



accepted right knee conditions; and (2) whether appellant met her burden of proof to establish that she had any continuing employment-related residuals or disability after March 8, 2015 due to the accepted conditions.

On appeal, counsel contends that the opinion of OWCP's referral physician lacks probative value and cannot carry the weight of the medical evidence

### **FACTUAL HISTORY**

OWCP accepted that on December 24, 2010 appellant, then a 60-year-old city carrier, sprained and tore the medial meniscus of her right knee while delivering mail. She returned to modified duty and continued working until July 20, 2011 when Dr. Kim M. Clabbers, a Board-certified orthopedic surgeon, performed authorized arthroscopic partial medial meniscectomy and chondroplasty of the patella and trochlea. Appellant did not return to work after the surgery and was placed on the periodic compensation rolls. Dr. Clabbers provided ongoing follow-up care.

In March 2012, OWCP referred appellant to Dr. Robert F. Draper Board-certified in orthopedic surgery, for a second opinion evaluation. In an April 20, 2012 report, Dr. Draper reviewed a statement of accepted facts (SOAF), history of the injury, and the medical evidence of record, noting that she was nine months status post right knee arthroscopic surgery. He opined that appellant had reached maximum medical improvement (MMI) and had permanent residuals of the right knee employment injury, but no permanent functional loss. Dr. Draper concluded that she was capable of working full time with the following restrictions: lifting no more than 50 pounds occasionally and 25 pounds frequently; sitting, standing, and walking no more than six hours per day. In a supplementary report dated June 7, 2012, he reviewed right knee x-rays. Dr. Draper opined that, while appellant had some preexisting osteoarthritic changes in the right knee, he did not believe a right total knee replacement was needed and such replacement would not be causally related to the December 24, 2010 employment injury. He reported that she had left knee osteoarthritis that had progressed to a left total knee replacement, and that this was without trauma to the left knee, and was due to the aging process and passage of time. Dr. Draper opined that a similar process was happening in appellant's right knee and that any future need for a right total knee replacement would not be causally related to her employment injury.

Dr. Clabbers continued to submit reports describing appellant's right knee condition. On March 26, 2013 he diagnosed degenerative joint disease of the right knee and noted that her right knee condition continued to be quite painful in spite of steroid injections and medication. Dr. Clabbers opined that appellant had reached MMI from her right knee employment injury as of July 5, 2012 and released her to full-time limited-duty work with the following restrictions: walking, standing, bending, and stooping no more than four hours per day; operating a motor vehicle at work no more than six hours per day; lifting no more than 10 pounds; pushing and pulling no more than 10 pounds for four hours per day; squatting, kneeling, and climbing no more than two hours per day.

In July 2013, OWCP again referred appellant to Dr. Draper. In an August 9, 2013 report, Dr. Draper noted the accepted conditions and advised that appellant continued to suffer some

minimal residuals from the accepted condition of torn medial meniscus, but that most of her symptoms were due to preexisting, nonwork-related osteoarthritis of the right knee. He opined that the December 24, 2010 employment injury did not cause permanent aggravation of the preexisting right knee osteoarthritis and concluded that, while appellant had permanent restrictions, these were due to her preexisting condition and not to the accepted conditions.

By letter dated September 23, 2013, OWCP notified appellant that it proposed to terminate her compensation benefits based on the weight of the medical evidence, as represented by Dr. Draper. It afforded her 30 days to submit additional evidence or argument in disagreement with the proposed action.

In response, appellant submitted reports dated September 5 and 12, 2013 from Dr. Clabbers documenting steroid injections to the right knee.

On February 10, 2014 the employing establishment offered appellant a modified position as a sales solution team member. The duties included contacting customers by telephone, light data entry, answering telephones, and back office administrative assistance-type duties. The physical requirements included sitting, simple grasping, pushing and pulling for intermittent use of a computer mouse, keyboard data entry, and telephone use.

On February 21, 2014 appellant indicated that she could neither accept nor reject the job offer as she was being scheduled for a right knee replacement. She submitted January 8 and February 20, 2014 form reports from Dr. Kevin Gingrich, a Board-certified orthopedist, who reported a right total knee replacement and advised that appellant could not work.

In a work capacity evaluation (Form-5c) dated April 3, 2014, Dr. Gingrich opined that appellant's fall onto her right knee aggravated her underlying arthritis. He advised that she had reached MMI and was capable of seated work only.

