

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

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**PATRICIA MARTIN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 04-266  
Issued: June 14, 2004**

*Appearances:*  
*Patricia Martin, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 10, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 16, 2003, terminating her wage-loss compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation on the grounds that she was no longer disabled for full-time work due to her accepted work injuries.

**FACTUAL HISTORY**

On May 27, 1988 appellant, then a 44-year-old mail handler, filed a traumatic injury claim alleging that on May 26, 1988 she hurt her knee and back while moving a large hamper of

mail in the performance of duty.<sup>1</sup> The Office accepted the claim for a lumbar strain, left knee abrasion and permanent aggravation of degenerative arthritis of the left knee. The Office approved left knee arthroscopic surgery performed on March 5, 1987. Appellant received schedule awards on June 14, 1989 and November 25, 1996 for a total of 30 percent impairment of the left lower extremity. She also received appropriate compensation for lost wages and began working limited duty for four hours a day in 1989, with restrictions of no lifting over five pounds, no kneeling, no repetitive bending, no standing over two hours per shift and no exposure to cold drafts and air conditioning. Appellant received compensation on the periodic rolls for partial disability and intermittent periods of total disability.<sup>2</sup>

Appellant came under the care of Dr. David P. Calimag, a neurologist, for treatment of her knee condition. Following a left knee arthroscopy, appellant was prescribed light duty and physical therapy. She was followed by Dr. Calimag for approximately eight years until she received authorization from the Office in 1996 to change her treating physician to Dr. Kishan Chand, a Board-certified orthopedic surgeon. In reports dated February 22 and March 1, 2002, Dr. Chand advised that appellant had a limited range of motion of the left knee. He opined that she could work up to five hours per day on the day shift. He also recommended that appellant sit at work in an orthopedic chair. On May 31, 2002 the employing establishment assigned appellant to a limited-duty job in accordance with Dr. Chand's medical restrictions, which she accepted on June 11, 2002. In subsequent reports dated November 13 and December 12, 2002, Dr. Chand indicated that appellant should remain on light duty for five hours a day.

In a work evaluation form dated April 10, 2002, Dr. Leonard R. Smith, a Board-certified orthopedic surgeon and Office referral physician, noted that he had examined appellant and found that she could work 6 hours per day with restrictions of sitting, walking and standing no more than 5 hours per day, no lifting more than 10 pounds and no pushing or pulling more than 20 pounds. In a report dated April 15, 2002, Dr. Smith diagnosed traumatic aggravation of preexisting degenerative arthritis of the left knee. He reiterated that appellant was restricted as to standing or sitting for prolonged periods of time.

The Office subsequently determined that a conflict in medical opinion existed between Dr. Chand and Dr. Smith as to whether appellant could work five or six hours a day. By letter dated February 25, 2003, the Office referred appellant together with a copy of the medical record and a statement of accepted facts, to Dr. Daniel E. Sullivan, a Board-certified osteopath specializing in orthopedic surgery, for an impartial medical evaluation. The examination was conducted on March 19, 2003 and Dr. Sullivan prepared a report which discussed appellant's history of injury, medical treatment and job restrictions. On physical examination he found that appellant had an active range of motion of the left knee, negative straight leg raising and decreased range of motion of the lumbar spine. Dr. Sullivan diagnosed obesity, degenerative arthritis and degenerative disc disease of the lumbar spine, advanced degenerative arthritis of the left hip and bilateral knees. He outlined restrictions in an OWCP-5 form but stated that they

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<sup>1</sup> Appellant previously injured her left knee at work on October 9, 1986 when she hit it on a mail sack. The Office accepted her claim for a left knee contusion.

<sup>2</sup> The Office accepted that appellant sustained recurrences of disability on March 19, 1999, June 29 and August 24, 2001.

were not due to residuals of appellant's accepted injury. He opined that appellant was capable of performing her current limited-duty sedentary work for eight hours a day.

