

In the Matter of)	
)	
MAURICE COLTER,)	
)	
Claimant,)	
)	
v.)	AHD No. PBL 96-100B
)	DCP No. 760005-0001-1999-0065
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
)	
Employer.)	

Appearances

JAMES J. GALLINARO, ESQUIRE
For the Claimant

THELMA C. BROWN, ESQUIRE
For the Employer

Before:

LESLIE A. MEEK
Administrative Law Judge

COMPENSATION ORDER

STATEMENT OF THE CASE

This matter arises out of a claim for disability compensation benefits filed pursuant to the provisions of Subchapter XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann., § 1-623.1 *et seq.* (2001), (hereinafter, the Act).

After timely notice, a full evidentiary hearing was held on May 22, 2007, before Leslie A. Meek, Administrative Law Judge. Maurice Colter (hereinafter, Claimant) appeared in person and by counsel; the District of Columbia Public Schools (hereinafter, Employer) appeared

by counsel. Claimant testified on his own behalf. Employer did not present any witnesses. Claimant Exhibit (hereinafter, CE) Nos. 1-20, and Employer Exhibit (hereinafter, EE) Nos. 1-21, described in the Hearing Transcript (hereinafter, HT), were admitted into evidence. The record closed on June 11, 2007, upon receipt of the hearing transcript.

BACKGROUND

Claimant sustained an accidental work-injury on March 2, 1988 while at work for Employer. He provided notice of his injury and timely filed a claim for disability benefits, which was accepted by the Disability Compensation

Program.

The Disability Compensation Program provided Claimant notice of its intent to terminate his disability compensation and medical benefits on January 11, 2007. In response to the January 11, 2007 Notice, Claimant filed an application for a formal hearing.

CLAIM FOR RELIEF

Claimant seeks reinstatement of his disability compensation and medical benefits.

ISSUES

Whether the Disability Compensation Program properly terminated Claimant's medical benefits.

FINDINGS OF FACT

The findings of fact set forth in the April 29, 1997 Compensation Order are adopted and incorporated herein by reference. The findings pertinent to the matter *sub judice* are: Claimant worked for Employer on March 2, 1988 when he sustained an accidental injury that arose out of and in the course of his employment. Claimant provided timely notice of his injury and a claim was timely filed.

Claimant has a 10th or 11th grade education and preexisting osteoarthritis in his right knee, as well as hypertension, coronary artery disease and obesity.

Dr. Rita Azer is Claimant's treating orthopaedist. Dr. Azer maintains separate medical records pertaining to Claimant's injuries: The medical records related to the March 1988 Date of Injury are not commingled with the medical records related to Claimant's

July 11, 2005 automobile accident.

Claimant was involved in a motor vehicle accident on July 11, 2005 in which he sustained an injury to his right knee by striking it on the dash of his car. He was treated for this injury by Dr. Azer, who treated him with injections and a knee immobilizer.

Claimant's right knee condition was stable prior to the July 2005 automobile accident. By May 2004, Claimant was progressing well; had no effusion; and, had no instability. By February 2005, his medication was reduced to only as needed, although his limitations remained unchanged.

DISCUSSION

The undersigned has thoroughly reviewed and considered the totality of the evidence and the arguments set forth by the parties on the issues presented for resolution. To the extent an argument is consistent with the findings of fact and conclusions of law contained herein, the argument is accepted; to the extent an argument is inconsistent therewith, it is rejected.¹

The Act provides for modification of an award of compensation if the Disability Compensation Program has reason to believe a change of condition has occurred. D.C. Code §1-623.24(d)(1).

An award may not be modified because of a change to the claimant's condition unless:

¹While each documentary exhibit received in evidence is not specifically referenced in the discussion, all evidence of record was reviewed as part of this deliberation.

(A) The disability for which compensation was paid has ceased or lessened;

(B) The disabling condition is no longer causally related to the employment;

(C) The claimant's condition has changed from a total disability to a partial disability;

(D) The employee has returned to work on a full-time or part-time basis other than vocational rehabilitation under §1-623.04; or

(E) The Mayor or his or her designee determines based upon strong compelling evidence that the initial decision was in error.

§1-623.24(d)(4).

The holding of the Employees' Compensation Appeals Board (ECAB)² is often recited: once government-employer has accepted a claim of disability compensation, and has actually paid benefits, employer must adduce persuasive medical evidence sufficient to substantiate a modification or termination of an award of benefits. *Chase*, ECAB No. 82-9 (July 9, 1992); *Mitchell*, ECAB No. 82-28 (May 28, 1983); and *Stokes*, ECAB No. 82-33 (June 8, 1983). In addition, ECAB has held the evidence relied

upon to support a modification or termination of compensation benefits must be current and fresh in addition to being probative and persuasive of a change in medical status. *Robinson*, ECAB No. 90-15 (September 16, 1992). *See also*, *Warren*, Dir. Dkt. No. 10-00, OHA No. PBL 99-32, OWC No. 003923 and *Amaiche*, Dir. Dkt. No. 12-00, OHA No. PBL 99-31, OWC No. 004146.³

Employer relies on the medical reports of Dr. David Johnson, as well as Claimant's treating physician, Dr. Rita Azer, to support the termination of Claimant's disability benefits. EE 1-21. The record is uncontradicted that Claimant sustained a work-related injury to his right knee in March 1988 and that he has continued to complain of discomfort. EE 2. The record is also uncontradicted, however, that Claimant sustained an intervening accident and injury to the right knee in July, 2005, that is unrelated to his employment. EE 3 and 21.

Evidence of the intervening accident, in addition to the medical reports of Dr. Johnson, are sufficient to sustain Employer's initial burden of production to show that Claimant's current condition is not medically related to the 1988 work-injury. Thus, the burden shifts to Claimant.

To sustain his burden, Claimant presents his live testimony and the medical reports of his treating physician, Dr. Rita Azer. HT 30- 49 and CE 1-20. Claimant testified about his 1988 work-injury and testified that he sustained a second injury to his right knee in July, 2005,

²Prior to 1998, the Employees' Compensation Appeals Board (ECAB) was responsible for ruling on appeals of Final Compensation Orders issued by the Assistant Director for Labor Standards.

³Despite the fact the OWC (Office of Workers' Compensation) number was listed on both of these cases, that number references Private Sector cases. The correct number for Public Sector cases is the OBA (Office of Benefits Administration) number.

when he struck it during an automobile accident. HT 36-37 and 42.⁴ Claimant's testimony related to his July 2005 right knee injury is sparse; however, Claimant did testify that following the accident he had swelling from his knee to his foot for which he was seen by Dr. Azer that same day. HT 37.

Additionally, Claimant fails to present any medical evidence to support the inference that the automobile accident, for which Claimant required medical treatment, is not an intervening and superceding event. Employer's prima facie

evidence supports a finding that Claimant's July 2005 accident exacerbated his then existing right knee condition. Claimant has failed to present sufficient rebuttal evidence; and, therefore, has fail to sustain his burden.

CONCLUSIONS OF LAW

Claimant has sustained a change in condition: his current right knee condition is not related to the 1988 work-injury. Since Claimant's right knee condition is not related to the 1988 work-injury, Employer properly terminated Claimant's medical benefits.

⁴Medical records related to Claimant's July 2005 right knee injury are conspicuously absent from Claimant's evidentiary submission.

ORDER

It is **ORDERED** that Claimant's claim for relief be, and hereby is **DENIED**.

LESLIE A. MEEK
ADMINISTRATIVE LAW JUDGE

November 29, 2007
Date