On April 8, 2014 Dr. Gingrich scheduled appellant for a right total hip replacement on May 13, 2014. On May 29, 2014 he noted that she was four weeks postoperative "due to knee injury aggravating total hip replacement."<sup>3</sup>

In November 2014, OWCP referred appellant to Dr. Robert Allen Smith, also Board-certified in orthopedic surgery, for a second opinion evaluation. In a December 5, 2014 report, Dr. Smith reviewed a SOAF, history of injury, and the medical evidence of record, noting that appellant had total knee replacement in November 2013.<sup>4</sup> Physical examination demonstrated well-healed scars on the right from prior arthroscopic procedures. There was no swelling in the

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<sup>3</sup> The record does not indicate that a request for surgical authorization of the hip replacement was made. The only authorization request in the record is appellant's request on April 25, 2014 to change physicians from Dr. Clabbers to Dr. Gingrich. This was granted by OWCP on June 11, 2014. Subsequent to the surgery, physical therapy was requested, but not authorized. As described above, in form reports, Dr. Gingrich scheduled the surgery and reported on appellant's condition four weeks later.

<sup>4</sup> The record at this time contains no information regarding the November 2013 right knee replacement surgery such as request for authorization, physician's treatment note, or operative report. As noted, the only evidence received were the brief form reports dated January and February 20, 2014.

knee and alignment was satisfactory. Range of motion was satisfactory with full extension to zero and further flexion to 95 degrees. Dr. Smith found no instability about the knee with satisfactory strength, no atrophy, and intact neurovascular status. He opined that appellant's accepted conditions had been treated properly and had fully resolved without residuals. Dr. Smith advised that her continued right knee complaints were the result of a total knee arthroplasty performed for nonemployment-related arthritis, which was not caused, aggravated, or accelerated by the December 24, 2010 employment injury. He indicated that appellant did not require further medical treatment and that, while she had no work restrictions related to her accepted conditions, her symptomatic nonemployment-related arthritis which had required total knee replacement excluded her from returning to work as a city carrier. Dr. Smith concluded that she was capable of full-time light-duty work with the following restrictions: pushing, pulling, and lifting no more than 20 pounds; no squatting, lifting, or climbing.

On January 14, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on the weight of the medical evidence, as represented by Dr. Smith. Appellant was afforded 30 days to submit additional evidence or argument in disagreement with the proposed action.

In a January 22, 2015 letter, counsel disagreed with the proposed termination. He asserted that Dr. Smith's report lacked reasoning for his opinion that appellant had recovered from the work injury and that the total knee replacement surgery was not in any way related to the accepted injury or to her prior arthroscopic surgery. No further evidence was submitted.

By decision dated February 25, 2015, OWCP terminated appellant's compensation benefits, effective March 8, 2015. It found that the weight of the evidence was represented by Dr. Smith.

On March 3, 2015 counsel requested a hearing before a hearing representative of OWCP's Branch of Hearings and Review and submitted a February 27, 2015 report in which Dr. Gingrich noted that appellant had right total knee replacement on November 19, 2013 after failure of conservative treatment. Dr. Gingrich described the employment injury, and advised that three months following the total knee replacement, she developed increasing pain in the right hip, opining that this pain began after the work injury. He indicated that follow-up x-rays of the right hip showed severe arthritic changes and that total hip arthroplasty was recommended and done on May 13, 2014. Dr. Gingrich opined that the trauma from appellant's December 24, 2010 twisting injury on the steps most likely aggravated her preexisting right hip and right knee arthritis, causing them to become more symptomatic.

Appellant retired effective March 30, 2015.

At the hearing, held on August 28, 2015, appellant testified regarding her knee and hip conditions. Counsel asserted that her right total knee replacement and hip replacement procedures were a consequence of the employment injury and prior surgery. The hearing representative noted that the record did not contain operative reports of either of these procedures. The record was held open for 30 days for the submission of additional evidence.

Following the hearing, appellant submitted an October 23, 2013 x-ray of the right knee, which demonstrated mild osteoarthritis of the medial compartment. In an October 23, 2013 report, Dr. Gingrich indicated that appellant was seen to reschedule a right total knee arthroplasty.<sup>5</sup> A November 19, 2013 operative report indicated that he performed a right total knee arthroplasty for the diagnosis of right knee osteoarthritis. In a progress report dated December 4, 2013, Dr. Gingrich noted that appellant was having some postoperative pain, but was able to bend her knee more every day and fully extended it upon physical examination.

By decision dated November 13, 2015, an OWCP hearing representative affirmed the February 25, 2015 termination decision, finding that Dr. Smith represented the weight of the medical evidence.

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

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>6</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>8</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>9</sup>

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

OWCP accepted that on December 24, 2010 appellant sustained a right knee sprain and meniscus tear and authorized a right knee arthroscopic repair, performed by Dr. Clabbers on July 20, 2011. It terminated appellant's wage-loss compensation and medical benefits, effective March 8, 2015, based on the opinion of Dr. Smith, an OWCP referral physician.

