

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

JACQUELINE NELSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

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**Docket No. 06-83
Issued: April 14, 2006**

Appearances:
Jacqueline Nelson, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 12, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 27, 2005, which affirmed the termination of her compensation. Under 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 the Office met its burden to terminate compensation benefits as of May 16, 2004; and (2) whether appellant has established continuing disability after May 16, 2004, causally related to the accepted employment injury.

FACTUAL HISTORY

On February 8, 1994 appellant, a 53-year-old letter carrier, injured her left knee when she slipped on some snow and ice while exiting her vehicle. She filed a claim for benefits on February 10, 1994, which the Office accepted for a meniscus tear of the left leg. Appellant returned to work on light duty on June 1, 1994. She sustained a recurrence of disability due to her work-related left leg condition on July 13, 1994. She has not returned to work since that

time. The Office commenced payment of temporary total disability compensation. The claim was expanded to accept the condition of hamstring tendinitis.

In a report dated November 16, 1994, Dr. Philip L. Bonnet, a specialist in psychiatry and appellant's treating physician, stated that appellant's left knee was not responding to treatment. This caused her to become anxious and depressed due to the pain and the inactivity caused by the February 1994 left knee injury. Appellant's anxiety and depression worsened when she realized that her left knee condition had adversely affected her ability to physically function. Dr. Bonnet opined that the development of this emotional condition was directly related to the February 1994 employment injury.

By letters dated November 22, 1994 and May 30, 1995, appellant's attorney requested that the claim be expanded to include an emotional condition based on Dr. Bonnet's psychiatric report.

In a June 12, 1995 statement of accepted facts, prepared for a second opinion specialist the Office stated:

"The Office has accepted the condition of tear of the meniscus as compensable. The claimant has now developed a psychological problem.... Is the psychological problem related to the injury on the job. Please give a complete diagnosis ... suggest a course of treatment and give a prognosis. Would the conditions have developed even without the injury on the job?"

In order to determine whether the development of appellant's psychiatric condition was related to the February 8, 1994 injury, the Office referred her for a second opinion examination with Dr. Stuart Kushner, Board-certified in psychiatry and neurology. In a report dated September 18, 1995, Dr. Kushner stated that appellant began to experience symptoms of depression and anxiety following her February 1994 work injury. He noted that appellant had no prior episodes of depression prior to her employment injury. Dr. Kushner stated that appellant appeared to have a major depressive disorder with a marked degree of accompanying anxiety, which severely limited her overall level of functioning including her ability to return to work. He advised that her depression was triggered by the accident and ensuing physical disability, but now seemed to have taken on a life of its own. Dr. Kushner concluded that her poor response to antidepressants and chronicity of symptoms made it difficult to determine with any precision when she would be capable of returning to some type of part-time employment."

In a report dated October 12, 1995, Dr. Harvey L. Baron, a Board-certified orthopedic surgeon, stated that appellant, "in spite of being very emotionally labile" had some pathology in her left knee. He recommended that she undergo a magnetic resonance imaging (MRI) scan to delineate whether she had any loose bodies or recurrent tears in her meniscus. Dr. Baron planned to examine appellant's knee to determine whether there was any structural pathology in the knee, and then consider whether she required emotional and psychiatric support.

By letter dated February 20, 1996, the Office asked Dr. Kushner whether the psychiatric condition he found, major depressive disorder, was related to appellant's employment-related injury. In a report dated February 28, 1996, Dr. Kushner stated:

"It was my impression that [appellant] was suffering from a major depressive disorder which seems to have been clearly triggered by the work-related injury. I believe that her current depression, which was significant at the time of the examination, was triggered by that injury. This could be supported by the fact that she had no prior psychiatric history, including no prior episodes of depression and never before been in any type of psychiatric treatment or on any psychotropic medications. Her symptoms depression had continued and included a tremendous amount of anxiety, tearfulness, lack of motivation, weight gain, physical symptoms, and generalized difficulty functioning."¹

In a report dated July 27, 1999, Dr. Leon I. Rosenberg, Board-certified in psychiatry and neurology, stated that at the present time appellant was unable to work both from an emotional and an intellectual level. Dr. Rosenberg felt, however, that there was no definitive evidence that she was so organically impaired that she would not be able to eventually return to work. He did indicate that appellant's injury-related condition had not yet resolved as of that time.

In a February 8, 2001 report, Dr. Bonnet stated that appellant's knee injury had still not healed. He advised that appellant had limited range of motion and extreme pain. Dr. Bonnet concluded that appellant was totally disabled and not employable in any capacity.

In order to determine appellant's current condition, the Office referred her for a second opinion examination with Dr. David Rubinfeld, a Board-certified orthopedic surgeon.² In a report dated February 6, 2003, Dr. Rubinfeld stated that no orthopedic condition was present and that she had no conditions related to her employment or to her accepted conditions of hamstring tendinitis and left leg meniscus tear. He advised that appellant had no ongoing orthopedic conditions or limitations that would preclude her from returning to her date-of-injury job as a rural letter carrier. Dr. Rubinfeld did note, however, that appellant's nonemployment-related conditions of obesity, psychiatric problems and cancer might impact her ability to work.

