



on January 25, 2003 for four hours per day. The employing establishment terminated appellant's employment on October 14, 1993 at the conclusion of her temporary appointment.

On January 12, 1994 appellant underwent an excision of a thickened distal tibiofibular ligament of the left ankle. The Office paid her compensation for total disability beginning that date. Following vocational rehabilitation, on March 27, 1997, the Office reduced appellant's compensation based on its finding that she had the capacity to earn wages as a medical assistant.

By letter dated September 20, 2004, the Office requested that appellant submit current medical evidence regarding her condition and its relationship to her employment. In response, she indicated that she last saw her attending physician, Dr. Donald E. Wild, a Board-certified orthopedic surgeon, in 1998.

On October 27, 2004 the Office notified appellant that she should submit a comprehensive medical report from her attending physician based on a recent medical examination addressing whether she had further residuals of her accepted employment injury. In a report dated November 23, 2004, Dr. Wild noted that appellant had done "quite well" since her 1994 left ankle surgery. On examination, he found no swelling and full range of motion without loss of strength. Dr. Wild indicated that the "anteriolateral aspect of the ankle where we removed her Bassett's lesion shows less than [the] usual amount of subcutaneous tissue which is related to the procedure." He interpreted an x-rays obtained on November 23, 2004 as showing no abnormalities. Dr. Wild diagnosed status post surgery for a Bassett lesion of the left ankle. He stated, "[Appellant] at this time demonstrates no long-term sequelae and I would not recommend any restrictions at this point. I would not anticipate any subsequent surgeries. We would not recommend any work restrictions at this point. I would recommend no further treatment program. I would likewise not recommend any further follow-up evaluations."

On March 14, 2006 the Office requested that Dr. Wild address whether appellant had any residuals of her accepted employment injury. In an April 25, 2006 response, he stated:

"[Appellant] was last evaluated on November 23, 2004. At that time, she was 10 years post left ankle surgery. [Appellant] had no further evidence of ankle problems. She described occasional symptoms and an awareness that her ankle was [not] 100 percent normal but her symptoms were [not] enough to limit her activities. [Appellant's] examination was within normal limits.

"It has been 16 months since [appellant] was last seen and evaluated. However, based on that evaluation, it is my opinion that she has recovered from her left ankle problems."

On August 14, 2006 the Office informed appellant that it proposed to terminate her compensation and medical benefits on the grounds that she had no further condition or disability due to her January 20, 1993 employment injury. The Office further noted that it was modifying her loss of wage-earning capacity to zero based on its finding that her condition had materially changed. By decision dated September 18, 2006, the Office finalized its termination of compensation and medical benefits. The Office again noted that it was modifying her wage-earning capacity decision to reflect that she had no loss of wage-earning capacity.

On October 10, 2006 appellant requested an oral hearing. In a report dated November 29, 2006, Dr. Tara Long Scott, a podiatrist, indicated that she initially evaluated appellant on October 26, 2006 for complaints of left ankle pain. She noted that a magnetic resonance imaging (MRI) scan study revealed normal findings other than “some thickening of the anterior tibiofibular ligament, which had healed with evidence of thickening of the ligament associated with a partial tear.<sup>1</sup> [Appellant] also had some mild edema within the peroneus brevis tendon, consistent with tendinosis; however, [she] is completely asymptomatic in that area.” On examination, Dr. Scott found mild edema of the left anterior lateral ankle and “mild pain on palpation of the anterior tibiofibular ligament.” She diagnosed a healed anterior tibiofibular ligament tear of the left ankle and recommended physical therapy, an ankle brace and appropriate footwear.

On December 6, 2006 Dr. Scott discussed her treatment of appellant for “chronic ankle pain associated with a torn anterior tibiofibular ligament on the left ankle. The ligament was surgically repaired 13 years ago; however, appellant continues to experience pain and swelling. An MRI scan [study] performed on November 2, 2006 revealed that the repaired ligament is bulbous and partially healed with scar tissue.” Dr. Scott found that, due to appellant’s chronic ankle condition, she may have to “decrease her activity intermittently to manage her symptoms.” She recommended against further surgical intervention.

Appellant submitted progress reports from Dr. Scott dated October 26, 2006 through March 21, 2007. On October 26, 2006 Dr. Scott listed findings on examination and noted her complaints of pain and swelling of the left ankle since 1993. She diagnosed a painful ankle. On November 9 and 29, 2006 Dr. Scott diagnosed an ankle sprain and a painful ankle and recommended possible physical therapy. On February 21 and March 21, 2007 she listed findings on examination and diagnosed a ligament tear. Dr. Scott placed appellant in a walking cast on February 21, 2007 and an ankle brace on March 21, 2007. She recommended possible exploratory surgery and opined that appellant should return for treatment on an as needed basis.

At the hearing, held on February 22, 2007, appellant’s attorney argued that the Office had to show that she was vocationally rehabilitated to modify its loss of wage-earning capacity determination. He also contended that the opinion of Dr. Wild was too old to constitute reliable medical evidence. By decision dated May 9, 2007, the Office hearing representative affirmed the September 18, 2006 decision. She found that the Office properly modified appellant’s wage-earning capacity to zero based on its finding that her accepted condition of left ankle strain had resolved. The hearing representative noted that Dr. Wild’s opinion constituted the weight of the medical evidence as he found that appellant had no residuals of her employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant’s ability to earn

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<sup>1</sup> An MRI scan study obtained on November 20, 2006 showed a chronic healed tear of the anterior tibiofibular ligament and possible tendinosis of the peroneal brevis tendon.

wages.<sup>2</sup> Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.<sup>3</sup>

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.<sup>4</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for a left ankle sprain. Appellant worked limited duty until her temporary appointment with the employing establishment ended on October 14, 2003. On January 12, 1994 she underwent an excision of a thickened distal tibiofibular ligament of the left ankle. The Office paid appellant compensation for temporary total disability.

