United States Department of Labor
Employees' Compensation Appeals Board

J.N., Appellant	)	
and	)	**Docket No. 08-487**
	)	**Issued: July 10, 2008**
DEPARTMENT OF VETERANS AFFAIRS, MASSACHUSETTS NATIONAL CEMETARY, Bourne, MA, Employer	)	

Appearances:
Appellant, pro se
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 December 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 28, 2007, terminating his compensation benefits. The record also contains a September 10, 2007 decision denying further merit review of the claim. Pursuant to 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 of proof to terminate compensation for wage-loss and medical benefits effective April 14, 2007; and (2) whether the Office properly determined appellant's application for reconsideration was insufficient to warrant further merit review pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On February 27, 2006 appellant, then a 58-year-old caretaker, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury in the performance of duty on that date when he slipped and fell. The Office accepted a sprain/strain of the lateral collateral ligament of the right knee. Appellant underwent arthroscopic surgery on June 22, 2006 to repair medial and lateral meniscus tears of the right knee. He remained off work and received compensation for wage loss.

In a report dated October 12, 2006, Dr. Robert Wilsterman, an attending orthopedic surgeon, stated that appellant had not been able to return to work. He indicated that appellant could work with restrictions, noting he could not walk far and had difficulty sitting more than four hours. Dr. Wilsterman diagnosed right knee osteoarthritis, right lateral meniscus degeneration, right knee effusion and pain. He stated, "Overall [appellant] continues to have problems with the knee that is directly related to the work injury."

The Office prepared a statement of accepted facts and referred appellant for a second opinion examination by Dr. Jerald Katz, an orthopedic surgeon. In a report dated December 18, 2006, Dr. Katz provided a history and results on examination. He diagnosed status post partial medial and lateral meniscectomies and medial joint arthritis of the right knee. Dr. Katz further stated:

> "[Appellant] most probably sustained a contusion to his knee and his lateral meniscus tear at the time of his injury on February 27, 2006. He has preexisting tricompartmental arthritis, which is not unusual for a manual laborer of 58 years of age. I believe this is preexisting because [appellant] did not develop tricompartmental arthritis since the time of his injury, less than a year ago and his arthroscopic evaluation described arthritis and this was in June of 2006.
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> "I believe that his employment[-]related injury, which was a contusion of the knee and medical and lateral meniscus tears, were adequately treated and this problem has resolved within two months.
>
> "I believe he has preexisting arthritis of his knee, which is what he is complaining about now. It is certainly conceivable that his work injury and the fact that he had to have meniscal tissue resected aggravated his preexisting arthritis.
>
> "In summary, I feel that his employment[-]related injury completely resolved but his preexisting arthritis is what is bothering him now."

By letter dated February 1, 2007, the Office notified appellant that it proposed to terminate his compensation for wage-loss and medical benefits based on the weight of the medical evidence, as represented by Dr. Katz. The Office advised that, if he disagreed, he should submit additional evidence or argument within 30 days. Appellant submitted hospital treatment notes dated May 20, 2006 that were previously of record. He also submitted a Social Security Administration notice of award dated January 23, 2007.

By decision dated March 29, 2007, the Office terminated compensation for wage-loss and medical benefits effective April 14, 2007.

On April 30, 2007 appellant requested reconsideration of his claim. He stated that his arthritis was worsening and he continued to have knee pain. Appellant noted that he was receiving long-term disability benefits from the Social Security Administration. With respect to the medical evidence, he submitted a December 7, 2006 form report from Dr. Wilsterman indicating that he was referred for physical therapy and hospital reports previously of record.

In a decision dated September 10, 2007, the Office determined that the application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[1] The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[2] The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[3]

ANALYSIS -- ISSUE 1

The Office accepted a right lateral collateral ligament sprain/strain in the performance of duty on February 27, 2006. The Board notes that the second opinion physician, Dr. Katz, also supported a finding that the lateral and medial meniscus tears, for which appellant underwent surgery on June 22, 2006, were causally related to the employment injury. It is, as noted above, the Office's burden of proof to establish that the employment-related conditions had resolved.

The Board finds that the report of Dr. Katz represents the weight of the medical evidence in this case with regard to appellant's employment-related right knee injuries. Dr. Katz provided a complete history and he opined that appellant's employment injuries had resolved. He noted that appellant underwent surgery to repair the meniscus tears and opined his employment-related condition resolved two months after the surgery. Dr. Katz indicated that appellant had preexisting arthritis, and while it may have been temporarily aggravated by the employment injury, the continuing complaints of knee pain were related to the underlying arthritis condition rather than the employment injury.

The evidence from the attending physician, Dr. Wilsterman, is not of sufficient probative value to create a conflict with Dr. Katz. He diagnosed osteoarthritis and lateral meniscus degeneration, which are not accepted employment-related conditions. To support a continuing employment-related condition, there must be a rationalized opinion on causal relationship

[1] *Jorge E. Stotmayor,* 52 ECAB 105, 106 (2000).

[2] *Mary A. Lowe,* 52 ECAB 223, 224 (2001).

[3] *Frederick Justiniano,* 45 ECAB 491 (1994).

between the diagnosed conditions and the employment injury.[4] Dr. Wilsterman stated that appellant continued to have knee problems that were "directly related" to the work injury without providing any explanation or medical rationale in support of the opinion. His report is of diminished probative value to the issue presented. The Board also notes that the findings of an administrative agency with respect to entitlement to benefits under a specific statutory authority have no bearing on entitlement to compensation under the Federal Employees' Compensation Act.[5]

The Board finds that the Office met its burden of proof to terminate compensation benefits effective April 14, 2007. Dr. Katz provided a rationalized medical opinion based on a complete background that the employment-related conditions had resolved. His report represents the weight of the medical evidence in this case.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[6] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[7]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.[8]

A timely application for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[9]

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[4] *See Thomas R. Horsfall*, 48 ECAB 180, 183 (1996).

[5] *Burney L. Kent*, 6 ECAB 378 (1953) (findings by the Veterans Administration had no bearing on proceedings under the Act); *see also Daniel Deparini*, 44 ECAB 657 (1993) (findings of the Social Security Administration are not determinative of disability under the Act).

[6] 5 U.S.C. § 8128(a).

[7] 20 C.F.R. § 10.605 (1999).

[8] *Id*. at § 10.606(b)(2).

[9] *Id*. at § 10.608.

ANALYSIS -- ISSUE 2

Appellant submitted an application for reconsideration stating that he continued to have knee pain and he believed his knee arthritis was worsening. He did not attempt to show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. With respect to new medical evidence, he submitted only a December 7, 2006 report that does not address the issue of a continuing employment-related condition as of April 14, 2007. Appellant did not submit relevant and pertinent evidence not previously considered by the Office.

The Board accordingly finds appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) to warrant merit review of the claim. Pursuant to 20 C.F.R. § 10.608, the Office properly denied the application for reconsideration without merit review of the claim.

CONCLUSION

The Office met its burden of proof to terminate compensation for wage loss and medical benefits effective April 14, 2007, based on the weight of the probative evidence. Appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and therefore the Office properly denied the application for reconsideration without merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 10 and March 28, 2007 are affirmed.

Issued: July 10, 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