

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MANUEL J. SHABAZZ and U.S. POSTAL SERVICE,
POST OFFICE, East Hartford, CT

*Docket No. 98-1803; Submitted on the Record;
Issued August 1, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on March 16, 1998.

The Office accepted appellant's claim for a right foot strain and a permanent aggravation of planus right foot. He sustained his employment injury on August 1, 1983. Appellant worked intermittently for employers other than the employing establishment, sometimes in the private sector and was at one time self-employed, from April 30, 1984 through July 30, 1987.

In a report dated September 14, 1994, Dr. Gerald F. Cambria, a Board-certified orthopedic surgeon and referral physician, considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed bilateral pes planus and mild bilateral bunions. Dr. Cambria found no evidence of a disabling chronic right ankle injury. He opined that the condition due to appellant's August 1, 1983 employment injury was that of a right ankle sprain, that appellant might have sustained an aggravation of his preexisting pes planus but the condition was temporary and should have resolved within six to eight months. Dr. Cambria restricted appellant to sedentary work and stated that appellant also had an L4 disc herniation based on a magnetic resonance imaging scan, that it was "apparently" sustained while in the army due to a fall from a helicopter and was not related to the August 1, 1983 employment injury. Referring to appellant's subjective complaints of pain, he stated that appellant did not have any residual disability from the August 1, 1983 employment injury. Dr. Cambria stated that appellant's bunion on his right foot was not related to the August 1, 1983 employment injury but might be related to his preexisting pes planus.

In attending physician's reports, Form CA-20a, including those dated from August 21, 1995 (reflecting an examination on September 14, 1994) to February 14, 1995, appellant's treating physician, Dr. Donald S. Dworken, a Board-certified orthopedic surgeon, noted appellant's employment injury on August 1, 1983, checked the "yes" box that it was work related, diagnosed a torn ligament ankle, opined that appellant's condition had not changed in

many years and that appellant had a permanent partial disability in the right foot. In a progress report dated February 14, 1995, Dr. Dworken reiterated that appellant's condition had stabilized, that appellant could only do a sitting job and should only work four hours a day.

To resolve the conflict between Dr. Dworken's opinion that appellant continued to be disabled and Dr. Cambria's opinion that appellant was not disabled due to the August 1, 1983 employment injury, the Office referred appellant to an impartial medical specialist, Dr. Richard E. Loyer, a Board-certified orthopedic surgeon. In his report dated April 3, 1996, Dr. Loyer considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed chronic pain in the right foot, bilateral pes planus and degenerative disease of the metacarpal joint of the right great toe. Dr. Loyer opined that there were no objective findings of residuals from the right ankle sprain and aggravation of the pes planus in the right foot. He opined that the diagnostic condition due to the August 1, 1983 employment injury was chronic pain of the right foot with some element of posterior tibial tendinitis. Dr. Loyer stated that "the incident apparently aggravated [appellant's] underlying preexisting pes planus and the aggravation apparently continued although ... this [was] without any supportive, objective findings." He placed standing and walking restrictions on appellant.

In response to questions from the Office, in a report dated April 26, 1996, Dr. Loyer explained that he stated that appellant's pain was not attributable to the August 1, 1983 employment injury "alone" and that appellant's work limitations were not the result of the work injury. He also stated that appellant's pain on palpation of the posterior tibial tendon between the medial malleolus and its insertion onto the plantar aspect was unresolved.

In his report dated May 10, 1996, Dr. Loyer stated:

"If you wish to change the diagnosis from chronic pain right foot to chronic tendinitis of the posterior tibial tendon secondary to injury that would be consistent with my exam[ination], comments, etc."

He also stated, referring to the sixth paragraph, page two of his April 3, 1996 report, that the pain on palpation of posterior tibial tendon correlated to the diagnostic test in that paragraph, although no diagnostic test is mentioned in that paragraph and then stated that although he found no supportive objective findings, "tenderness could be considered an objective finding, if you wish."

In a report dated February 19, 1998, a referral physician, Dr. David B. Brown, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed resolved ankle sprain due to the August 1, 1983 employment injury, chronic pes planus deformity of the right foot and mild great toe bunion. Dr. Brown opined that the August 1, 1983 ankle injury was superimposed on a preexisting pes planus deformity, the pes planus deformity was not caused by the August 1, 1983 employment injury and the pes planus deformity was not made materially and substantially greater due to the ankle sprain. He stated that there were no objective findings of any residuals of a significant injury to the foot following the August 1, 1983 employment injury. Dr. Brown concluded that appellant was not disabled due to the residuals of the August 1, 1983 employment injury and that

appellant had a temporary injury extending no more than six months following the August 1, 1983 employment injury so by February 1, 1984 the injury would have resolved.