By decision dated March 27, 1997, the Office reduced appellant's compensation effective March 30, 1997 based on its finding that she had the capacity to perform the position of medical assistant.<sup>6</sup> On September 30, 2004 the Office requested that she submit current medical evidence regarding her employment-related condition. Appellant indicated that she last sought medical treatment from her attending physician, Dr. Wild, in 1998. On October 27, 2004 the Office requested a comprehensive medical report from Dr. Wild.

On November 23, 2004 Dr. Wild examined appellant and found that she had no swelling, loss of motion or loss of strength of the left ankle. Appellant had some loss of subcutaneous tissue due to her 1994 left ankle surgery but had done "quite well" since the procedure. Dr. Wild found that x-rays of the left ankle were normal. He diagnosed status post surgery for a Bassett lesion of the left ankle. Dr. Wild found that appellant had no work restrictions or need for further medical treatment. In an April 25, 2006 response, he clarified that, based on his November 23, 2004 evaluation, appellant had no evidence of problems with her left ankle and that her examination was normal. Dr. Wild indicated that appellant related that her ankle was not the same as preinjury but did not "limit her activities." He concluded that she had "recovered from her left ankle problems."

The Office can modify an established wage-earning capacity determination by showing a material change in the nature and extent of the employee's injury-related condition or that the

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<sup>2</sup> See 5 U.S.C. § 8115 (determination of wage-earning capacity).

<sup>3</sup> *Sharon C. Clement*, 55 ECAB 552 (2004).

<sup>4</sup> *Tamra McCauley*, 51 ECAB 375, 377 (2000).

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

<sup>6</sup> As the Office had issued a wage-earning capacity determination, the issue in this case is whether the wage-earning capacity determination should be modified rather than termination of compensation.

employee has been retrained or vocationally rehabilitated.<sup>7</sup> As appellant's attending physician, Dr. Wild had a thorough knowledge of her condition. He explained that findings on x-ray and physical examination were normal and that she had fully recovered from her employment injury. While Dr. Wild based his opinion on an October 2004 examination, he reiterated in his April 2006 report that appellant had "recovered from her left ankle problems." His opinion, which is thorough and rationalized, establishes that appellant's condition has materially changed such that she no longer has any residuals of her employment injury. The Office, therefore, met its burden of proof to modify its loss of wage-earning capacity determination to zero as appellant has no further employment-related disability.

### **LEGAL PRECEDENT -- ISSUE 2**

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>8</sup> 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>9</sup>

### **ANALYSIS -- ISSUE 2**

The Office met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Wild, appellant's attending physician, who explained that findings on x-ray and physical examination were normal and that she had fully recovered from her employment injury. He found that appellant had no residuals of her accepted left ankle condition and required no further medical treatment. As appellant's attending physician, Dr. Wild had a thorough knowledge of her condition. His opinion, which is detailed and well rationalized, establishes that appellant requires no further medical treatment due to her accepted employment injury.

### **LEGAL PRECEDENT -- ISSUE 3**

As the Office met its burden of proof to modify appellant's loss of wage-earning capacity to zero based on its finding that she had no further employment-related disability, she has the burden of proof to show that she had a continuing loss of wage-earning capacity after that date due to her accepted injury.<sup>10</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>11</sup> Causal relationship is a medical issue and the medical evidence

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<sup>7</sup> See *Tamra McCauley*, *supra* note 4.

<sup>8</sup> *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>9</sup> *Id.*

<sup>10</sup> See generally *Thaddeus J. Spevack*, 53 ECAB 474 (2002) (the burden of proof is on the party attempting to show modification of the wage-earning capacity determination).

<sup>11</sup> *Richard O'Brien*, 53 ECAB 234 (2001).

required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>14</sup>

### **ANALYSIS -- ISSUE 3**

In support of her claim that she had a continuing loss of wage-earning capacity due to her employment injury, appellant submitted a report dated November 29, 2006 from Dr. Scott who interpreted a November 20, 2006 MRI scan study as normal except for some thickening of the anterior tibiofibular ligament and some tendinosis unsupported by clinical findings. On examination, Dr. Scott listed findings of mild edema of the left anterior lateral ankle and "mild pain on palpation of the anterior tibiofibular ligament." She diagnosed a healed anterior tibiofibular ligament tear of the left ankle and recommended physical therapy, an ankle brace and supportive footwear. Dr. Scott, however, did not address the relevant issue of whether appellant had any further disability due to her employment injury; consequently, her opinion is of little probative value.

On December 6, 2006 Dr. Scott noted that she was treating appellant for ankle pain from a surgically-repaired torn anterior tibiofibular ligament of the left ankle. She found that appellant might have to reduce her activity "intermittently to manage her symptoms." In progress reports dated October 26, 2006 through March 21, 2007, Dr. Scott discussed appellant's complaints of a painful left ankle and listed findings on examination. She diagnosed either a left ankle sprain or ligament tear and recommended treatment options. Dr. Scott did not address whether appellant had disability from employment and thus her report is of diminished probative value. Appellant, consequently has not submitted medical evidence sufficient to establish that she had any further employment-related disability after September 19, 2006.

### **CONCLUSION**

The Board finds that the Office properly modified its determination of appellant's loss of wage-earning capacity to zero effective September 19, 2006 and properly terminated authorization for medical treatment based on its finding that appellant had no further residuals due to her January 20, 1993 employment injury. The Board further finds that appellant has not established that she had continuing employment-related disability after September 19, 2006.

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<sup>12</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>14</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 9, 2007 and September 18, 2006 are affirmed.

Issued: December 7, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board