

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

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N.W., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Cleveland, OH, Employer )

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**Docket No. 08-65  
Issued: April 23, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 9, 2007 appellant filed a timely appeal from a September 11, 2007 merit decision of the Office of Workers' Compensation Programs affirming the termination of her 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.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's compensation benefits effective January 5, 2007; and (2) whether appellant established that she had any continuing disability after January 5, 2007.

**FACTUAL HISTORY**

On March 15, 2004 appellant, then a 44-year-old letter carrier filed a traumatic injury claim alleging that, on March 10, 2004, while delivering mail, she slipped and fell injuring her low back, left hip, knee and elbow. The Office accepted the claim for left hip contusion, back

contusion, lumbosacral strain, left elbow contusion and left knee sprain. Appellant stopped work on March 10, 2004 and returned to a light-duty position on May 24, 2004.

Appellant came under the care of Dr. Daniel Breitenbach, a Board-certified internist, who treated her from March 10 to April 28, 2004. Dr. Breitenbach noted that x-rays of the left knee and hip were negative for fractures and diagnosed left hip contusion, lumbosacral contusion with strain and radiculopathy, left elbow contusion and left knee sprain. He recommended crutches and physical therapy and advised that appellant was totally disabled. A magnetic resonance imaging (MRI) scan of the lumbosacral spine dated May 20, 2004 revealed no abnormalities.

In reports dated May 6 to July 27, 2004, Dr. Breitenbach diagnosed left hip, knee and lumbosacral contusion and released appellant to light-duty work on May 20, 2004. In reports dated August 18, 2004 to July 13, 2005, he noted that an MRI scan of the left knee revealed chondromalacia and ulceration of the right patella. On April 5, 2006 Dr. Breitenbach advised that appellant had not been treated for five months as she was caring for her ill mother. He noted that she could continue working subject to restrictions. Appellant submitted reports from Dr. Jerome B. Yokiell, a Board-certified anesthesiologist, dated July 8 and August 12, 2004. Dr. Yokiell noted a history of injury and diagnosed lumbar radiculopathy and contusion of the knee. He prescribed oral medications and hyalgan injections for pain management.

On June 15, 2006 the Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for a second opinion. In an August 24, 2006 report, Dr. Kaffen reviewed the records provided and examined appellant. He diagnosed a resolved contusion of the back, resolved lumbosacral strain, resolved contusion of the left elbow, resolved sprain of the left knee and resolved left hip contusion. Dr. Kaffen noted examination of the left elbow revealed no swelling or tenderness but limited range of motion, the left knee examination revealed no swelling or intra articular effusion and full range of motion with significant patellofemoral crepitation on motion. With regard to the lumbar region, he noted slight tenderness, full range of motion, no motor or sensory deficit and no muscle atrophy, the hip examination revealed tenderness over the lateral aspect and limited range of motion without pain. Dr. Kaffen found that there were no objective physical findings to indicate that appellant continued to experience residuals due to the accepted work-related conditions. He opined that appellant was medically capable of performing her regular job duties as a letter carrier and noted that any work restrictions were due to the nonwork-related condition of osteoarthritis of the patellofemoral joint of the left knee. Dr. Kaffen prepared a work capacity evaluation and indicated that appellant was capable of performing her usual job and identified restrictions which were attributed to her diagnosed nonwork-related conditions of osteoarthritis of the patellofemoral joint of the left knee.

Dr. Breitenbach, in reports dated June 29 to September 5, 2006, noted that appellant's left knee gave out on June 26, 2006 causing pain over the patella. He diagnosed left knee sprain, lumbar contusion with radiculopathy, left hip contusion and left elbow contusion. In duty status reports dated July 25 and September 5, 2006, he noted that appellant could resume work full time subject to restrictions. An MRI scan of the left knee dated July 10, 2006 revealed a Grade 1 sprain of the medial collateral ligament and edema in the region of Hoffa's fat pad consistent with Hoffa's disease and arthrosis of the patellofemoral joint.

On September 26, 2006 the Office requested that Dr. Breitenbach review and comment on Dr. Kaffen's findings. In a report dated October 10, 2006, Dr. Breitenbach stated that he reviewed Dr. Kaffen's report. He could not dispute the physicians reasoning and findings. Dr. Breitenbach opined that appellant's back discomfort, left knee pain and osteoarthritis of the patellofemoral joint were most likely due to excessive weight and not to the contusion of her knee.

On November 28, 2006 the Office issued a notice of proposed termination of compensation and medical benefits on the basis of Dr. Kaffen's opinion and Dr. Breitenbach's October 10, 2006 report established no ongoing residuals of the accepted conditions.

