United States Department of Labor
Employees' Compensation Appeals Board

G.A., Appellant	)	
and	)	**Docket No. 08-806**
	)	**Issued: August 14, 2008**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 23, 2008 appellant filed a timely appeal from a December 21, 2007 decision of the Office of Workers' Compensation Programs, terminating her wage-loss compensation and denying her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation; and (2) whether appellant has any permanent impairment of her left lower extremity that entitles her to a schedule award.

FACTUAL HISTORY

This is the second appeal in this case.[1] On November 14, 2007 the Board set aside Office decisions dated September 20, 2006 and April 30, 2007 and remanded the case for reconstruction and proper assemblage of the record because two medical reports were missing. Those reports have now been associated with the record on appeal.

On April 18, 2005 appellant, then a 51-year-old mail clerk, sustained a crush injury and contusion to her left foot when a piece of equipment fell on it. She returned to work in a limited-duty capacity for four hours a day on May 12, 2005. On November 8, 2005 appellant filed a claim for a schedule award.

A May 17, 2005 magnetic resonance imaging (MRI) scan report indicated diffuse soft tissue swelling on the dorsum of the left mid foot, possibly with some mild bone marrow edema which would represent post-traumatic bone bruising. In a June 18, 2005 report, Dr. Lafayette Singleton, a Board-certified neurologist, stated that an electromygram (EMG) and a nerve conduction study (NCS) revealed peroneal neuropathy in appellant's left foot.

On August 24, 2005 Dr. Jacob Salomon, an attending Board-certified general surgeon, released appellant to limited work for eight hours a day as of September 12, 2005 with four hours of regular work and four hours of sedentary work. Effective October 11, 2005, he added the restrictions of no walking or standing for more than 15 minutes at a time. Appellant missed intermittent time from work after September 12, 2005. In a report dated October 29, 2005 (corrected copy submitted December 1, 2005), Dr. Salomon stated that appellant's left foot crush injury developed into a radiculopathy of the left peroneal nerve at the mid foot. He provided findings on physical examination and found that she had a 21 percent permanent impairment of her left lower extremity due to motor deficit of the left foot peroneal nerve and extensor hallucis and extensor digitorum muscles. Effective November 18, 2005, appellant's permanent restrictions included four hours of regular duty, four hours of light duty, no lifting over 25 pounds and no prolonged walking or standing.

In reports dated April 13 and May 25, 2006, Dr. Edward S. Forman, a Board-certified orthopedic surgeon and an Office referral physician, reviewed appellant's medical history and provided physical findings on examination. Appellant had subjective complaints of pain but there were no objective findings or diagnostic studies documenting residuals from her April 18, 2005 work-related left foot injury. Dr. Forman opined that appellant's left foot injury resolved as of August 18, 2005. He found that she had no permanent impairment of her left foot and could return to full duty.

The Office found a conflict in the medical opinion evidence between Dr. Salomon and Dr. Forman as to whether appellant had any continuing disability or any permanent impairment related to her April 18, 2005 employment injury. It referred appellant, together with a statement of accepted facts, a list of questions and the case record, to Dr. Steven A. Kodros, a Board-certified orthopedic surgeon, for an impartial medical examination.

[1] Docket No. 07-1833, order remanding case (issued November 14, 2007).

In a September 13, 2006 report, Dr. Kodros reviewed appellant's medical history and provided findings on physical examination and the results of x-rays. He stated:

