

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LORETTA C. WEST and U.S. POSTAL SERVICE,  
NATIONAL AIRPORT MAIL FACILITY, Washington, D.C.

*Docket No. 97-336; Submitted on the Record;  
Issued December 21, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to a schedule award for residuals of her employment-related injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits effective November 30, 1995.

On April 14, 1994 appellant, then a 50-year-old postal clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she first realized her heel spurs were caused or aggravated by her employment on December 6, 1993. The Office accepted the claim for aggravation of right heel spur on November 17, 1994.

In a treatment note dated June 15, 1995, Dr. Angelo Pace, a podiatrist, opined that appellant's plantar fasciitis in her right foot had resolved, but recommended that she continue using orthotic devices in her shoes.

On August 12, 1995 appellant filed a claim for a schedule award.

By letter dated September 20, 1995, the Office requested Dr. Pace to submit an impairment rating for appellant using the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In response to the Office's request, Dr. Pace responded in a letter dated September 28, 1995 and noted:

"Since her initial presentation, her treatment course has consisted of cortisone injections, NSAID therapy, physical therapy, cast immobilization, custom molded prescription orthotics, arthritic workup, and work activity restrictions.

"Presently, she feels greatly improved as compared to her original presentation. She is capable of ambulating and standing for short periods of time when using her orthotics. However, prolonged periods of standing, walking or pushing heavy

objects will aggravate her symptoms. These activities place additional stress on her feet which can result in worsening of her heel pain. [Appellant], as indicated in previous status reports, is capable of working a normal eight-hour workday when following certain restrictions.”

In the attached duty status report (Form CA-17), Dr. Pace noted under description of clinical findings “resolved plantar fasciitis right foot. Residual pain after activity.” Dr. Pace indicated that appellant was capable of performing her usual employment as long as she worked within her restrictions.

In a report of a telephone conversation with Dr. Pace dated September 26, 1995, the Office explained to him that appellant had requested a schedule award: “Dr. Pace indicated again that he has explained to [appellant] that if she can go shopping she does not have an impairment.”

By decision dated November 30, 1995,<sup>1</sup> the Office rejected appellant’s claim for a schedule award. In the accompanying memorandum, the Office also found that appellant does not have any impairment or residuals from her accepted injury based upon Dr. Pace’s report. In an accompanying cover letter, the Office advised appellant that further medical treatment was not authorized and any prior authorization was terminated.

Appellant requested reconsideration in a letter received by the Office on April 1, 1996 and submitted a January 2, 1996 report from Dr. Pace in support of her request. In his January 2, 1996 report, Dr. Pace noted:

“Although her present symptoms do not precisely conform to the 4th Edition A.M.A., *Guide[s] to the [E]valuation of [P]ermanent [I]mpairment*, [appellant] has residual pain which is controlled through the use of orthotics and work restriction recommendations. As indicated on her duty status report of September 28, 1995 she still has ‘residual heel pain.’ This pain is controlled to a tolerable level through the use of her orthotics and work activity restrictions. My previous letter indicates that ‘she feels greatly improved as compared to her original presentation.’ Her improvement does not indicate complete resolution. Her plantar fasciitis has resolved, but her heel pain persists. Upon last evaluation of [appellant], it appears that her present level of heel pain is of a permanent nature. However, as previously indicated, when following certain work restrictions, she is capable of working a normal eight-hour workday. At this time, it appears that [appellant] will permanently require orthotics to manage her heel pain in addition to work-duty restrictions.”

In a decision dated May 16, 1996, the Office denied appellant’s request for reconsideration of its prior decision. The Office noted that Dr. Pace’s January 2, 1996 report

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<sup>1</sup> The Board notes that the date “October 12, 1995” is crossed out and underneath the dated “November 30, 1995” is written. In a report of telephone conversation dated November 29, 1995, appellant indicated that she had not received the decision. The Office then discovered the decision had been mailed to an incorrect address and indicated that the decision would be mailed to her correct address.

again failed to document whether appellant suffered from any permanent impairment pursuant to the fourth edition of the A.M.A., *Guides*. In addition, the Office noted that Dr. Pace failed to note whether appellant had reached maximum medical improvement.

The Board finds that appellant is not entitled to a schedule award.

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.304 of the implementing federal regulations,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

Dr. Pace, appellant's treating podiatrist, indicated in his September 25, 1995 letter and his telephone conversation with the Office on September 26, 1995 that he does not believe that appellant has any remaining impairment from her original injury. In a January 2, 1996 letter, Dr. Pace indicated that appellant still has heel pain which he stated did not conform to the A.M.A., *Guides* for an impairment rating. Furthermore, Dr. Pace did not indicate in either letter that appellant had reached maximum medical improvement. Dr. Pace did indicate that appellant will not have any problems as long as she follows her work restrictions in both letters. Dr. Pace has opined that appellant does not have any continuing impairment. Thus, the record reveals that appellant does not have any permanent condition upon which a schedule award can be based and is therefore not entitled to a schedule award.

The Board further finds that the Office has met its burden of proof in terminating medical benefits for appellant's work-related condition.

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.<sup>5</sup> 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.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>5</sup> *Pedro Beltran*, 44 ECAB 222 (1992); *Mary E. Jones*, 40 ECAB 1125 (1989).

<sup>6</sup> *Frederick Justiniano*, 45 ECAB 491 (1994); see *Marlene G. Owens*, 39 ECAB 1320 (1988); *Calvin S. Mays*, 39

In the present case, the Office accepted that appellant sustained an aggravation of right heel spur on November 17, 1994. On November 30, 1995 the Office terminated authorization for medical treatment, finding that appellant no longer had residuals from her accepted injury. As noted above, it is the Office's burden to establish that employment-related residuals had ceased. In the instance case the Office has met its burden. Dr. Pace in both letters opined that appellant was no longer suffering residuals, except for heel pain, from her accepted employment injury.

As the record contains probative evidence establishing that appellant's accepted condition of aggravation of right heel spur has totally resolved, the Office met its burden of proof in terminating appellant's medical benefits for residuals of her work-related injury.

The decisions of the Office of Workers' Compensation Programs dated May 16, 1996 and November 30, 1995 are affirmed

Dated, Washington, D.C.  
December 21, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member