United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 06-446**
	)	**Issued: January 11, 2007**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

Appearances:
Appellant, pro se
Jim C. Gordon, Esq., for the Director

Oral Argument November 3, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 21, 2005 appellant filed a timely appeal from a November 24, 2004 decision of a hearing representative of the Office of Workers' Compensation Programs that affirmed the termination of his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's compensation benefits effective December 1, 2004; and (2) whether he established that he had any continuing employment-related disability or condition after December 1, 2004.

FACTUAL HISTORY

On April 30, 1997 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim alleging that he sustained a left ankle injury when he stepped out of his postal vehicle onto the sidewalk. The Office accepted the claim for bilateral knee and ankle sprains and right foot

and ankle contusions. It paid appropriate compensation. Appellant stopped work on April 30, 1997.

Appellant came under the care of Dr. Yao L. Kaledzi, a Board-certified orthopedic surgeon, who treated him following the injury. In reports dated June 6 and July 10, 1997, Dr. Kaledzi noted a history of appellant's work injury and diagnosed a sprained left ankle, contusion of the left foot, sprain of the left knee rule out thorn meniscus, sprain of the right ankle and contusion injury of the right foot. A magnetic resonance imaging (MRI) scan of the left knee dated September 17, 1997 revealed a tear of the lateral meniscus. An MRI scan of the left ankle dated November 8, 1997 revealed a longitudinal split-type tear of peroneus brevis tendon extending from the tibiotalar joint and reconstituting just beyond the calcaneal tuberosity and slight thickening with small focus increased intrasubstance signal peroneus longus tendon suggesting either tendinitis or a small partial tear. On February 3, 1998 Dr. Arnold Wilson, a Board-certified orthopedic surgeon, performed an arthroscopy of the left knee, partial medial and lateral meniscectomies and diagnosed left knee tears of the medial and lateral menisci.

The Office expanded appellant's claim to include contusion of the right foot, sprain of the right ankle and sprain of the right knee.

Appellant submitted treatment notes from Dr. Wilson dated December 30, 2000 to November 28, 2001. Dr. Wilson noted a history of injury and subsequent treatment for injuries to appellant's left ankle and right foot. He diagnosed trauma to the left knee, chronic left ankle synovitis and right foot Morton's neuroma which were causally related to the work injury of April 30, 1997. From May 30, 2001 to October 30, 2002 Dr. Wilson noted appellant's continued treatment for left ankle synovitis, symptomatic Morton's neuroma of the left forefront and recommended resection of the Morton's neuroma. In an operative report dated July 17, 2001, he performed arthroscopy of the left ankle, synovial debridement, left ankle, resection of anterior soft tissue and osteochondral drilling and diagnosed left ankle anterior soft tissue impingement, osteochondral lesion, distal tibia, synovitis of the left ankle. On November 13, 2001 Dr. Wilson performed resection of Morton's neuroma of the right second web space and diagnosed Morton's neuroma of the right second web space. An MRI scan of the right forefoot dated April 4, 2001 revealed mild to moderate hallux valgus and moderate effusion versus synovitis of the first metatarsal joint. An MRI scan of the left ankle dated June 21, 2002 revealed os trigonum versus ununited fracture fragment of the lateral tubercle of the talus with localized bone marrow edema and surrounding soft tissue impingement, probable tear of the anterior talofibular and possibly the posterior talofibular ligament and low-grade partial tear of the distal segment of the Achilles tendon.

On October 11, 2002 the Office referred appellant to Dr. Kenneth Falvo, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated November 11, 2002, Dr. Falvo discussed appellant's work history. He noted an essentially normal physical examination. Dr. Falvo diagnosed status post arthroscopy of the left knee, healed; status post arthroscopy of the left ankle, healed; status post excision of Morton's neuromas second and third toes of the right foot, healed and metacarpophalangeal synovitis of the left foot, healed. He advised that appellant did not have any residuals of his accepted work-related conditions of bilateral knee and ankle sprains and right foot and ankle contusion and was able to return to his usual occupation full time as a mail handler.

In a letter dated August 8, 2002, the Office informed appellant that the surgery for Morton's neuroma between the second and third toes on the left foot was not authorized. It requested him to submit a medical report which explained how his current condition was related to the accepted work injury.

Appellant submitted reports from Dr. Wilson dated April 10 to September 18, 2003, for treatment of recurrent pain in his left foot. Dr. Wilson noted diffuse tenderness about the web space between the third and fourth toes and diagnosed Morton's neuroma of the left forefoot and left ankle, posterior tibialias tendinitis and left Achilles tendinitis. He opined that appellant was totally disabled from work and recommended surgical intervention.

The Office found that a conflict of medical opinion arose between Dr. Wilson, appellant's treating physician, who stated that appellant was totally disabled due to residuals of his work-related conditions, and Dr. Falvo, an Office referral physician, who determined that appellant did not have any residuals of his accepted conditions and could return to work without restriction.

