United States Department of Labor
Employees' Compensation Appeals Board

G.P., Appellant	)	
	)	**Docket No. 17-0039**
and	)	**Issued: July 14, 2017**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Milpitas, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 14, 2016 appellant filed a timely appeal from May 18 and September 12, 2016 merit decisions 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 this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective July 26, 2015 as he no longer had any residuals or disability causally related to the accepted employment injury; and (2) whether appellant met his burden of proof to establish continuing disability after July 26, 2015.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 23, 1987 appellant, then a 35-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that on June 8, 1983 he became aware of pain, ligament and cartilage damage, and arthritis in his right knee and realized that his conditions were caused or aggravated by standing for long periods of time at work.[2] The employing establishment terminated appellant's employment on October 1, 1987 due to his abusive absenteeism.

In a May 17, 1988 decision, OWCP denied appellant's occupational disease claim. It found that he failed to submit a rationalized medical opinion to establish that his right knee conditions were causally related to the accepted employment factors. In a June 22, 1989 decision, OWCP vacated the May 17, 1988 decision and accepted appellant's claim for permanent aggravation of degenerative arthritis of the right knee. It placed him on temporary total disability.

In a June 25, 2007 decision, OWCP reduced appellant's compensation effective July 8, 2007 based on his capacity to earn wages in a constructed position of dental ceramist. This decision was affirmed on December 3, 2007 by an OWCP hearing representative.

On August 13, 2012 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion to determine whether his accepted condition had resolved. In a September 12, 2012 medical report, Dr. Doman reviewed the SOAF and medical record. He noted a history of appellant's accepted employment injury and service-connected disability. Dr. Doman reported normal findings on physical and x-ray examination of the right knee. He noted that a left knee x-ray showed minimal degenerative changes. Dr. Doman opined that appellant's accepted injury had resolved as the aggravation of his preexisting underlying degenerative arthritis was temporary in nature. He related that the nature of his work at the employing establishment would not have resulted in any permanent aggravation of his preexisting degenerative arthritis. Dr. Doman noted that degenerative arthritis was a progressive degenerative condition and appellant's present condition, including his total knee arthroplasty, represented a natural history of his preexisting degenerative arthritis condition. He indicated that the temporary aggravation would have long ago ceased within three months of modification of his work activities. Dr. Doman concluded that appellant could return to his date-of-injury clerk position with no restrictions.

In an August 27, 2012 note, Dr. Oliver noted that appellant was 10.9 years status post a right total knee arthroplasty for degenerative joint disease and 9.7 years status post resection of the heterotopic ossification within the quadriceps tendon. He also noted appellant's complaint of increased left knee and leg pain. Dr. Oliver related that appellant attributed his pain to the extra load placed on his left leg due to his previous right leg surgery. He reported that physical examination of the right knee for range of motion from 0 to 90 degrees without tenderness or crepitus. The knee and patella were both stable in flexion and extension and the patella was well tracking. The incision was completely healed and there was no swelling, effusion, or warmth.

[2] Appellant received a 30 percent disability rating from the Department of Veterans Affairs (VA) for a service-connected right knee condition.

Dr. Oliver reported that right knee x-rays were unremarkable for loosening, subsidence, or malpositioning. He advised that, after reviewing information and records provided by appellant, there was only one mention of arthritis of the left knee in a single x-ray report. Dr. Oliver maintained that based on a lack of information there was no way to officially conclude that appellant's left knee arthritis was directly related and secondary to his right knee arthritis.

In order to determine appellant's current condition and ascertain whether he still suffered residuals from his accepted right knee condition, OWCP, on March 12, 2015, again referred appellant, together with an updated SOAF, the medical record, and a list of questions, to Dr. Doman for a second opinion examination. In an April 30, 2015 report, Dr. Doman noted a history of appellant's accepted employment injury and medical treatment. He reviewed the SOAF and medical record.

On examination of the right knee, Dr. Doman found a well-healed surgical scar. Range of motion was from full extension to 100 degrees flexion. There was no ligamentous instability or swelling. There were no signs of infection.

On examination of the left knee, Dr. Doman found excellent range of motion from full extension to 125 degrees of flexion. There was no knee effusion. Dr. Doman reported that right knee x-rays, including a standing view, showed excellent position of the prosthesis with no evidence of loosening. There were minimal degenerative changes in the opposite left knee. Based on his examination and review of the medical file, Dr. Doman related that it was his firm and definite opinion that the accepted condition of aggravation of right knee degenerative arthritis had resolved. He noted that appellant had undergone right total knee replacement with an outstanding result. Dr. Doman explained that the rationale for the resolution of the aggravation was based on the outstanding results of the total knee replacement in conjunction with his opinion that the condition of the right knee had returned to its baseline condition prior to the aggravation. He concluded that appellant could return to his date-of-injury position as a clerk with the employing establishment effective immediately.

