

FACTUAL HISTORY

The Office accepted that on September 16, 1999 appellant, then a 29-year-old letter carrier, stepped down onto an uneven sidewalk and sustained a right leg and ankle strain and tear of the right medial meniscus. The Office subsequently accepted reflex sympathetic dystrophy syndrome of the right lower extremity. On November 15, 1999 appellant underwent arthroscopic repair of the right medial meniscus tear, performed by Dr. Stephen W. Smith, a Board-certified orthopedic surgeon specializing in reconstructive surgery of the knee and hip. Appellant was off work from November 16 to December 5, 1999 and returned to work in a light, sedentary duty position beginning December 6, 1999 and continuing. She received compensation for intermittent work absences.

Beginning in February 2000, Dr. Smith noted the onset of numbness and paresthesias in appellant's right ankle, foot and lateral calf.² He referred appellant to Dr. Shevin D. Pollydore and Dr. Robert Schnapper, both Board-certified neurologists, who submitted April 5 and July 7, 2000 reports respectively, which diagnosed a peroneus longus sprain, tendinitis, hypoesthesia in a quasi-peroneal distribution and persistent pain of partially nonneuropathic origin.

The Office found insufficient rationale in these reports to establish a causal relationship between these diagnoses and the September 16, 1999 injury. In a November 29, 2000 decision, the Office terminated appellant's compensation benefits on the grounds that all work-related residuals had ceased. Appellant then requested an oral hearing. She submitted additional notes from Dr. Smith³ and February and March 2001 reports from Dr. Christopher S. Russell, an attending Board-certified neurologist, who opined that appellant exhibited objective signs of reflex sympathetic dystrophy, including swelling of the right ankle and calf, darkening of the skin on the right foot and decreased pinprick sensation.

By decision dated and finalized April 2, 2001, an Office hearing representative reversed the November 29, 2000 decision and reinstated appellant's wage-loss and medical compensation benefits on the grounds that the Office did not meet its burden of proof to terminate her benefits. The Office hearing representative directed the Office to appoint a second opinion specialist to ascertain whether appellant sustained a right ankle injury on September 16, 1999 and if the accepted conditions had resolved.

Appellant continued to submit reports from Dr. Smith dated through December 2001, supporting a causal relationship between the diagnosed reflex sympathetic dystrophy syndrome and the September 16, 1999 injury and finding her disabled for work from January 10 through

² March 21, 2000 electromyographic and nerve conduction velocity studies of the right lower extremity, a May 17, 2000 lumbar magnetic resonance imaging (MRI) scan, a July 27, 2000 right knee MRI scan and a Doppler ultrasound study were all normal.

³ In a January 10, 2001 chart note, Dr. Smith also diagnosed "stress and depression" which appellant related to unhappiness at work. There is no claim of record for an emotional condition.

June 30, 2001.⁴ Dr. Smith also referred appellant to Dr. Leslie Kelman, a Board-certified neurologist, who submitted reports from August 2001 to May 2002, diagnosing reflex sympathetic dystrophy due to the September 16, 1999 injury.

The record indicates that appellant became pregnant in early 2002. Dr. Smith submitted June through August 2002 chart notes, describing increasing lumbar and right lower extremity symptoms due to the pregnancy and holding her off work intermittently. He noted that appellant might have to stop “work entirely until after the pregnancy is over” in late November 2002. Dr. Smith released appellant to restricted light duty as of November 23, 2002.

On November 4, 2002 appellant filed a claim for compensation for the period September 16 to November 23, 2002 and submitted additional evidence. In a November 8, 2002 form report (CA-20), Dr. Smith diagnosed reflex sympathetic dystrophy syndrome of the right lower extremity and left-sided lumbar pain. In response to question 8 on the form, “Do you believe the condition found was caused or aggravated by an employment activity,” Dr. Smith checked the box “no.” He clarified his opinion in December 9 and 16, 2002 reports, stating that, while the reflex sympathetic dystrophy was related to the September 16, 1999 injury, it was also exacerbated by pregnancy due to “increased weight and decreased mobility,” rendering her unable to work. The employing establishment controverted the claim, asserting that the work absence was due to her pregnancy and not the accepted condition.

In a December 24, 2002 letter, the Office advised appellant of the type of additional factual and medical evidence needed to establish her claim. The Office requested a narrative medical report describing the objective findings substantiating that her condition had worsened such that she could no longer perform her light-duty job. The Office afforded appellant 30 days, in which to submit such evidence. Appellant did not submit new evidence prior to January 28, 2003.

By decision dated January 28, 2003, the Office denied appellant’s claim for a recurrence of disability for the period September 16, 2002 to January 7, 2003, on the grounds that causal relationship was not established. The Office noted that Dr. Smith’s November 8, 2002 form indicated that appellant’s claimed disability was due to her pregnancy and not the accepted condition. The Office found that appellant failed to establish a causal relationship between the accepted conditions and her claimed disability from September 16, 2002 to January 7, 2003, “[m]edical treatment [was] not authorized and prior authorization, if any, [was] terminated.” Appellant returned to sedentary duty in February 2003, as a modified city carrier.⁵

⁴ Appellant returned to work on June 30, 2001 in a sedentary position as a modified city carrier. By decisions dated July 2 and October 23, 2001, the Office determined that appellant had no loss of wage-earning capacity as of her return to work on June 30, 2001, and that the modified city carrier position was representative of her wage-earning capacity as she had successfully performed it for more than 60 days beginning June 30, 2001. These decisions are not before the Board on the present appeal.