The Office referred appellant to Dr. Donald J. Rose, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a report dated September 18, 2003, Dr. Rose reviewed the records provided and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Dr. Rose noted an essentially normal physical examination. Both knees exhibited full range of motion, no effusion, no joint line tenderness and no crepitus. Examination of the right foot revealed no effusion of the right ankle joint and excellent strength on inversion, eversion and dorsiflexion. Dr. Rose diagnosed status postoperative arthroscopy of the left and right knee without residual disability, status post excision of Morton's neuroma of the right foot, status postoperative arthroscopy of the left ankle secondary to trauma sustained without residual disability. He noted that appellant had probable interdigital Morton's neuroma of the third web space of the left foot; however, it was unclear whether this was related to the work injury of April 30, 1997. Appellant also had nonspecific neuralgia of the left distal leg, left ankle and left foot; however, the etiology of this neuralgia was unknown and Dr. Rose deferred to a neurologist for a final determination of disability for the causalgia of the left ankle and foot.

On October 27, 2003 the Office referred appellant to Dr. Donald Forman, a Board-certified orthopedic surgeon, for a second opinion evaluation, concerning the Morton's neuroma. In a report dated November 19, 2003, Dr. Forman noted an essentially normal physical examination. He diagnosed status post excision of the Morton's neuroma, right second web space which was work related, status post arthroscopy of the left ankle with synovitis and status post arthroscopy of the left knee with partial medial and lateral meniscectomy. Dr. Forman indicated that the diagnosis of Morton's neuroma in the left third web space was not work related. He noted that he found no objective physical findings to substantiate appellant's complaints of pain in the left foot and bilateral knees and that he had no residuals of these conditions. Dr. Forman indicated that appellant reached maximum medical improvement with regard to the right Morton's neuroma. He advised that he could return to work as a letter carrier with restrictions for a short period of time.

On December 30, 2003 the Office referred appellant to Dr. Naunihal S. Singh, a Board-certified neurologist, for a second opinion evaluation. In a report dated January 26, 2004, Dr. Singh discussed appellant's work history. He noted an essentially normal physical examination. Dr. Singh diagnosed status post arthroscopy of the left knee and left ankle and right ankle sprain and status post Morton's neuroma excision of the right ankle between the second and third toes. Dr. Singh opined that the Morton's neuroma on the left foot was not related to the work injury of April 30, 1997. Appellant had mild temporary disability and could return to work in a sedentary position with no bending, lifting or walking for three months.

Appellant submitted additional reports from Dr. Wilson dated November 20, 2003 to May 12, 2004. Dr. Wilson continued to support total disability due to residuals from appellant's work-related injury.

On June 28, 2004 the Office referred appellant back to Dr. Singh for further evaluation. In a report dated July 19, 2004, Dr. Singh diagnosed status post arthroscopic surgery for the left knee and left ankle and post surgery of the right Morton's neuroma excision between the second and third toes. He advised that the Morton's neuroma of the right interdigital taral regions did not cause appellant's symptomology but attributed his condition to anxiety, conversion reaction and malingering. Dr. Singh indicated that appellant had a normal neurological examination and was at maximum medical improvement. He determined that appellant had no neurological disability but had considerable somatization and exaggeration of symptoms.

In a July 29, 2004 report, Dr. Wilson diagnosed post-traumatic arthritis of the left knee and Morton's neuroma of the left forefoot. He recommended physical therapy and surgical intervention of the left forefoot.

On October 20, 2004 the Office issued a notice of proposed termination of appellant's compensation benefits on the grounds that the medical evidence established no residuals of the work-related employment injury.

Appellant submitted a report from Dr. Wilson dated October 28, 2004. Dr. Wilson noted continued treatment for pain in the left forefoot and diagnosed Morton's neuroma of the left forefoot causally related to the work injury. In a report dated November 10, 2004, Dr. Joel S. Cohen, a Board-certified neurologist, opined that appellant's jerking movements were likely behavior in nature and recommended a nerve conduction study.

By decision dated December 1, 2004, the Office terminated appellant's compensation and medical benefits effective the same day on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his accepted employment injury.

On December 20, 2004 appellant requested an oral hearing before an Office hearing representative. The hearing was held on July 21, 2005. Appellant submitted reports from Dr. Wilson dated March 17 to July 13, 2005.

In a decision dated September 20, 2005, the hearing representative affirmed the December 1, 2004 decision, as modified. He noted that appellant's condition was accepted for

Morton's neuroma of the right foot and advised that Dr. Forman found that he reached maximum medical improvement with regard to this condition.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his or his 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.[2]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for bilateral knee and ankle sprains, right foot and ankle contusions and right Morton's neuroma. It reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Wilson, a Board-certified orthopedist, who disagreed with the Office referral physician, Dr. Falvo, a Board-certified orthopedist, concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Rose to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Rose is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related conditions has ceased.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[3]

In his report dated September 18, 2003, Dr. Rose reviewed appellant's history, reported findings and noted that he exhibited no objective complaints or definite abnormality in his condition. He opined that, based on a review of the medical records and the overall diagnosis, appellant recovered and would have been capable of resuming all of his work activities without restrictions. Dr. Wilson diagnosed status postoperative arthroscopy of the left and right knee without residual disability, status post excision of Morton's neuroma of the right foot, status postoperative arthroscopy of the left ankle secondary to trauma sustained without residual disability. Dr. Rose noted that appellant also developed nonspecific neuralgia of the left distal leg, left ankle and left foot; however, the etiology of this neuralgia was unknown. He noted that appellant had no signs of any permanent injury and could return to regular duty with no restrictions or limitations and would require no further treatment due to his work-related injury.