On June 5, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Doman's opinion. Appellant was afforded 30 days to submit additional evidence or argument.

In June 9 and 30, 2015 statements, appellant disagreed with the proposed action. He requested copies of reports from prior second opinion physicians and employment physical examinations to show that Dr. Doman's report was erroneous. Appellant submitted reviews from patient satisfaction surveys regarding Dr. Doman and contended that he was biased because he had twice examined him as directed by OWCP. He further contended that Dr. Doman barely listened to him during the examination and did not perform necessary tests. Appellant claimed that he spent more time in the waiting room than he did with Dr. Doman.

Appellant submitted an April 10, 2015 progress note from Dr. Sanjay B. Ponkshe, an employing establishment Board-certified internist. Dr. Ponkshe noted appellant's chief complaint of back and knee pain for years. He also noted a history of his physical and emotional medical problems. Dr. Ponkshe examined appellant and diagnosed, among other things, chronic back pain due to chronic bilateral knee pain that was likely traumatic arthritis.

An unsigned nursing progress note, printed on May 5, 2015 from the employing establishment's medical center, noted appellant's complaints of worsening chronic back and bilateral knee pain. The progress note provided examination findings.

In an August 25, 2014 knee and lower leg conditions disability benefits questionnaire, Dr. Contessa D. Metcalfe, a family practitioner, indicated that in 2014 appellant was diagnosed left knee degenerative arthritis and total right knee replacement. She noted his medical history included a 1973 right knee meniscectomy with residual bilateral knee pain due to decomposition, 1988 arthroscopic right knee surgery, and September 2001 right knee total replacement along with left knee and back pain due to compensating for the right knee condition. Dr. Metcalfe reported findings and indicated that appellant used assistive devices as a normal mode of locomotion. She advised that his conditions impacted his ability to perform work duties that involved kneeling, squatting, or prolonged standing or walking. In the remarks section, Dr. Metcalfe noted that appellant had served in the United States Army from April 1972 to April 1982 but had not participated in combat. She related that he had contributing factors of pain, weakness, fatigability and/or incoordination, and limitation of functional ability of the knee joint during flare-ups or repeated use over time. Dr. Metcalfe maintained that degree of loss of range of motion during pain on use or flare-ups was approximately five degrees in each direction. She changed his VA established diagnosis of total right knee replacement to total right knee replacement with instability.

By decision dated July 23, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective July 26, 2015. It found that the weight of the medical evidence rested with Dr. Doman's April 30, 2015 opinion that appellant no longer had any employment-related residuals or disability.

By letter dated August 5, 2015, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephone hearing was held on April 5, 2016. During the hearing, counsel asserted that Dr. Doman's opinion could not represent the weight of the medical evidence as he relied on a SOAF that did not contain a complete description of appellant's employing establishment job or accurately note his accepted condition. He further asserted that the physician had provided no reasoning or clinical findings and was biased because he had previously examined appellant on September 4, 2012.

In a May 18, 2016 decision, an OWCP hearing representative affirmed the July 23, 2015 termination decision, finding that Dr. Doman's report constituted the weight of the medical evidence.

By letter dated June 27, 2016, appellant requested reconsideration. He submitted a partial discussion note dated June 7, 2016 from Dr. Matthew B. Jaffe, a Board-certified orthopedic surgeon. Dr. Jaffe reported that appellant's right knee appeared to be in satisfactory condition without obvious evidence of loosening or hardware failure. He related that he would not recommend a revision procedure at that time. Dr. Jaffe identified appellant's physical restrictions, which included avoidance of running and significant impact activities for all of his knee replacements. He recommended activities of tolerance which included bending and prolonged standing. Dr. Jaffe recommended no kneeling with direct pressure on the prosthesis. He advised that these recommendations may be modified depending on the condition and age of

appellant and his knee replacement. Dr. Jaffe indicated that his right knee prosthesis appeared to be intact, had been working for over 15 years, and likely had significant components of wear internally. He recommended limited bending, stooping, and prolonged standing, and recommended no kneeling or heavy lifting. Dr. Jaffe maintained that appellant could not work eight hours a day, five days a week in a position that required prolonged standing, kneeling, heavy lifting, bending, and moving containers up to 80 pounds. He recommended sedentary work only with intermittent standing, bending, and lifting. Dr. Jaffe noted that appellant's restrictions were permanent and would not be expected to improve over time. He related that his knee condition would likely degenerate and might require future revision surgery.

