August 14, 2006 employment injury.

The Office referred appellant to Dr. Friedenthal for an impartial medical examination and an opinion regarding whether she had any continuing residuals of her August 14, 2006 employment injury.⁹ In a March 6, 2009 report, Dr. Friedenthal indicated that she showed evidence of patellofemoral arthrosis and medial compartment arthrosis, but there was no evidence that these preexisting conditions were made structurally worse by the August 14, 2006 injury. He stated that the clinical findings reflected underlying and preexisting degenerative disease in the right knee, not causally related to injuries sustained on August 14, 2006. Dr. Friedenthal concluded that appellant had no residuals of her August 14, 2006 employment injury. The Office terminated her compensation effective August 17, 2009 based on the March 6, 2009 report of Dr. Friedenthal.

On appeal, counsel argued that Dr. Stark and Dr. Friedenthal did not adequately consider appellant's prior work-related right knee condition of January 22, 1983 and the multiple right knee surgeries required by the work-related condition. The Board finds that the Office did not present sufficient medical information to support its termination of appellant's compensation effective August 17, 2009.

Both the May 13, 2008 report of Dr. Stark and March 6, 2009 report of Dr. Friedenthal are of limited probative value regarding continuing work-related residuals in appellant's right knee because these reports were not based on a complete and accurate factual and medical history. Neither Dr. Stark nor Dr. Friedenthal had the benefit of a complete statement of accepted facts which discussed appellant's January 22, 1983 right knee work injury and prior right knee surgeries that occurred as a result of this injury.¹⁰ The record is devoid of any significant evidence pertaining to appellant's January 22, 1983 work injury.¹¹ Moreover, it does not appear that Dr. Friedenthal had an accurate understanding of the injury she sustained on August 14, 2006, *i.e.*, internal derangement of her right knee. His March 6, 2009 report suggested that appellant sustained a less serious injury on August 14, 2006 in that he noted in the "impression" section of his report a diagnosis of "status post sprain and strain injury [of the] right knee of August 14, 2006, by history." Both Dr. Stark and Dr. Friedenthal found notable problems in her right knee, which they described as preexisting, but they did not adequately explain why these conditions were not work related.

For these reasons, the Office did not meet its burden of proof to terminate appellant's compensation effective August 17, 2009. The case will be remanded to the Office for consolidation of the files for her January 22, 1983 and August 14, 2006 injuries and the

⁹ See *supra* note 7.

¹⁰ See *supra* notes 5 and 6. The Board notes that, given the limited probative value of Dr. Stark's opinion on the relevant issue of the present case, there was no conflict in the medical evidence and Dr. Friedenthal served as an Office referral physician rather than as an impartial medical specialist.

¹¹ The January 22, 1983 injury was developed under a separate claim file and it does not appear that this file was ever combined with the claim file for the August 14, 2006 injury.

production of a statement of accepted facts which describes the history of both injuries and any surgeries that she underwent for these work-related injuries.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective August 17, 2009 on the grounds that she had no residuals of her accepted right knee injuries after that date. The case is remanded to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2009 decision of the Office of Workers' Compensation Programs is reversed and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 26, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board