

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEROY YARBROUGH and DEPARTMENT OF THE ARMY,
PINE BLUFF ARSENAL, Pine Bluff, AR

*Docket No. 02-651; Submitted on the Record;
Issued August 7, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that he had no further disability causally related to his October 19, 1999 employment injury.

On October 19, 1999 appellant, then a 47-year-old electrician, filed a claim for a traumatic injury occurring on that date, in the performance of duty. The Office accepted his claim for a right knee meniscus tear and authorized a right knee arthroscopy.¹

Appellant sustained intermittent periods of total disability from November 1 through December 16, 1999. His attending physician, Dr. Clark, a Board-certified orthopedic surgeon, released him to return to work with restrictions on December 23, 1999.² Appellant worked until February 24, 2000, the date that the employing establishment separated him on the grounds that he could not perform the duties of his employment. The Office began vocational rehabilitation in April 2000.

By letter dated April 5, 2001, the Office requested that Dr. Clark respond to questions regarding appellant's current condition. In a report dated May 8, 2001, he related:

“Current findings on examination include persistent and recurrent effusions and pain anteriorly in the knee which interfere with his ability to climb, squat and

¹ In an operative report dated November 4, 1999, Dr. Charles A. Clark, a Board-certified orthopedic surgeon, diagnosed retained hardware, chondromalacia of the patella and a medial meniscus tear. He performed a plica release, patellofemoral chondroplasty, a repair of the medial meniscus repair and removal of hardware.

² In a report dated December 22, 1999, Dr. Clark stated, “I am going to let [appellant] return to his regular job with some limitations with respect to climbing and squatting. I think these will be permanent problems because of his long [history] of patellofemoral problems and surgical intervention in the past.”

work on his knees. These current findings, in my estimation, preexist[] the injury of October 19, 1999.³

“It is my feeling that the effects of the work injury have indeed ceased and the meniscus is completely healed. I think the risk of retearing the meniscus is high, but at this point in time he has no meniscal symptomatology. In my estimation, [appellant] has recovered from the meniscal tear.”

Regarding the question of whether appellant could perform his prior employment and whether he had had any work limitations, Dr. Clark responded:

“This is a difficult question to answer, in that I do not know exactly what [appellant’s] job entailed prior to his surgery. However, his biggest problems are with his extensor mechanism of the knee, that is specifically the patellofemoral joint, where he has degenerative arthritis which is secondary to a patellar realignment that he underwent as a child. These problems do make it difficult for [appellant] to do any work that requires climbing, working at heights or squatting, lifting and repetitive deep knee bending. These are permanent conditions.”

By letter dated June 12, 2001, the Office requested that Dr. Clark clarify whether appellant’s work restrictions were caused by his employment-related medial meniscus tear or a preexisting condition. The Office enclosed a description of the job of electrician at the employing establishment and requested that Dr. Clark indicate whether appellant could perform the duties of the position.

In a response received by the Office on June 20, 2001, Dr. Clark stated that the majority of appellant’s work restrictions were preexisting and checked “yes” that appellant was capable of performing the duties of electrician at the employing establishment.

On August 3, 2001 the Office issued appellant a proposed notice of termination on the grounds that the weight of the medical evidence, as represented by the reports of Dr. Clark, established that he had no further disability causally related to his employment injury. The Office provided appellant 30 days within which to submit additional factual and medical information relevant to his claim.

In response to the Office’s proposed termination of compensation, appellant submitted a letter in which he noted that contrary to Dr. Clark’s statement in his May 8, 2001 report, he had not had surgery on his knee when he was a child but instead during his time in the military. Appellant further submitted disability certificates from Dr. Clark dated December 1999 to August 2001. On December 22, 1999 he released appellant to return to work with permanent limitations on climbing, using ladders and squatting. In a note dated January 7, 2000, Dr. Clark found that appellant could attempt his regular duties beginning January 10, 2000. In a disability certificate dated March 6, 2000, he again found that appellant had permanent limitations on

³ Appellant has an award from the Department of Veterans Affairs for a service-related impairment of his right knee.

climbing ladders and squatting. In a disability certificate dated August 6, 2001, Dr. Clark opined that appellant could resume work without restrictions.

By decision dated November 9, 2001, the Office finalized its termination of appellant's compensation.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that the weight of the medical evidence established that he had no further disability causally related to his October 19, 1999 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The opinion of Dr. Clark, a Board-certified orthopedic surgeon and appellant's attending physician, constitutes the weight of the medical evidence. In his report dated May 8, 2001, Dr. Clark found that appellant's work-related medial meniscus tear had "completely healed." He further found that appellant's current knee condition was due to a preexisting condition.⁶ Additionally, Dr. Clark reviewed the position description of electrician at the employing establishment and found that appellant could perform the duties of his regular employment. As appellant's attending physician, Dr. Clark, had a thorough knowledge of appellant's condition, performed his medial meniscus repair and examined him numerous times. Dr. Clark's opinion is, therefore, probative on the issue of whether appellant could perform his usual employment and is sufficient to justify the Office's termination of benefits.

The remaining evidence of record submitted prior to the Office's termination of compensation is insufficient to establish that appellant had any further disability due to his employment injury. The most recent disability certificate submitted by appellant from Dr. Clark, dated August 6, 2001, established that he could return to work without restrictions.

Accordingly, the Board finds that the Office properly met its burden of proof to terminate appellant's compensation benefits based on the opinion of Dr. Clark.⁷

⁴ *David W. Green*, 43 ECAB 883 (1992).

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

⁶ While Dr. Clark indicated that appellant had injured his knee as a child rather than as an adult, this error is harmless as the relevant issue is the fact that appellant had a preexisting knee condition rather than the date of the prior injury.

⁷ The Board notes that appellant submitted new evidence with his appeal. The Board's review of a case is limited to the evidence that was before the Office at the time of its decision; therefore, the Board cannot consider the additional evidence in the present appeal. *See* 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated November 9, 2001 is affirmed.

Dated, Washington, DC
August 7, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member