

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

T.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Akron, OH, Employer**

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**Docket No. 08-433
Issued: July 8, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 26, 2007 appellant filed a timely appeal from an October 17, 2007 merit decision of the Office of Workers' Compensation Programs affirming a decision terminating 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 terminate appellant's compensation benefits effective February 28, 2007; and (2) whether appellant established that she had any continuing disability after February 28, 2007.

FACTUAL HISTORY

On February 19, 2004 appellant, then a 47-year-old clerk, sustained injury to her right knee as she attempted to get out a chair at work and struck it against a table. The Office accepted the claim for right knee contusion, aggravation of right knee chondromalacia patella and aggravation of osteoarthritis of the right knee. It authorized arthroscopic surgery which was

performed on November 18, 2004. Appellant stopped work on February 19, 2004 and returned to a light-duty position on February 7, 2005 and stopped on February 18, 2005. The Office paid appellant wage-loss compensation beginning May 13, 2004, for periods in which she was unable to work.

Appellant was treated by Dr. Remigio L. Abello, a Board-certified internist, from February 23 to 26, 2004. Dr. Abello noted a history of injury and diagnosed contusion of the right knee. He recommended physical therapy and returned appellant to work limited duty. Dr. Michelle L. Hatherill, a Board-certified orthopedist, treated appellant beginning March 1, 2004. She noted that x-rays of the right knee revealed no acute fracture or dislocation and diagnosed post-traumatic patellofemoral syndrome of the right knee and possible meniscal tear. On November 18, 2004 Dr. Hatherill performed arthroscopy, right knee with patellar chondroplasty and excision of fibrotic medial plica and diagnosed patellar chondrosis, right knee with fibrotic medial plica. In reports dated December 1, 2004 to January 5, 2005, she noted appellant's slowly improving course following arthroscopic surgery and returned her to work on February 7, 2005 in a limited-duty position subject to restrictions.

On February 7, 2005 the employing establishment offered appellant a full-time modified light-duty position as a clerk subject to the restrictions set forth by Dr. Hatherill. Appellant accepted the position and returned to work on February 7, 2005.

On April 5, 2005 appellant filed a notice of recurrence of disability alleging that on February 18, 2005 she experienced a recurrence of knee pain while at work. On June 30, 2005 the Office accepted the recurrence of disability. Thereafter, it referred appellant to a second opinion physician who indicated that, while appellant's employment-related condition had not resolved, she could work within certain restrictions.

Appellant continued to submit reports from Dr. Hatherill, dated April 20 to October 17, 2005, who noted appellant's complaints of persistent right knee pain following arthroscopic surgery. On September 19, 2005 Dr. Hatherill noted marked improvement in appellant's knee symptoms with occasional discomfort with prolonged ambulation. On January 3, 2006 she returned appellant to work for four hours per day with restrictions. In a report dated March 1, 2006, Dr. Hatherill noted improvement in appellant's right knee pain and on May 10, 2006 discharged her from care. In a disability form dated August 4, 2006, she returned appellant to work on May 10, 2006 with no restrictions.

The record reflects that, on November 4, 2005, the Office of the Inspector General began an investigation of appellant for possible fraud after a doctor's disability note was discovered not to have been prepared or submitted by the health care provider. The record contains an investigative report and documents related to video surveillance of appellant from November 29 to December 28, 2005 in which she was seen shopping and walking in excess of her medical restrictions. In a February 17, 2006 memorandum of interview with an investigator, appellant advised the investigator "I always felt like I could come back to work" and "I could have come back to work for eight hours a day in a limited-duty status back in August 2005." Also submitted was an Office of the Inspector General report dated March 20, 2006 which concluded that appellant had been receiving compensation benefits while off work while she was physically capable of working eight hours per day.

In a letter dated May 16, 2006, the employing establishment requested that Dr. Hatherill review the video surveillance tapes and a statement of accepted facts and address whether appellant had residuals of her accepted conditions and whether she could return to work.¹ In a letter dated June 22, 2006, Dr. Hatherill declined to respond to the Office's request.

