

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 09-487
Issued: September 2, 2009**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2008 appellant filed a timely appeal from a June 6, 2008 merit decision of the Office of Workers' Compensation Programs affirming the termination of her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation effective April 11, 2007 on the grounds that she no longer had residuals of her July 25, 2005 employment injury after that date.

FACTUAL HISTORY

The Office accepted that on July 25, 2005 appellant, then a 45-year-old mail carrier, sustained a left knee sprain when she stood up after loading a mailbox with mail. She stopped work for intermittent periods and received compensation.

On November 13, 2006 Dr. Steven J. Valentino, an osteopath and Board-certified orthopedic surgeon, examined appellant upon referral by the Office. He described appellant's medical history and findings on examination. Dr. Valentino noted that she walked normally and was able to heel and toe walk well. Appellant was able to squat and return to the erect posture without difficulty. Her knees revealed an absence of synovitis, effusion or internal derangement. Patellofemoral compression and inhibition tests were negative and anterior and posterior drawer signs, varus and valgus stress testing and pivot shift testing were negative. Dr. Valentino noted that appellant's range of motion was full and that neurologic examination revealed that deep tendon reflexes were intact. Appellant's motor and sensory examinations were normal and there were no pathologic reflexes. Dr. Valentino concluded that she had recovered from her accepted work-related left knee sprain and that she no longer required ongoing supervised medical care. He concluded that appellant no longer had residuals from the injury based on the normal physical examination and the findings on diagnostic testing. It was Dr. Valentino's opinion that any restrictions she required were due to her underlying degenerative joint disease rather than the July 25, 2005 employment injury.

In a March 8, 2007 letter, the Office advised appellant of its proposed termination of her compensation. It noted that Dr. Valentino found that she no longer had residuals of her July 25, 2005 employment injury. The Office provided appellant 30 days to submit evidence contesting the proposed termination.

Appellant submitted a February 28, 2007 treatment note and a February 7, 2007 work restrictions form of Dr. Bruce Hopper, Jr., an attending Board-certified orthopedic surgeon, who stated that he was treating appellant for degenerative joint disease of her right knee. In the February 7, 2007 work restrictions form, Dr. Hopper noted that she required permanent restrictions due to a "left knee strain/sprain."

In an April 11, 2007 decision, the Office terminated appellant's compensation benefits effective April 11, 2007 on the grounds that she had no residuals of her July 25, 2005 employment injury. It found that the weight of medical evidence rested with Dr. Valentino.

Appellant requested reconsideration and submitted a March 26, 2008 report from Dr. Hopper who asserted that she continued to have residuals of her July 25, 2005 employment injury. Dr. Hopper indicated that she continued to have chronic pain syndrome in her left knee and, because she was not in physical therapy within the first couple months after her injury, her left knee tissues "pathologically remodeled in a dysfunctional manner and she now has chronic pain with use of her left knee." He advised that appellant's preexisting right knee post-traumatic osteoarthritis was aggravated by her left knee injury. Dr. Hopper provided a similar opinion in a November 12, 2007 report.

The Office found a conflict in medical opinion between Dr. Valentino and Dr. Hopper regarding whether appellant continued to have employment-related residuals. It referred her to Dr. Zohar Stark, a Board-certified orthopedic surgeon, for an impartial medical examination.

On May 13, 2008 Dr. Stark discussed appellant's July 25, 2005 injury and her medical treatment, including the results of diagnostic testing. Physical examination revealed that appellant was able to walk with a reciprocating heel/toe gait. Examination of her right knee,

which showed signs of prior surgery, showed no tenderness on palpation. Dr. Stark indicated that the left knee did not reveal effusion or reduced quadriceps strength or mass. Range of motion of the left knee was from 0 to 130 degrees of flexion with crepitation at the patellofemoral joint but no tenderness over the joint lines. There were no sensory or motor deficits in the lower extremities. Dr. Stark concluded that appellant's July 25, 2005 left knee sprain had resolved. He stated:

“There is no evidence that such pathology still exists. There is no objective evidence that her ‘tissue pathologically remodeled in dysfunctional manner’ [and] resulted in a chronic pain syndrome. Her chronic pain syndrome is related to her chondromalacia patella, which is not related to the injury to her knee sustained on July 25, 2005. [Appellant] has chondromalacia patella in both knees and advanced degenerative joint disease of her right knee, which were not produced or aggravated by the alleged injury of July 25, 2005. [She] did sustain severe injuries to her right knee in 1983 and underwent open reduction internal fixation of fracture of proximal tibia, which resulted in some mal-alignment as patient does have valgus alignment of her right knee. [Appellant] developed degenerative joint disease in her knee and there is no connection between the incident on July 25, 2005 and the degenerative joint disease of her right knee and no connection between the chondromalacia of the patella in her left knee to the incident in question.”¹

In a June 6, 2008 decision, the Office affirmed its April 11, 2007 decision. It found that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Stark.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ It's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant who must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁶

¹ Dr. Stark recommended restrictions on walking, standing, squatting, climbing and kneeling due to her nonwork-related degenerative knee disease.