On November 28, 2006 Dr. Breitenbach noted appellant's complaints of back and bilateral knee pain and diagnosed left knee sprain, lumbar contusion with radiculopathy, left hip contusion and left elbow contusion. In a duty status report dated November 28, 2006, he noted that appellant could work full time subject to restrictions.

By decision dated January 5, 2007, the Office terminated appellant's compensation benefits effective that day. It found that the weight of the medical evidence established that appellant had no continuing disability resulting from her accepted employment injury.

In a letter dated January 14, 2007, appellant requested an oral hearing which was held on July 10, 2007. In a January 3, 2007 report, Dr. Breitenbach treated her for back, left hip and left knee pain. He noted that he did not dispute the findings of Dr. Kaffen, and reiterated that appellant's injuries from her work-related fall had resolved. Appellant's current complaints were due to her nonwork-related osteoarthritis of the patellofemoral joint of the left knee. She submitted a return to work slip from Dr. Michelle Laster, a Board-certified internist, dated April 7, 2007. Dr. Laster noted that appellant was excused from work from April 6 to 9, 2007 but could return on April 10, 2007.

By decision dated September 11, 2007, the hearing representative affirmed the termination decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> 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.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must

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<sup>1</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>2</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for left hip contusion, back contusion, lumbosacral strain, left elbow contusion and left knee sprain.

On June 15, 2006 the Office referred appellant for a second opinion evaluation to Dr. Kaffen, an orthopedic surgeon. On August 24, 2006 Dr. Kaffen advised that he examined appellant and found that each of the accepted conditions had resolved. He noted that examination of the left elbow revealed no swelling or tenderness with limited range of motion, the left knee examination revealed no swelling or intra articular effusion, full range of motion with significant patellofemoral crepitation on motion of the left knee. The lumbar region examination revealed slight tenderness, full range of motion, no motor or sensory deficit and no muscle atrophy, the hip examination revealed tenderness and limited range of motion without pain. Dr. Kaffen did not find any objective physical residuals to establish that appellant's accepted conditions required ongoing medical treatment or caused disability for work. He opined that appellant was medically capable of performing her regular job duties as a letter carrier and that her work restrictions were due to the nonwork-related condition of osteoarthritis of the patellofemoral joint of the left knee.

Dr. Kaffen's report was subsequently reviewed by Dr. Breitenbach who noted that appellant experienced pain over the patella when her left knee gave out in June and returned her to work full time subject to restrictions. On October 10, 2006 Dr. Breitenbach advised that he could not dispute the medical reasoning or physical findings of Dr. Kaffen and opined that appellant's ongoing back discomfort, left knee pain and osteoarthritis of the patellofemoral joint were most likely due to her excessive weight and not to the accepted contusion of her knee. Other reports from Dr. Breitenbach submitted prior to the termination of benefits do not specifically address whether appellant had continuing residuals of her accepted March 10, 2004 employment injury.

The Board finds that the opinion of Dr. Kaffen represents the weight of the medical evidence and establishes that appellant's work-related conditions resolved. Dr. Kaffen indicated that appellant did not have residuals from the condition of left hip contusion, back contusion, lumbosacral strain, left elbow contusion and left knee sprain and that she could return to her regular duties. Dr. Breitenbach advised that he agreed with the opinion of Dr. Kaffen noting that appellant's excessive weight was the most likely cause of her continuing symptoms.

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

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<sup>3</sup> *Id.*; Leonard M. Burger, 51 ECAB 369 (2000).

## LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant.<sup>4</sup>

To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

## ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her left hip contusion, back contusion, lumbosacral strain, left elbow contusion and left knee sprain on or after January 5, 2007.

Appellant submitted a report from Dr. Breitenbach dated January 3, 2007. However, Dr. Breitenbach did not support that appellant had continuing residuals due to her accepted work injuries. Rather, he concurred with the determination of Dr. Kaffen, who opined that appellant's injuries from her work-related fall were resolved and her current complaints were due to her nonwork-related osteoarthritis of the patellofemoral joint of the left knee. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted a return to work slip from Dr. Laster dated April 7, 2007, who noted that appellant was excused from work from April 6 to 9, 2007 but could return on April 10, 2007. However, Dr. Laster did not specifically address how any continuing condition or medical restrictions were causally related to the accepted March 10, 2004 employment injury.<sup>6</sup>

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions.

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<sup>4</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>5</sup> See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

<sup>6</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

**CONCLUSION**

The Board finds that the Office has met its burden of proof to terminate benefits effective January 5, 2007. The Board further finds that appellant failed to establish that she had any continuing disability after January 5, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 11 and January 5, 2007 are affirmed.

Issued: April 23, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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