On October 27, 2003 the Office referred appellant to Dr. Forman, a Board-certified orthopedist, for a second opinion evaluation. In a report dated November 19, 2003, Dr. Forman

[1] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[2] *Mary A. Lowe*, 52 ECAB 223 (2001).

[3] *Solomon Polen*, 51 ECAB 341 (2000).

diagnosed status post excision of the Morton's neuroma, right second web space which was work related, status post arthroscopy of the left ankle with synovitis and status post arthroscopy of the left knee with partial medial and lateral meniscectomy. He found no objective physical findings to substantiate appellant's complaints of pain in the left foot and bilateral knees and had no residuals of these conditions. Dr. Forman indicated that he reached maximum medical improvement with regard to the right Morton's neuroma and could return to work as a letter carrier.

On December 30, 2003 the Office referred appellant to Dr. Singh, a Board-certified neurologist, for a second opinion evaluation. In a report dated January 26, 2004, Dr. Singh diagnosed status post arthroscopy of the left knee and left ankle, left and right ankle sprain and status post Morton's neuroma excision of the right ankle between the second and third toes. He opined that the Morton's neuroma was not related to the work injury of April 30, 1997 and appellant had mild temporary disability and could return to work in a sedentary position with no bending, lifting or walking for three months. On June 28, 2004 the Office referred appellant back to Dr. Singh for a second opinion evaluation. In a report dated July 19, 2004, Dr. Singh, noted evaluating him for the jerky movements of the upper body and advised that Morton's neuroma of the right interdigital taral regions did not cause this symptomology and opined that the cause was anxiety, conversion reaction and malingering. He indicated that appellant had a normal neurological examination and was at maximum medical improvement and determined that he had no neurological disability but had considerable somatization and exaggeration of symptoms.

After issuance of the pretermination notice, appellant submitted multiple reports from Dr. Wilson dated October 28, 2004, who repeated his opinion that appellant was disabled due to a Morton's neuroma of the left forefoot causally related to the work injury. However, Dr. Wilson did not specifically address how any continuing condition was causally related to the accepted April 30, 1997 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[4] Additionally, Dr. Wilson's report is similar to his prior reports and is insufficient to overcome that of Dr. Rose or to create a new medical conflict.[5] Also submitted was a report from Dr. Cohen dated November 10, 2004, who saw appellant in consultation and opined that his jerking movements were likely behavior in nature. However, this report failed to provide a rationalized opinion addressing how any continuing condition was causally related to the April 30, 1997 injury.[6] The Board finds that Dr. Rose had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated Dr. Rose clearly opined that appellant had absolutely no work-related reason for disability. His opinion, as set forth in his report of September 18, 2003, is found to be probative evidence and

[4] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[5] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Wilson's report does not contain new findings or rationale upon which a new conflict might be based.

[6] *See Jimmie H. Duckett, supra* note 4.

reliable. The Board finds that Dr. Rose's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.[7]

LEGAL PRECEDENT -- ISSUE 2

If the Office meets its burden of proof to terminate the claimant's compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.[8] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the claimant must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing residuals of his bilateral knee and ankle sprains, right foot and ankle contusions and right Morton's neuroma causally related to his accepted employment injuries on or after December 1, 2004. Appellant submitted reports from Dr. Wilson dated March 17 and July 13, 2005, who noted treating him for diffuse pain in his left lower extremity. Dr. Wilson diagnosed Morton's neuroma of the left forefoot and chondromalacia patella of the left knee and recommended surgical intervention. The Board finds that he did not provide a rationalized opinion specifically addressing how any continuing condition or medical restrictions were causally related to the accepted April 30, 1997 employment injury. It has found that vague and unrationalized medical opinions on causal relationship have little probative value.[10] Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.[11] Therefore, the report from Dr. Wilson is insufficient to overcome that of Dr. Rose or to create a new medical conflict.[12]

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[7] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[8] *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

[9] *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

[10] *See Jimmie H. Ducket*, *supra* note 4.

[11] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

[12] *Howard Y. Miyashiro*, *supra* note 5.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between his current condition and his accepted work-related injury of April 30, 1997.[13] The Board has found that vague and unrationalized medical opinion on causal relationship have little probative value. Therefore, the report from Dr. Wilson is insufficient to overcome that of Dr. Rose or to create a new medical conflict.[14]

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate medical and compensation benefits effective December 1, 2004. It further finds that appellant failed to establish that he had any continuing disability after December 1, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 24, 2004 is affirmed.

Issued: January 11, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[13] *Id.*

[14] *See Howard Y. Miyashiro*, *supra* note 5; *Dorothy Sidwell*, *supra* note 5.