On April 23, 2003 the Office issued a notice to terminate wage-loss compensation, finding that the weight of the medical evidence, residing with the report of the impartial medical specialist, established that appellant was no longer disabled for work. Appellant was given 30 days to submit additional evidence or argument if she disagreed with the proposed action. In a letter dated May 14, 2003, appellant responded to the Office's notice and argued that she was unable to work more than six hours per day based on Dr. Chand's opinion. Appellant also submitted progress notes dated March 13 through April 21, 2003, reports dated April 30 and May 30, 2003 from Dr. Chand, who stated that appellant could work six hours a day and "light duty as tolerated" time analysis forms (171-1755) and copies of periodic claims for continuing wage-loss compensation.<sup>3</sup>

In a decision dated July 16, 2003, the Office terminated appellant's wage-loss compensation on the grounds that she was no longer disabled for work and had no continuing disability due to her work injuries of October 9, 1986 and May 26, 1988.

### **LEGAL PRECEDENT**

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>4</sup> After it is determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The Office must support its termination findings with reasoned medical evidence. A reasoned medical opinion is explained by medical rationale and is based on an accurate medical and factual background of the claimant.<sup>6</sup>

### **ANALYSIS**

In this case, the Office accepted that appellant sustained a left knee contusion and permanent aggravation of a preexisting degenerative arthritis of the left knee following her work injuries of October 9, 1986 and May 26, 1988. Appellant has continued to receive compensation for partial disability based on her ability to work five hours a day due to her left knee condition. The five-hour a day work limitation was imposed by appellant's treating physician, Dr. Chand.

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<sup>3</sup> She also submitted duplicates of medical reports previously of record including reports from Dr. Chand dated November 16, 1998, June 16, 1999, February 5 and August 24, 2002 and February 22, 2003, a February 27, 1997 report from Dr. David F. Beigler, Dr. Smith's April 15, 2002 report, a work evaluation form dated April 10, 2002, a copy of the decision pertaining to her schedule award, a copy of the impartial medical specialist's report and a copy of a May 3, 2002 Office letter accepting appellant's claim for a recurrence on June 29, 2001. This evidence was already of record.

<sup>4</sup> *John W. Graves*, 52 ECAB 160 (2000).

<sup>5</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>6</sup> See generally *James H. Botts*, 50 ECAB 265 (1999).

The Board finds that the Office properly determined that a conflict arose in the medical record when Dr. Smith, an Office referral physician, indicated that appellant could work six hours a day with restrictions. The Office referred appellant to an impartial medical specialist to resolve the conflict between Dr. Smith and Dr. Chand and to address whether appellant was able to work more than five to six hours a day.<sup>7</sup>

Dr. Sullivan reviewed appellant's history, reported findings, and diagnosed obesity, degenerative arthritis and degenerative disc disease of the lumbar spine, advanced degenerative arthritis of the left hip and bilateral knees. He noted physical findings indicating that appellant had active range of motion of the left knee, negative straight leg raising and decreased range of motion of the lumbar spine. Dr. Sullivan opined that the restrictions that were outlined which permitted appellant to work in an essentially sedentary position, were not related to the residuals of appellant's accepted injury and that he could find no medical rationale for such work restrictions. He determined that appellant could work eight hours a day, and based this conclusion on his thorough review of the medical evidence and his findings upon physical examination of appellant.

The Board finds that the opinion of Dr. Sullivan is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>8</sup>

The Board finds that the Office properly relied on Dr. Sullivan's March 19, 2003 opinion as the basis for terminating benefits. The report of the impartial medical specialist is sufficiently well rationalized and based upon a proper factual background. Dr. Sullivan examined appellant and reviewed her medical records. He reported accurate medical and employment histories. Accordingly, the Office properly accorded special weight to the opinion of Dr. Sullivan as the impartial medical specialist.<sup>9</sup>

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<sup>7</sup> Section 8123(a) provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination to resolve that conflict. 5 U.S.C. § 8123(a). When there exists 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. See *James R. Driscoll*, 50 ECAB 146 (1998).

<sup>8</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).

<sup>9</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's compensation as the weight of the medical evidence established that she was no longer disabled for work due to her work-related left knee condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 16, 2003 is affirmed.

Issued: June 14, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member