

U. S. DEPARTMENT OF LABOR  
Employees' Compensation Appeals Board

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In the Matter of JEANNE M. BYRNE and U.S. POSTAL SERVICE,  
POST OFFICE, Phoenix, Ariz.

*Docket No. 97-57; Submitted on the Record;  
Issued September 15, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 17, 1996.

The Board has duly reviewed the case record and concludes that the Office met its burden of proof to terminate compensation benefits.

In the present case, the Office accepted appellant's claim for temporary aggravation of left plantar fasciitis and bursitis of the heel cord.<sup>1</sup> After her employment injury, appellant performed light work part time and underwent multiple left foot surgeries in 1993 which were not deemed work related. As of June 1, 1995, she resumed working light duty three hours a day. The Office terminated appellant's compensation benefits by decision dated June 17, 1996, stating that the weight of the medical evidence established that appellant's injury-related disability had ceased. Appellant requested reconsideration of the decision which was denied on August 13, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.<sup>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>3</sup>

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<sup>1</sup> Appellant filed a claim, No. 85008-13-1087230, for a similar condition of her right lower extremity which was denied by decision dated May 10, 1996. Appellant's claim for her left lower extremity is the subject of this appeal.

<sup>2</sup> *Patricia M. Mitchell*, 48 ECAB \_\_\_\_ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>3</sup> *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The Office in terminating appellant's benefits relied on the report of Dr. Glen R. Bair, a Board-certified orthopedic surgeon and second opinion physician, dated April 15, 1996. In his report, Dr. Bair noted that none of the actual operation reports of appellant's surgeries were in the record but the last operation in November 1993 was an excision of a retrocalcaneal mass and a retrocalcaneal exostosis. He found that x-rays performed on April 15, 1996 showed a significant exostosis of the prominence of the os calcis and three magnetic resonance imaging (MRI) scans appellant provided were not of diagnostic value when compared to the current x-ray. Based on appellant's history of injury, a physical examination, and his review of the diagnostic tests, Dr. Bair opined that he would not relate appellant's complaints of pain in her left foot to her job activities. He stated:

"Most of the difficulty on the left appears to be secondary to either regrowth of an exostosis or poor surgical technique in excising it. It is commonly referred to as a "pump bump" as opposed to a person's occupation. I believe that the complaints in both heels are partially related to her obesity."

Dr. Bair stated that appellant might need repeat excision of the bony exostosis on the left heel but that was not related to any occupational disease. He opined that appellant could perform her regular work full time. Dr. Bair did not believe work would aggravate her feet and that the biggest aggravating factor related to her obesity and to what most likely appeared to be inappropriate or misdirected surgical treatment.

Appellant submitted reports from her treating physician, Dr. Arlene Polakof, a podiatrist. In a report dated September 11, 1995, Dr. Polakof stated that she had been treating appellant for several years for pain in her left lower extremity and that weight bearing with prolonged standing had done nothing but exacerbate her symptoms. In a report dated May 31, 1996, Dr. Polakof reviewed Dr. Bair's April 15, 1996 report at appellant's request. She noted that although Dr. Bair stated there were no actual operative reports of any surgery in the record, appellant's surgery and related doctors' visits were well documented. Dr. Polakof found errors in Dr. Bair's findings in that he stated appellant's problem began with plantar fasciitis but that is a condition of the foot, not the posterior heel, and he erroneously stated that appellant was 5 feet tall when she is 5 feet, 7 inches tall. She specifically stated that appellant did not have "pump bump" as shown by her x-rays and MRI scans which showed no posterior exostosis. Dr. Polakof stated that it was only in the last six months that appellant developed a retrocalcaneal exostosis as noted on the April 15, 1996 x-ray. She also objected to the Office's finding in its decision that Dr. Bair's opinion was entitled to more weight because he was a Board-certified orthopedic surgeon, noting that she also was a Board-certified surgeon and her specialty in podiatry particularly pertained to appellant's foot problem. In her report dated July 15, 1996, Dr. Polakof considered appellant's medical history and opined that appellant could perform permanent light work.

Appellant submitted copies of her hospital records documenting treatment of her feet, and progress and disability notes, CA-17s (duty status reports) and other reports from Dr. Polakof from 1991 through 1996. Appellant also submitted two letters dated July 10, 1996 objecting to Dr. Bair's findings and reiterating her present symptoms and her medical treatment.

In his April 15, 1996 report, based on a physical examination, a review of a current x-ray and old MRIs, Dr. Bair found that appellant had recovered from her left plantar fasciitis and

bursitis of the heel cord and that appellant's present problem with her left foot were partially related to her obesity. He found the old MRI scans were not of diagnostic value particularly when compared to the current x-ray. Dr. Bair opined that appellant could return to work full time. While Dr. Bair may not have reviewed all the medical documents relative to appellant's foot and may have erred in noting appellant's height, his opinion is sufficiently rationalized to support the Office's termination of benefits.<sup>4</sup> Dr. Polakof's reports dated September 11, 1995, May 31 and July 15, 1996 in which she stated that appellant required permanent restrictions due to her foot condition and objected strongly to Dr. Bair's conclusions do not address how appellant's current left foot condition is causally related to her employment. They therefore do not establish that appellant's current left foot condition is work related.<sup>5</sup> The medical records from the hospitals, Dr. Polakof's CA-17s and disability notes do not provide any rationalized medical opinion addressing whether appellant's left foot condition is work related and therefore are not probative.<sup>6</sup> Appellant's letters dated July 10, 1996 are not medical evidence and cannot establish the requisite causal connection. As the weight of the medical evidence on the issue, Dr. Bair's April 15, 1996 opinion justified the Office's June 17, 1996 termination of benefits.

The decisions of the Office of Workers' Compensation Programs dated August 13 and June 17, 1996 are hereby affirmed.

Dated, Washington, D.C.  
September 15, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> See *Larry Warner*, *supra* note 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*