In progress notes dated from December 2, 1997 through March 30, 1998, Dr. Dworken documented appellant's medical condition. In the December 2, 1997 note, he opined that appellant had a deformed foot on the right side and pes planus on the left. Dr. Dworken stated that appellant was unable to work in a postal situation. In the February 3, 1998 note, he noted that he was continuing to treat appellant for his ankle, foot and torn ligaments, that appellant also had degenerative disc disease at L3-4 and that the torn ligaments were "really shaking up his back." In the March 28, 1998 report, Dr. Dworken reiterated that appellant was unable to work as a letter carrier and that he had chronic pes planus deformity of both feet. In his March 30, 1998 note, he reiterated that appellant was unable to return as a letter carrier and that he required a sedentary job with limited standing and walking. He stated the only past history he had of appellant was plantar fasciitis, and that appellant's problem was with his ankle joint. In an attending physician's report dated April 1, 1998, Dr. Dworken diagnosed pes planus in the right ankle and foot and he checked the "yes" box that the condition was work related.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

By decision dated April 22, 1998, the Office terminated appellant's compensation benefits, stating that the evidence of record failed to establish that appellant was entitled to medical benefits or workers' compensation benefits for continuing disability. Once the Office has accepted 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 disability has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper medical and factual background.²

When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

To resolve the conflict in the evidence between Drs. Dworken's and Cambria's opinions as to whether appellant continued to be disabled, the Office referred appellant to an impartial medical specialist, Dr. Loyer. In his April 3, 1996 report, Dr. Loyer opined that there were no objective findings of residuals from appellant's right ankle sprain and aggravation of the pes planus in the right foot. He also opined, however, that appellant had chronic pain of the right foot with some element of posterior tibial tendinitis due to the August 1, 1983 employment injury. Dr. Loyer stated that the work incident "apparently" aggravated appellant's underlying

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994).

² *Larry Warner*, 43 ECAB 1032 (1992).

³ *See Roger Dingess*, 47 ECAB 123, 126 (1995).

preexisting pes planus and the aggravation continued although there were no “supportive, objective findings” to show that it continued. To clarify his report, in his April 26, 1996 report, he stated that appellant’s pain was not attributable to the August 1, 1983 employment injury “alone” and appellant’s work limitations were not the result of the work injury. Dr. Loyer stated that appellant’s pain on palpation of the posterior tibial tendon was not resolved. In his May 10, 1996 report, he stated that that if it wished, the Office could change his diagnosis from chronic pain of the right foot to chronic tendinitis of the posterior tibial tendon secondary to the August 1, 1983 employment injury and that diagnosis would be consistent with his examination and comments. Dr. Loyer also stated that a diagnostic test in a particular paragraph correlated to the diagnosis of pain but there was no reference to a diagnostic test in that paragraph and further, he stated that although he stated there were no supportive objective findings, tenderness could be considered an objective finding.

Dr. Loyer’s report is not well rationalized, clear or consistent. Although he stated that appellant had no residuals from the August 1, 1983 employment injury, he also stated that the pain in appellant’s right foot which could be considered chronic tendinitis was related to the August 1, 1983 employment injury. Dr. Loyer made an unclear reference to a diagnostic test showing appellant’s condition but also stated there were no objective findings although tenderness could be considered an objective finding if the Office so chose. His report is not well rationalized and therefore is not entitled to special weight.⁴

The Office then referred appellant to Dr. Brown, a referral physician, who in his February 19, 1998 report, opined that appellant had a temporary injury extending no more than six months following the August 1, 1983 employment injury which was resolved by February 1, 1984. In his progress notes dated from December 2, 1997 through March 30, 1998 and in his April 1, 1998 attending physician’s report, Dr. Dworken opined that appellant continued to be disabled due to his work-related condition of pes planus in the right ankle and foot.

Because Dr. Loyer’s report is not well rationalized, the Office did not resolve the conflict between Drs. Dworken and Cambria as to whether appellant continued to be disabled due to a work-related condition. The Office therefore did not meet its burden of proof in terminating appellant’s benefits.

⁴ See *H. Adrian Osborne*, 47 ECAB 556, 562-63 (1997); *Elmer K. Kroggel*, 47 ECAB 557, 559 (1996).

The decision of the Office of Workers' Compensation Programs dated April 22, 1998 is hereby reversed.

Dated, Washington, D.C.
August 1, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member