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁴ *Id.*

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

Section 8123(a) of the Act provides in pertinent part: “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.”⁷ In situations where there exist 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.⁸

ANALYSIS

The Office accepted that appellant sustained a left knee sprain after loading a mailbox with mail. It terminated appellant’s compensation benefits on April 11, 2007 based on the November 13, 2006 report of Dr. Valentino, an osteopath and Board-certified orthopedic surgeon, who served as an Office referral physician.

The Board finds that the Office properly relied on the well-rationalized opinion of Dr. Valentino to terminate appellant’s compensation. Dr. Valentino concluded that appellant had recovered from her accepted work-related left knee sprain of July 25, 2005 and found that she no longer required ongoing supervised medical care. He provided medical rational for his opinion by explaining that she had limited findings on physical examination and that the findings on diagnostic testing did not show any residuals of the employment injury. Dr. Valentino advised that any restrictions appellant required were due to her underlying degenerative joint disease rather than the July 25, 2005 employment injury.⁹

Appellant subsequently submitted November 12, 2007 and March 26, 2008 reports in which Dr. Hopper reiterated that she continued to have residuals of her July 25, 2005 employment injury.¹⁰ The Office properly determined that there was a conflict in the medical opinion between Dr. Valentino and Dr. Hopper regarding whether appellant continued to have residuals of her employment injury. In order to resolve the conflict, it properly referred her,

⁷ 5 U.S.C. § 8123(a).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ Appellant submitted a February 28, 2007 treatment note and a February 7, 2007 work restrictions form of Dr. Hopper, an attending Board-certified orthopedic surgeon. The Office properly found that this evidence was of limited probative value because the physician did not provide a thorough medical evaluation or opinion on causal relation. See *John D. Jackson*, 55 ECAB 465 (2004).

¹⁰ Dr. Hopper noted that because appellant was not in physical therapy within the first couple months after her injury, her left knee tissues “pathologically remodeled in a dysfunctional manner and she now has chronic pain with use of her left knee.” He advised that appellant’s preexisting right knee post-traumatic osteoarthritis was aggravated by her left knee injury.

pursuant to section 8123(a) of the Act, to Dr. Stark, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.¹¹

The Board finds that the weight of the medical evidence then came to be represented by the thorough, well-rationalized opinion of Dr. Stark, the impartial medical specialist selected to resolve the conflict in the medical opinion. The report of Dr. Stark does not show that appellant had employment-related residuals after April 11, 2007, the date her compensation was terminated.

On May 13, 2008 Dr. Stark discussed appellant's July 25, 2005 injury and her medical treatment, including the results of diagnostic testing. Physical examination revealed that appellant was able to walk with a reciprocating heel/toe gait. Examination of her right knee, which showed signs of prior surgery, showed no tenderness on palpation. Dr. Stark indicated that the left knee did not reveal effusion or reduced quadriceps strength or mass. Range of motion of the left knee was from 0 to 130 degrees of flexion with crepitation at the patellofemoral joint but no tenderness over the joint lines. There were no sensory or motor deficits in the lower extremities. Dr. Stark concluded that appellant's July 25, 2005 left knee sprain had resolved. He explained that his opinion was supported by the limited findings on examination and diagnostic testing. Dr. Stark also noted that appellant had chondromalacia patella in both knees and advanced degenerative joint disease of her right knee, which were not produced or aggravated by the July 25, 2005 injury.

On appeal, appellant's attorney argued that Dr. Stark did not adequately explain why appellant's chondromalacia was not aggravated by the July 25, 2005 injury. The Board notes that her claim had only been accepted for left knee sprain and that Dr. Stark explained that there was no evidence on examination or diagnostic testing to show that the condition was employment related. Appellant's attorney also contended that Dr. Stark did not explain why he recommended work restrictions; however, Dr. Stark stated that he provided such restrictions due to appellant's nonwork-related degenerative knee disease.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective April 11, 2007 on the grounds that she no longer had residuals of her July 25, 2005 employment injury after that date.

¹¹ On appeal, appellant's attorney asserted that the referral to Dr. Stark was improper because three physicians were bypassed to get to Dr. Stark due to the fact they could not give appointments within a reasonable amount of time. Although appellant's attorney made reference to the portion of Office procedure regarding selection of impartial medical specialists, he did not cite any specific precedent showing that the Office's method of selection was improper.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 6, 2008 decision is affirmed.

Issued: September 2, 2009
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board