The medical evidence relevant to the March 8, 2015 termination included Dr. Smith's December 5, 2014 report. Dr. Smith thoroughly described physical examination findings of the right knee, noting no swelling, satisfactory alignment and range of motion, no instability, satisfactory strength, no atrophy, and intact neurovascular status. He advised that appellant's accepted conditions had been treated properly and had fully resolved without residuals. Dr. Smith opined that her continued right knee complaints were due to a total knee arthroplasty,

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<sup>5</sup> Appellant also submitted a November 4, 2013 report from Dr. Paul G. Grena, a Board-certified cardiologist, who opined that she was cardiovascularly stable for joint replacement surgery, and a November 19, 2013 pathology report.

<sup>6</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *Id.*

<sup>8</sup> *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> *See James F. Weikel*, 54 ECAB 660 (2003).

which was done in November 2013 for arthritis, and that neither the diagnosed condition nor surgery was caused, aggravated, or accelerated by the December 24, 2010 employment injury. He indicated that appellant did not require further medical treatment and that she had no work restrictions related to her accepted conditions. Dr. Smith concluded that any symptoms and restrictions, which precluded her return to work as a city carrier, were due to the nonemployment-related arthritis that necessitated the total knee replacement.

The Board finds that Dr. Smith's report represents the weight of the medical evidence at the time and that OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits. Dr. Smith had full knowledge of the relevant facts and evaluated the course of her condition. He is a specialist in the appropriate field. Dr. Smith's opinion is based on proper factual and medical history and his report contained a detailed summary of this history. He addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's conditions.<sup>10</sup> At the time benefits were terminated, Dr. Smith found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. Contrary to her assertion on appeal, his opinion as set forth in his December 5, 2014 report is found to be probative evidence and reliable, and sufficient to justify OWCP's termination of benefits for the accepted conditions.

While Dr. Gingrich opined on April 3, 2014 that a fall, which he did not further identify, aggravated appellant's underlying arthritis, this was almost one year prior to the termination on March 8, 2015. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.<sup>11</sup> Moreover, appellant did not provide additional medical evidence in response to the proposed termination notice.

OWCP therefore met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 8, 2015.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate appellant's wage-loss compensation on March 8, 2015, the burden shifted to her to establish that she had any disability causally related to the accepted lumbar conditions.<sup>13</sup> Causal relationship is a medical issue. 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

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<sup>10</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of 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 are facts, which determine the weight to be given to each individual report).

<sup>11</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>12</sup> *Supra* note 6.

<sup>13</sup> See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant did not meet her burden of proof to establish that she had continuing residuals of the accepted right knee sprain and meniscal tear on or after March 8, 2015.

Subsequent to the termination, appellant submitted a February 27, 2015 report from Dr. Gingrich. Dr. Gingrich, however, did not specifically indicate that she continued to be disabled due to the December 24, 2010 employment injury. Rather, he opined that the trauma from the December 24, 2010 employment injury most likely aggravated appellant's preexisting right hip and right knee arthritis, causing them to become more symptomatic.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>15</sup> As noted, medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.<sup>16</sup> The Board finds Dr. Gingrich's February 27, 2015 report of diminished probative value because he did not adequately explain or describe physiologically how or why the December 24, 2010 employment injury aggravated appellant's preexisting arthritis or explain why she continued to be totally disabled after March 8, 2015 due to the December 24, 2010 employment injury.<sup>17</sup> Dr. Gingrich did not explain why this injury caused continuing, disabling residuals, or sufficiently explain why her right total knee and total hip replacement procedures which were not authorized, were needed due to the employment injury.

Dr. Gingrich's report submitted on reconsideration is therefore entitled to little probative value and is insufficient to meet appellant's burden of proof to establish that she continued to have work-related disability due to the accepted right knee sprain and meniscal tear.<sup>18</sup>

The additional evidence submitted after the March 8, 2015 termination consisted of reports dated October to December 2013, which are in regard to the November 2013 right total knee replacement surgery and contain no opinion regarding causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of

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<sup>14</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>15</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>18</sup> *S.S.*, 59 ECAB 315 (2008).

limited probative value on the issue of causal relationship.<sup>19</sup> Thus, these reports are irrelevant to appellant's claimed disability after March 8, 2015. Appellant therefore did not meet her burden of proof to establish that she continued to be disabled due to the accepted right knee sprain and meniscal tear after March 8, 2015.

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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 8, 2015, because she no longer had residuals of the accepted right knee conditions. The Board further finds that appellant did not meet her burden of proof to establish that she had continuing employment-related residuals or disability after March 8, 2015 due to the accepted conditions.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> *Willie M. Miller*, 53 ECAB 697 (2002).