In a report dated March 14, 2003, Dr. Bonnet stated his disagreement with Dr. Rubinfeld's report.

¹ In an Office memorandum dated November 26, 1996, hamstring tendinitis and meniscal tear were listed as "accepted conditions." "Psychiatric condition" was listed as an "other significant condition." An Office memorandum dated January 22, 1997 indicated that a psychiatric condition was never accepted, although the bills for appellant's psychiatric treatment were paid by the Office. The memorandum queried whether the psychiatric condition was work related.

² On November 26, 1996 appellant was referred for vocational rehabilitation. An Office memorandum dated May 8, 1997 indicated that the Office advised the vocational rehabilitation counselor to close the case.

The Office found that there was a conflict in the medical evidence between Drs. Rosenfeld and Bonnet regarding whether appellant still experienced residuals from the February 8, 1994 employment injury. The Office referred appellant to Dr. Michael S. Grenis, a Board-certified orthopedic surgeon, for an impartial examination to resolve the conflict.

In a report dated February 18, 2004, Dr. Grenis stated findings on examination and reviewed appellant's history of injury and her medical records. He concluded that appellant's current left knee symptomatology, including limited motion, tenderness and swelling of the left knee, was not related to the February 8, 1994 employment injury. Dr. Grenis advised that appellant had limitations on walking, on bending her knee, and in engaging in work activities which required a strong, pain-free knee. However, these limitations were not causally related to her accepted left leg conditions.

By decision dated April 26, 2004, the Office found that appellant had no continuing disability or impairment causally related to the February 8, 1994 employment injury, finding that Dr. Grenis' opinion represented the weight of the medical evidence.

By letter dated April 29, 2004, appellant's attorney requested an oral hearing, which was held on February 24, 2005. Appellant's attorney stated at the hearing that the fact that the Office never formally accepted the psychological condition even though they paid for medical treatment and referred appellant to psychiatrists to determine whether he had a psychiatric or emotional condition was a "complicating factor" in this termination case. Counsel noted that there were several physicians of record who had opined that appellant had a psychiatric or emotional condition caused by her left leg condition. Appellant did not submit any additional medical evidence.

By decision dated May 27, 2005, an Office hearing representative affirmed the April 26, 2004 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ After it has 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.⁴

Section 8123(a) of the Federal Employees' Compensation Act 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.⁵

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ 5 U.S.C. § 8123(a).

ANALYSIS -- ISSUE 1

The Office based its decision to terminate appellant's compensation on Dr. Grenis' February 18, 2004 report. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of 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.⁶ Dr. Grenis found that appellant no longer had any residuals from the employment injury. Dr. Grenis found that appellant had no residuals stemming from her February 8, 1994 work injury accepted for left knee meniscus and left hamstring conditions. He advised that appellant's current left knee symptomatology, including limited motion, tenderness and swelling of the left knee, was unrelated to the February 8, 1994 employment injury. Dr. Grenis advised that appellant had limitations on walking, on bending her knee, and in engaging in work activities which required a healthy, asymptomatic knee. However, he concluded that her present limitations were not causally related to her accepted left leg conditions. The Office relied on Dr. Grenis' opinion in its April 26, 2004 termination decision, finding that appellant had no residuals stemming from her 1994 work injury and that she had no continuing disability for work resulting from the accepted employment conditions.

The Board finds that Dr. Grenis' referee opinion negated a causal relationship between appellant's accepted conditions and is sufficient to establish that she no longer had any residuals from her accepted February 1994 employment injury. His opinion is sufficiently probative, rationalized, and based upon a proper factual background. Therefore, the Office properly accorded Dr. Grenis' opinion as the special weight of an impartial medical examiner.⁷ Accordingly, the Board finds that Dr. Grenis' opinion constituted sufficient medical rationale to support the Office's April 26, 2004 decision terminating appellant's compensation.

LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminated appellant's compensation in its April 26, 2004 decision, the burden of proof shifted to appellant to establish a continuing employment-related disability.⁸

⁶ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁷ *Gary R. Seiber*, 46 ECAB 215 (1994).

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); see also *George Servetas*, 43 ECAB 424 (1992).

ANALYSIS -- ISSUE 2

Appellant argued that Dr. Grenis' opinion did not represent the weight of medical opinion. Appellant essentially requested a reweighing of the medical evidence, the weight of which the Office properly found represented by Dr. Grenis' referee medical opinion.⁹ Thus, the Board affirms the Office hearing representative's May 27, 2005 decision which affirmed the April 26, 2004 Office termination decision.

CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits as of May 16, 2004.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 14, 2006
Washington, DC

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

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

⁹ The Office did not address the contention raised by appellant's attorney at the hearing that the Office had erred in failing to adjudicate appellant's claim based on a psychological condition. The Office did include in its June 1995 statement of accepted facts a reference to a possible psychological condition causally related to the accepted left leg condition. It also referred the claim to three physicians, Dr. Kushner, Dr. Baron and Dr. Rosenberg, each of whom indicated that appellant had sustained psychological effects from her accepted left leg conditions in 1995. As there is no final decision by the Office on this matter, it is not before the Board in the present appeal. See 20 C.F.R. § 501.2(c).