⁵ In a June 19, 2003 letter, appellant alleged that the position required her to lift, push, pull and bend in violation of her medical restrictions. She did not provide factual corroboration of these tasks.

In a March 27, 2003 letter, appellant requested reconsideration. A January 29, 2003 chart note from Dr. Smith, noted severe right knee pain during the previous three to four weeks, without a particular injury. A February 21, 2003 MRI scan showed a patellar tendon tear and a small effusion. In a February 26, 2003 report, Dr. Smith diagnosed patellar tendinitis, commenting that appellant's entire clinical course was secondary to her original right leg injury. In reports through July 2003, Dr. Smith opined that a late March 2003 functional capacity evaluation increased appellant's symptoms and worsened a patellar tendon sprain. He also diagnosed a lateral meniscus sprain of the right knee and recommended continued sedentary duty.

On July 10, 2003 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Alexander Doman, a Board-certified orthopedic surgeon. The Office identified Dr. Doman as an impartial medical examiner and referee specialist.

In a July 29, 2003 report, Dr. Doman found no abnormalities of the right knee or ankle and no objective findings of reflex sympathetic dystrophy syndrome. He obtained right ankle and knee x-rays, which were reported as normal. Dr. Doman stated that appellant had a normal orthopedic examination and that her "subjective complaints of pain [did] not correspond with the objective findings." He noted that a psychological test indicated possible somatoform pain disorder or hypochondriasis. Dr. Doman found appellant able to perform full-time unrestricted duty as she had no work-related orthopedic condition or residuals of her original injury. Dr. Doman also found a two percent permanent impairment of the right lower extremity resulting from the 1999, arthroscopic knee surgery.

By decision dated August 28, 2003, the Office denied modification of the January 28, 2003 decision. The Office found that the weight of the medical opinion evidence rested with Dr. Doman who found no orthopedic disability or objective signs of reflex sympathetic dystrophy syndrome. The Office noted that appellant was referred to Dr. Doman as she presented evidence supporting the claimed recurrence of disability that required further development.⁶

LEGAL PRECEDENT -- ISSUE 1

When a claimant who is on light-duty alleges a recurrence of disability, he or she must show either a change in the nature and extent of the light-duty job requirements, or in the extent of the work-related injury or condition.⁷ To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁸

⁶ The Office explained the referral to Dr. Doman as follows: "Because [appellant] also submitted some *prima facie* medical evidence, albeit, not sufficient to demonstrate [her] recurrence of disability. It was determine[d] that the Office should send [appellant] out to a medical examiner, in order to assist [her] with [her] claim"

⁷ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222, (1986).

⁸ *James H. Botts*, 50 ECAB 265 (1999).

ANALYSIS -- ISSUE 1

In the decision dated and finalized April 2, 2001, an Office hearing representative directed the appointment of a second opinion specialist to determine whether residuals of the accepted September 16, 1999 injury had resolved and whether appellant had sustained a right ankle injury related to that incident. On July 10, 2003 the Office referred appellant to Dr. Doman. Although the Office stated that Dr. Doman was to resolve a conflict of medical opinion regarding the percentage of permanent impairment of appellant's right lower extremity, there was no conflict at the time of his appointment. Also, the Office's August 28, 2003 decision states that Dr. Doman's role was to develop the medical evidence, which is the function of a second opinion physician. The Board finds that Dr. Doman is a second opinion examiner and not an impartial medical examiner. His opinion is not entitled to the special weight normally accorded impartial medical examiners.⁹

On examination, Dr. Doman found no abnormality of appellant's right knee no evidence of the accepted reflex sympathetic dystrophy of the right lower extremity. He stated that appellant had a normal orthopedic examination and that her complaints did not correspond with his objective findings. Dr. Doman contended that appellant could return to full time unrestricted duty.

The Board finds that there is a conflict of medical opinion between Drs. Smith and Russell for appellant and Dr. Doman for the government. To resolve this conflict, the case must be remanded to the Office for further development, to include the appointment of an impartial medical examiner in accordance with section 8123(a) of the Federal Employees' Compensation Act.¹⁰ Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

The Office's January 28, 2003 decision terminated appellant's medical benefits on the grounds that she no longer had residuals of the accepted September 16, 1999 injury. However,

⁹ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁰ 5 U.S.C. § 8123(a). See also *Edward W. Spohr*, 54 ECAB ____ (Docket No. 03-1173, issued September 10, 2003).

¹¹ *Karen L. Yaeger*, 54 ECAB ____ (Docket No. 02-599, issued January 7, 2003).

¹² *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

the Office did not meet its burden of proof, as there is a conflict in medical opinion as to whether appellant's accepted employment-related conditions have resolved. Therefore, the January 28, 2003 termination of medical benefits and the August 28, 2003 affirmance, will both be reversed and appellant's medical benefits reinstated.

CONCLUSION

The Board finds that the case is not in posture for a decision on the issue of whether appellant sustained a recurrence of disability from September 16, 2002 to January 7, 2003, as the case must be remanded to the Office to resolve an outstanding conflict between Drs. Smith and Russell for appellant and Dr. Doman for the government. The Board finds that the decision of the Office dated August 28, 2003 should be reversed, as the Office did not meet its burden of proof to terminate appellant's compensation.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 28 and January 28, 2003 are set aside in part regarding the denial of appellant's claim for recurrence of disability and the case is remanded to the Office for further development on this issue consistent with this decision. The decisions of the Office dated August 28 and January 28, 2003 are reversed in part regarding termination of appellant's medical benefits effective January 28, 2003.

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Washington, DC

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