In a September 12, 2016 decision, OWCP denied modification of the May 18, 2016 decision. It found that the evidence submitted was insufficient to outweigh the weight accorded to Dr. Doman's April 30, 2015 opinion.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of proof to justify termination or modification of compensation benefits.[3] OWCP may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.[4] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of July 26, 2015. OWCP accepted that he sustained permanent aggravation of degenerative arthritis of the right knee. It authorized arthroscopic total right knee replacement performed on September 11, 2001 and resection of heterotopic ossification about the right total knee arthroscopy performed on December 3, 2002. OWCP terminated appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Doman, a second opinion physician.

In his April 30, 2015 report, Dr. Doman noted a history of the accepted employment injury and reviewed the SOAF and medical record. He provided normal physical and x-ray examination findings regarding the right knee. Dr. Doman also found normal findings on physical examination of the left knee. He advised that an x-ray of the left knee revealed minimal degenerative changes. Dr. Doman opined that the accepted condition had resolved and that appellant could return to his date-of-injury clerk position with no restrictions effective immediately. He reasoned that the successful right knee replacement with an outstanding result in conjunction with examination findings showed that the right knee condition had returned to

[3] *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[4] *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

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

the baseline condition prior to the accepted aggravation of his underlying degenerative arthritis. Dr. Doman further found that appellant could immediately return to his date-of-injury job.

The Board finds that Dr. Doman's April 30, 2015 report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits for the accepted condition on July 23, 2015. Dr. Doman's opinion is based on a proper factual and medical history as he reviewed the SOAF and appellant's prior medical treatment records. He also related his comprehensive examination findings in support of his opinion that appellant no longer had any residuals or disability causally related to the accepted right knee injury.

The Board finds that the remaining evidence submitted by appellant prior to the termination of his compensation is insufficient to show that he had any remaining work-related residuals or disability.

Dr. Oliver's August 27, 2012 note indicated appellant's complaint of increased left knee and leg pain. He reported normal findings on examination and unremarkable right knee x-ray findings. The Board finds that Dr. Oliver's note is of diminished probative value as he did not attribute any right knee condition to the accepted work injury.[6] Instead, his report primarily focused on appellant's left knee.[7]

Dr. Ponkshe's April 10, 2015 progress note provided appellant's medical history and findings on examination. He diagnosed, among other things, chronic back pain due to chronic bilateral knee pain that was "likely" traumatic arthritis. The Board finds, however, that Dr. Ponkshe's diagnosis was of limited probative value because it was equivocal and speculative in nature.[8] Moreover, he did not provide a medical opinion addressing whether the diagnosed condition was causally related to the accepted employment injury.[9] Similarly, Dr. Metcalf's August 25, 2014 report is of limited probative value as she did not offer a medical opinion addressing whether appellant's accepted right knee condition remained symptomatic or disabling.

Furthermore, the unsigned progress note from the employing establishment's medical center has no probative medical value. A report that is unsigned or bears an illegible signature

[6] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[7] No left knee condition was accepted by OWCP. *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (where a claimant claims that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

[8] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[9] *See supra* note 7.

lacks proper identification that a physician authored it and cannot be considered probative medical evidence.[10]

The Board finds that Dr. Doman's opinion that appellant had recovered from the employment injury represents the weight of the medical evidence and the additional medical evidence submitted is insufficient to create a conflict in opinion regarding whether he had continuing residuals or disability related to the accepted injury. Therefore, OWCP properly terminated appellant's compensation effective July 26, 2015 based on his opinion.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to the claimant to establish that he has continuing disability after that date related to his accepted injury.[11] To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[12] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[13]

ANALYSIS -- ISSUE 2

Following the termination of his wage-loss compensation and medical benefits appellant submitted Dr. Jaffe's partial discussion note dated June 7, 2016. In this note, Dr. Jaffe found that appellant's right knee appeared to be in satisfactory condition without obvious evidence of loosening or hardware failure. He opined that appellant could perform sedentary work only with certain restrictions. Dr. Jaffe noted that his knee condition would likely degenerate and might require future revision surgery. However, he did not diagnose a specific condition or specifically address causal relationship by stating how appellant's continuing residuals and disability for work and need for further medical treatment were causally related to the accepted work injury.[14] Appellant, therefore, did not establish continuing disability after July 26, 2015 causally related to the accepted injury.[15]

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.

[10] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[11] *See Manuel Gill*, 52 ECAB 282 (2001).

[12] *Id.*

[13] *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[14] *See supra* note 7.

[15] *Virginia Davis-Banks*, 44 ECAB 389 (1993).

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective July 26, 2015 as he no longer had any residuals or disability causally related to the accepted employment injury. The Board further finds that appellant has failed to meet his burden of proof to establish continuing disability after July 26, 2015.

ORDER

IT IS HEREBY ORDERED THAT the September 12 and May 18, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 14, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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