United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 10-1234**
	)	**Issued: February 2, 2011**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 31, 2010 appellant filed a timely appeal from a March 9, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated wage-loss compensation and medical benefits effective July 5, 2009.

FACTUAL HISTORY

Appellant filed a traumatic injury claim (Form CA-1) dated September 5, 2002 alleging injury to her ankle in the performance of duty on August 7, 2002. She was delivering mail when a dog scared her and she twisted her ankle while running away. On October 1, 2002 the Office accepted the claim for left ankle sprain. Appellant worked intermittently and was placed on the periodic rolls in July 2006.

In a June 11, 2007 report, Dr. Brian Levy, the treating podiatrist, advised that appellant underwent surgery, described as a decompression of the intermediate dorsal cutaneous nerve of the left foot. He noted that there had been a previous ankle arthroscopic surgery.[1]

The Office referred appellant for a second opinion examination by Dr. Andrew Weiss, an orthopedic surgeon. In a report dated November 20, 2007, Dr. Weiss provided a history and results on examination. He diagnosed left ankle sprain, status post left ankle arthroscopy and status post resection of the dorsal cutaneous nerve. Dr. Weiss opined that the accepted left ankle sprain had resolved and that appellant was capable of performing her regular duty as a letter carrier.

In a report dated January 2, 2008, Dr. Levy stated that appellant had suffered complications with the surgery and provided results on examination. He opined that appellant had 80 percent functional capacity of her left foot and ankle and would be able to work four hours a day at her regular job with four hours of limited duty.

The Office found a conflict in medical opinion regarding the extent of appellant's employment-related condition and disability. Appellant was referred to Dr. Stanley Soren, a Board-certified orthopedic surgeon, for an impartial referee examination. In a report dated April 15, 2008, Dr. Soren listed a history, results on examination and reviewed the medical evidence. He diagnosed sprain of the left ankle, anterolateral, primarily involving the anterior talofibular ligament, status post left ankle arthroscopy with lateral ligament repair, decompression of the intermediate dorsal cutaneous nerve of the left foot and wound dehiscence after the ankle arthroscopy and lateral ankle ligament repair of May 30, 2006. Dr. Soren opined that appellant had recovered from the accepted conditions, but noted that she had tender sutures on the anterolateral ankle incision that was related to the employment injury. He found that appellant should not work more than four hours a day as a letter carrier. Dr. Soren advised that after the sutures were resected and pending a reasonable recovery period, appellant could work regular duty full time.

On August 12, 2008 appellant underwent left ankle surgery involving an excision of left ankle scars performed by Dr. Levy. The Office referred appellant to Dr. Soren and requested a supplemental report regarding the nature and extent of a continuing employment-related condition.

In a report dated January 13, 2009, Dr. Soren reviewed a history of injury and provided results on examination. He stated, "[Appellant] has recovered quite well from her left ankle sprain/strain and the surgical procedures. At the present time, [appellant] is capable of returning to full duty, eight-hour-a-day capacity, as a letter carrier. There is no need for any further medical treatment or surgery relative to the left foot and ankle." Dr. Soren advised that the surgical scars would remain, but appellant had made an excellent recovery and could resume her usual occupation on a full-time basis.

By letter dated May 11, 2009, the Office notified appellant that it proposed to terminate her compensation benefits based on the weight of the medical evidence, as represented by

[1] The record indicates appellant underwent surgery on May 30, 2006.

Dr. Soren. In a May 26, 2009 report, Dr. Levy stated that her current visit "showed improved signs, but still disability was present." He opined that appellant could work limited duty.

In a decision dated June 17, 2009, the Office terminated appellant's compensation benefits effective July 5, 2009. It found the weight of the evidence was represented by Dr. Soren.

Appellant requested a review of the written record. In a report dated July 9, 2009, Dr. Levy stated that appellant had never fully recovered from her 2002 injury. He advised that her gait continued to be altered and her ankle became painful on excessive use.

In a decision dated November 16, 2009, an Office hearing representative affirmed the June 17, 2009 decision, finding that Dr. Soren represented the weight of the medical evidence.

In a letter dated December 2, 2009, appellant requested reconsideration of her claim. She submitted an August 29, 2009 report from Dr. Levy opining that she continued to have an employment-related left ankle condition that had permanently affected her ability to work in the same capacity as prior to the injury. Contrary to Dr. Soren's report, he noted significant findings affecting appellant's ability to work. Dr. Levy stated that continuing to work could lead to more progression of the left ankle pathology.

In a decision dated March 9, 2010, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.[3]

The Federal Employees' Compensation Act provides that, if there is a 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 the examination.[4] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is

[2] *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

[3] *Furman G. Peake*, 41 ECAB 361 (1990).

[4] 5 U.S.C. § 8123.

called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[5]

It is well established that, when a case is referred to a referee examiner for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[6]

ANALYSIS

The Office accepted appellant's claim for a left ankle sprain and she received compensation on the periodic rolls. It found a conflict under 5 U.S.C. § 8123(a) between the attending podiatrist, Dr. Levy, and a second opinion physician, Dr. Weiss. Dr. Levy advised that appellant remained partially disabled due to the employment injury, while Dr. Weiss opined that the employment injury had resolved and appellant could perform her date-of-injury position.

The Office referred appellant to Dr. Soren as the impartial specialist. Dr. Soren provided reports dated April 15, 2008 and January 13, 2009. He reviewed a complete history and provided detailed findings on examination. Dr. Soren opined that appellant had recovered from her employment injury, with the exception of tender sutures from the ankle surgery. Following excision surgery on August 12, 2008, he found that appellant was capable of returning to her letter carrier position, with no further medical treatment necessary. Dr. Soren stated that appellant had made an excellent recovery following the August 2008 surgery. His opinion was based on two examinations and a thorough review of the medical history and evidence. As noted, a rationalized opinion from a referee physician is entitled to special weight.

The Board notes appellant submitted additional reports from Dr. Levy reiterating his opinion that appellant continued to have an employment-related disability. Additional reports from a physician on one side of the conflict that is properly resolved by a referee physician are generally insufficient to overcome the weight accorded the referee's report or create a new conflict.[7] The Board finds that Dr. Soren's opinion represents the weight of the medical evidence.

On appeal, appellant argues that the evidence submitted supported a continuing employment-related disability and the Office unreasonably sought second opinion evidence. The Board notes, however, that the Office may require an employee to submit to an examination as frequently and at the times and places as may be reasonably required.[8] There is no evidence that the development of the medical evidence was unreasonable in this case. Appellant asserted that the Office had unjustifiably limited the characterization of the work-related condition. The accepted condition was a left ankle sprain, with arthroscopic surgery in May 2006. It is not clear whether appellant felt additional conditions should be accepted, and if so, she would have to

[5] 20 C.F.R. § 10.321 (1999).

[6] *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

[7] *See Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).

[8] 5 U.S.C. § 8123(a).

identify the specific conditions and the medical evidence supporting the additional diagnosed conditions.[9] Appellant argues that "OWCP evidence" was unrationalized and of limited probative value. For the reasons noted above, the referee physician, Dr. Soren, provided a probative medical opinion based on a complete background that represents the weight of the evidence.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate wage-loss compensation and medical benefits effective July 5, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 9, 2010 and November 16, 2009 are affirmed.

Issued: February 2, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] It is appellant's burden of proof to establish a specific condition as causally related to the employment injury. *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).