

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE GALLARDO and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, NY

*Docket No. 98-1973; Submitted on the Record;
Issued March 3, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits.

The Board has duly reviewed appellant's claim on appeal and find that the Office met its burden of proof to terminate her compensation benefits.

On June 11, 1996 appellant, a mail carrier, fell in the performance of duty injuring her left ankle. The Office accepted her claim for left ankle fracture on July 22, 1996. Appellant returned to light duty eight hours a day on September 30, 1996. The Office issued a notice of proposed termination of compensation on August 26, 1997. By decision dated September 11, 1997, the Office terminated appellant's benefits. Appellant requested an oral hearing and by decision dated December 19, 1997, the hearing representative set aside the Office's September 11, 1997 decision and remanded the case for further development of the medical evidence. By decision dated April 2, 1998, the Office terminated appellant's compensation and medical benefits and finding that she had no disability and no residuals of her accepted employment injury including plantar fasciitis.¹

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical

¹ Following the Office's April 2, 1998 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁵

In this case, appellant's attending physician, Dr. Michael J. Katz, a Board-certified orthopedic surgeon, continued to support appellant's disability and need for medical treatment. He stated that she had residual symptoms at the Achilles tendon, limited range of motion and that she had an exacerbation of plantar fasciitis. On June 6, 1997 Dr. Katz diagnosed moderate swelling and stated that appellant was to wear an ankle lacer. Dr. Katz diagnosed mild swelling on July 11, 1997.

The Office referred appellant for a second opinion evaluation. In a report dated July 15, 1997, Dr. R.P. Koval, a Board-certified orthopedic surgeon, noted appellant's history of injury and performed a physical examination. He noted that appellant walked without a limp, had no deformities and full range of motion with no swelling or instability. Dr. Koval found no tendinitis although appellant complained of tenderness. He stated that appellant could return to work without restrictions, that she had no residuals and no evidence of plantar fasciitis. Dr. Koval concluded that appellant had no disability due to her accepted employment injury.

On September 18, 1997 Dr. Katz stated that appellant's fracture had healed, but that she had developed plantar fasciitis. He stated that plantar fasciitis was a known complication from an ankle injury. Dr. Katz stated that appellant experienced swelling especially when standing for long periods and that she should not work in a position that required long periods of standing. In a report dated September 24, 1997, Dr. Katz stated that appellant exhibited tenderness in her Achilles tendon and plantar fascia. He stated that she could not return to full duty.

Section 8123(a) of the Federal Employees' Compensation Act,⁶ provides, "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." In this case, in accordance with the directive of the hearing representative, the Office referred appellant for an impartial medical evaluation by Dr. Richard Nottingham, a Board-certified orthopedic surgeon. In a report dated February 26, 1998, Dr. Nottingham reviewed appellant's history of injury and performed a physical evaluation. He found no limp, no swelling, full range of motion and no evidence of Achilles tendinitis nor plantar fasciitis. Dr. Nottingham opined that appellant had fully recovered and reached maximum medical improvement. He stated that she required no further treatment and that she had no disability due to her accepted employment injury.

In situations where there are 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 on a proper

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

factual background, must be given special weight.⁷ As Dr. Nottingham's report was based on a proper factual background and based on objective physical findings in support of his conclusion that appellant was no longer disabled and had no residuals of her accepted employment injury, including plantar fasciitis, his report is entitled to the weight of the medical evidence and the Office properly relied on this report in determining that appellant was no longer entitled to compensation.

The April 2, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.

March 3, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).