Appellant was removed from her position with the employing establishment on June 19, 2006.

On November 6, 2006 the Office referred appellant to Dr. Manhal A. Ghanma, a Board-certified orthopedist, for a second opinion. In a November 27, 2006 report, Dr. Ghanma indicated that he reviewed the records provided, the video surveillance and examined appellant. He noted range of motion of the right knee of 105 degrees of flexion and 108 degrees on the left, there was no flexion contracture, no discoloration or deformity of the right knee, no crepitation or limp and no abnormality of gait, stance or balance. Dr. Ghanma opined that there were no objective findings that appellant had residuals of the work-related conditions. He advised that appellant would have been able to return to full unrestricted duty on January 7, 2006. Dr. Ghanma opined that appellant's work-related conditions resolved six weeks after her arthroscopic surgery and he based his opinion on the normal healing time from such surgery and the work injury itself. He indicated that appellant's current symptoms relate to underlying right knee arthritis, which predated the work injury and was not aggravated by the work injury. Dr. Ghanma advised that any osteoarthritis related to appellant's work injury was negligible in nature and not permanent based on the mechanism of injury. He opined that the knee contusion would have resolved in a few weeks of injury and the diagnosed chondromalacia was for the most part preexisting and that which was related to her work injury was treated surgically as was the preexisting patellar pathology. Dr. Ghanma opined that appellant recovered from her work injury, which consisted of a minor incident of bumping her knee against a table, within a few days to weeks and could return to her date-of-injury job without restrictions. He noted that no further treatment was necessary.

On January 18, 2007 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Ghanma's report dated November 27, 2006 established no residuals of the work-related employment conditions.

By decision dated February 28, 2007, the Office terminated all of appellant's benefits effective the same day on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her accepted employment injury.

In a letter dated March 4, 2007, appellant requested an oral hearing which was held on July 25, 2007.

By decision dated October 17, 2007, the hearing representative affirmed the prior decision.

¹ The record reflects that appellant and her attorney were sent a copy of the May 16, 2006 correspondence to Dr. Hatherill which requested that she view video surveillance of appellant and provide an opinion on appellant's work status.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³ 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 establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for right knee contusion, aggravation of right knee chondromalacia patella and aggravation of osteoarthritis of the right knee and authorized arthroscopic surgery which was performed on November 18, 2004.

After Dr. Hatherill, on August 4, 2006, indicated that appellant could return to work full time without restrictions on May 10, 2006. The Office referred appellant for a second opinion evaluation by Dr. Ghanma, an orthopedic surgeon.⁵ In his report dated November 27, 2006, Dr. Ghanma noted an essentially normal physical examination with no flexion contracture, no discoloration or deformity, no crepitation, no limp and no abnormality of gait, stance or balance. He indicated that there were no objective findings to support that appellant had residuals of the work-related conditions. Dr. Ghanma opined that appellant's work-related conditions resolved six weeks after her arthroscopic surgery and he based his opinion on the normal healing time from such surgery and the work injury itself. He indicated that appellant's current symptoms relate to the underlying right knee arthritis, which predated the work injury and was not aggravated by the work injury. Dr. Ghanma further advised that any osteoarthritis related to appellant's work injury was negligible in nature and not permanent based on the mechanism of injury. He advised that the knee contusion would have resolved in a few weeks and the chondromalacia, for the most part, was preexisting and that which was related to her work injury was treated surgically as was the preexisting patellar pathology. Dr. Ghanma opined that appellant recovered from her relatively minor work injury and could return to her date-of-injury job without restrictions and would require no further treatment.

² *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁵ The Board notes that, after the Office initially referred appellant for a second opinion with Dr. Alan H. Wilde, it requested a supplemental report but was informed that he no longer conducted referral examinations. The Office acted properly in referring appellant for another opinion. See *Ayanle A. Hashi*, 56 ECAB 234 (2004) (when the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues).

