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

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| **S.C., Appellant** | ) | |
| **and** | ) | **Docket No. 13-1214** |
| | ) | **Issued: September 24, 2013** |
| **DEPARTMENT OF COMMERCE, CENSUS BUREAU, Hyattsville, MD, Employer** | ) | |

*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, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On April 22, 2013 appellant, through his attorney, filed a timely appeal of a November 20, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUE***

The issue is whether OWCP properly terminated appellant's medical benefits effective June 5, 2012.

### ***FACTUAL HISTORY***

On February 21, 2010 appellant, then a 58-year-old field representative, slipped on ice while in the performance of duty. February 25, 2010 x-rays from Dr. William J. Dunwoody, a Board-certified diagnostic radiologist, exhibited degenerative changes of the left knee and mild

[1] 5 U.S.C. § 8101 *et seq.*

diffuse vascular calcification of the right femur. An April 12, 2010 sonogram of the right lower extremity obtained by Dr. Jennifer H. Park, a Board-certified diagnostic radiologist, was unremarkable. A June 23, 2011 magnetic resonance imaging (MRI) scan obtained by Dr. Tomy P. Kalapparambath, a Board-certified nuclear medicine physician, showed right semitendinosus muscle atrophy with minimal edema. OWCP accepted appellant's traumatic injury claim for left knee sprain and right thigh strain.[2]

In a January 18, 2012 report, Dr. Nicholas T. Dutcheshen, a Board-certified orthopedic surgeon, examined appellant's left knee. He observed medial joint line pain and patellofemoral crepitus. X-rays confirmed bone-on-bone arthritis. Dr. Dutcheshen diagnosed left knee osteoarthritis.

OWCP referred appellant to Dr. Michael E. Holda, a Board-certified orthopedic surgeon, for a second opinion examination. In a February 13, 2012 report, Dr. Holda reviewed the January 17, 2012 statement of accepted facts and medical file. He noted that appellant previously underwent left knee arthroscopy due to a basketball injury sustained in or around 1999. On physical examination, Dr. Holda observed left knee crepitus, limited extension, and medial joint line tenderness and right knee crepitus. Other findings involving thigh and calf measurements, knee and ankle reflexes, lower extremity sensation, extensor hallucis longus musculature and seated straight leg raise maneuvers were unremarkable. Dr. Holda diagnosed temporary aggravation of preexisting left knee degenerative arthritis. He concluded that both of appellant's accepted conditions resolved, noting that the objective evidence did not demonstrate residuals of the February 21, 2010 injury.

In an April 6, 2012 letter, OWCP found that Dr. Holda's February 13, 2012 report constituted the weight of the evidence. It notified appellant of its proposal to terminate his medical benefits on the grounds that he no longer had residuals due to his February 21, 2010 work injury. OWCP gave him 30 days to submit additional argument or evidence.

Dr. Dutcheshen agreed with Dr. Holda's opinion in an April 20, 2012 report. He stated that appellant's left knee arthritis was a preexisting condition and that any residuals due to the February 21, 2010 work injury should have resolved.[3]

By decision dated June 5, 2012, OWCP terminated appellant's medical benefits.

Counsel requested a telephonic hearing, which was held on September 19, 2012. Appellant reiterated that he remained physically disabled.

In an April 11, 2012 report, Dr. Faisal I. Ahmad, a Board-certified neurologist, remarked that appellant continued to experience pain. In an October 26, 2012 report, Dr. Dutcheshen specified that appellant tore his right hamstring at work when he slipped on ice. Appellant overused his left knee to compensate for the tear and thereafter exacerbated his preexisting

[2] Information was incorporated into the January 17, 2012 statement of accepted facts.

[3] Dr. Dutcheshen restated the same findings and diagnosis contained in his earlier January 18, 2012 report.

arthritis. Dr. Dutcheshen pointed out that a fall "would not cause arthritis [of] this nature." He recommended knee arthroplasty.

On November 20, 2012 an OWCP hearing representative affirmed the June 5, 2012 decision.

## ***LEGAL PRECEDENT***

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits,[4] which includes furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5] Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.[6] The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation. To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition, which would require further medical treatment.[7]

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. Instead, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. Factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

## ***ANALYSIS***

OWCP accepted appellant's traumatic injury claim for left knee sprain and right thigh strain. Following a second opinion examination, Dr. Holda concluded in a February 13, 2012 report that he no longer had residuals of the February 21, 2010 industrial injury. Based on this opinion, OWCP terminated appellant's medical benefits effective June 5, 2012.

The Board finds that Dr. Holda's February 13, 2012 report constitutes the weight of medical opinion. As noted, the weight of the medical evidence is determined by its reliability, its probative value and its convincing quality.[9] Dr. Holda reviewed the January 17, 2012 statement of accepted facts and medical file. He conducted a physical examination and observed left knee crepitus, limited extension, and medial joint line tenderness and right knee crepitus. Dr. Holda

[4] *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

[5] *D.C.*, Docket No. 09-1070 (issued November 12, 2009); *Larry Warner*, 43 ECAB 1027 (1992).

[6] *I.J.*, *supra* note 4.

[7] *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[8] *Anna M. Delaney*, 53 ECAB 384, 386 (2002).

[9] *Id.*

stated that thigh and calf measurements, knee and ankle reflexes, lower extremity sensation, extensor hallucis longus musculature and seated straight leg raise maneuvers were unremarkable. Based on a thorough assessment, as well as the absence of objective evidence to the contrary, he determined that appellant temporarily aggravated his preexisting left knee degenerative arthritis due to the February 21, 2010 work injury, did not exhibit current employment-related residuals. In subsequent April 20 and October 26, 2012 reports, Dr. Dutcheshen, the attending physician, agreed with Dr. Holda's conclusion that the accepted left knee sprain and right thigh strain had resolved.[10] The Board notes that Dr. Ahmad's April 11, 2012 report failed to provide sufficient medical rationale addressing how residuals of the accepted conditions continued or were disabling.[11] Consequently, the Board finds that OWCP properly relied on Dr. Holda's opinion in terminating appellant's medical benefits.

Counsel contends that OWCP's November 20, 2012 decision was contrary to fact and law. The Board has addressed the merits of the case. Appellant also submitted new evidence after issuance of the November 20, 2012 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[12] Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***CONCLUSION***

The Board finds that OWCP properly terminated appellant's medical benefits effective June 5, 2012.

[10] The Board notes that Dr. Dutcheshen referred to a torn right hamstring. OWCP did not accept this condition as work related.

[11] *Dean E. Pierce*, 40 ECAB 1249 (1989).

[12] 20 C.F.R. § 501.2(c).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the November 20, 2012 merit decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 24, 2013
Washington, DC

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

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

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