The Board finds that the weight of the medical evidence clearly establishes that appellant's work-related conditions have resolved. In particular, Dr. Ghanma indicated that appellant did not have residuals from the conditions of right knee contusion, aggravation of right knee chondromalacia patella and aggravation of osteoarthritis of the right knee and that she could return to her regular duties. There is no contemporaneous medical evidence supporting that appellant has continuing disability or medical residuals of her accepted condition.

For these reasons, the Office met its burden of proof in terminating appellant's benefits for her accepted conditions.

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.⁶

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.⁷

ANALYSIS -- ISSUE 2

Subsequent to the termination of benefits, appellant did not submit any new medical evidence.

The Board notes that, before the Office hearing representative, appellant, through her attorney, asserted that appellant's treating physician, Dr. Hatherill returned her to full unrestricted duty on May 10, 2006 and that it was not necessary to send appellant for a second opinion examination. The Board finds this argument without merit. The Office has the discretion to have a claimant submit to an examination by a physician designated or approved by the Office after the injury and as frequently and at the times and places as may be reasonably required.⁸ Also, as noted, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits and in doing so must establish that the

⁶ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁷ *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

⁸ *William B. Webb*, 56 ECAB 156 (2004).

disability has ceased or that it is no longer related to the employment injury.⁹ In this instance, the Office properly referred appellant's opinion for a determination of whether her work-related condition resolved.

Appellant's attorney asserted that it was improper for Dr. Ghanma, the Office referral physician, to note on November 27, 2006 that appellant could have returned to full unrestricted duty on January 7, 2006. The Board has reviewed Dr. Ghanma's report and cannot fault it on this ground. Dr. Ghanma opined that appellant recovered from her work injury which consisted of a minor incident of bumping her knee within a few days to weeks and the work-related conditions resolved six weeks after her arthroscopic surgery. He concluded that appellant would have been able to return to full unrestricted duty on January 7, 2006. Dr. Ghanma provided a thorough and well-rationalized report and based his opinion on the normal healing time from such surgery and the work injury itself.

Appellant's attorney asserted that Dr. Ghanma did not conclude that appellant did not have residuals of the accepted osteoarthritis or chondromalacia, rather, he opined that these conditions were not related or aggravated by the work incident and therefore she no longer had disability. The Board finds this interpretation of Dr. Ghanma's report inaccurate. Dr. Ghanma opined that there were no objective findings of the work-related right knee contusion, aggravation of right knee chondromalacia patella and aggravation of osteoarthritis of the right knee. He opined that appellant did have osteoarthritis of the right knee which was work related but defined it as "negligible" in nature and further advised that the chondromalacia, was for the most part, preexisting; however, that which was related to her work injury was treated surgically as was the preexisting patellar pathology.

Finally, appellant's attorney asserted that the statement of accepted facts dated May 12, 2006 was inaccurate and prejudicial. He specifically noted that the statement did not indicate that the Office accepted "aggravation" of the right knee osteoarthritis and "aggravation" of chondromalacia patella but merely acceptance of right knee osteoarthritis and chondromalacia patella. The Board has reviewed Dr. Ghanma's report and cannot fault it on this ground. Although there may be minor errors in the statement of accepted facts, the second opinion physician addressed appellant's accepted injury of February 19, 2004 and each of the accepted conditions of aggravation of right knee osteoarthritis and chondromalacia patella. He provided findings on examination of each of these areas and a review of the diagnostic testing. Therefore, the Board finds this argument to be without merit.

The Board finds that appellant has not established that she has any continuing residuals of her accepted employment conditions on or after February 28, 2007.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective February 28, 2007. The Board further finds that appellant failed to establish that she had any continuing disability after February 28, 2007.

⁹ See *Gewin C. Hawkin, supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 17 and February 28, 2007 are affirmed.

Issued: July 8, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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