> "Chief complaint is that of pain. It is localized somewhat diffusely over the dorsum of the foot. It is primarily associated with and aggravated by weight bearing activity. [Appellant] rates the pain [at] a level of 5 on a scale of 0 [to] 10 (10 being the worst pain she has ever experienced). She denies the presence of any residual swelling. [Appellant] denies numbness, weakness, or other focal neurologic complaints. She denies locking, giving way or mechanical symptoms. There is no radiating quality to her pain. [Appellant] denies prior history of injury or problem with the left foot before this."
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> "Physical examination today of the left foot and ankle reveals … no ecchymosis or discoloration. There is no increased warmth, erythema or sign of any inflammation. There is no deformity. Palpation produces generalized tenderness over the dorsum of the mid and forefoot. No plantar foot tenderness. Ankle proximally as well as the proximal hind foot and posterior aspect of the ankle and hind foot are all nontender. Dorsiflexion and plantarflexion left foot and ankle measure 15 degrees and 50 degrees respectively. [Appellant] complains of pain at end-range motion in both directions.… Subtalar inversion and eversion appears normal on the left symmetric with the right. This is nonpainful. Musculotendinous units about the foot and ankle function intact with good strength and without pain on resistance throughout. This includes eversion and inversion power. Pulses are palpable. Neurologic exam[ination] reveals motor power to be 5/5 throughout the foot and ankle. Sensory exam[ination] grossly intact to light touch throughout, including dermatomal distributions of both the deep and superficial peroneal nerves on the dorsum of the forefoot. [Appellant] ambulates about the office today barefooted with normal heel-toe gait pattern on the left. This is symmetric with the right and there is no limp or antalgia. She is able to toe-walk and heel-walk on the left without difficulty. Circumferences were measured and are found to be equal bilaterally at the level of the calves, ankles and midfoot regions."
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> "X-rays were obtained today, three views left foot with weight bearing views. These show no evidence of any prior fractures or bony abnormality.... No significant degenerative changes. Alignment appears anatomic overall ….
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> "Assessment: [Appellant] is status postcontusion or crush[-]type injury to the dorsum of the left foot. She has ongoing residual symptoms, some of which might be explained by the known natural history of the injury and its associated soft tissue component. There does not appear to have been any significant skeletal injury or fracture. Overall, [appellant's] left foot and ankle demonstrate excellent function on today's evaluation and, in fact, are absent of any objective

abnormalities or functional deficits. Furthermore, [appellant's] residual subjective symptoms are not readily supported by objective findings on today's exam[ination]. Based on history provided, I believe [appellant's] left foot injury and complaints are causally related to the accident that originally occurred while at work on [April 18, 2005].

"Recommendations: Regarding therapeutic intervention, at this time, I do not feel there is an indication for further treatment…. I do not feel there is any indication for any further formalized physical therapy, injections or any surgical intervention. Likewise, I do not see an indication for any further diagnostic workup. I believe [appellant] has reached [m]aximum [m]edical [i]mprovement with respect to her left foot injury. Based on findings of the evaluation today, I do not find any criteria to indicate the presence of any permanent partial impairment. With respect to activity, I have no reason to recommend specific restrictions for [appellant] from the standpoint of her left foot and ankle based on findings of my evaluation today. I believe she could be returned back to her previous occupation as a postal worker full time without restrictions."

In a February 2, 2007 report, Dr. Salomon stated that appellant sustained a crush injury and returned to work with restrictions. She continued to have burning pain. An EMG revealed polycystic waves, acute damage to the peroneal nerve. Dr. Salomon stated that the peroneal nerve injury was caused by the accepted left foot crush injury. The crush injury caused microtrauma to the bone which caused the peroneal nerve neuropathy. Dr. Salomon reiterated his opinion that appellant had a work-related 21 percent impairment of her left lower extremity due to peroneal nerve damage.

By decision dated December 21, 2007, the Office terminated appellant's compensation benefits and denied her claim for a schedule award on the grounds that weight of the medical evidence established that she had no continuing disability or medical condition causally related to her April 18, 2005 employment-related left foot contusion and crush injury.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

Section 8123(a) of the Act provides that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

[2] *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

[3] *Id.*

[4] *See Del K. Rykert*, 40 ECAB 284 (1988).

[of Labor] shall appoint a third physician who shall make an examination."[5] Where 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 on a proper factual and medical background, must be given special weight.[6]

ANALYSIS -- ISSUE 1

Appellant's claim for an injury on April 18, 2005 was accepted for a crush injury and contusion to her left foot. Due to the conflict in the medical opinion evidence between Dr. Salomon and Dr. Forman as to whether appellant had any continuing disability causally related to her accepted left foot conditions, the Office referred her to Dr. Kodros for an impartial medical examination.

Dr. Kodros provided a comprehensive report dated September 13, 2006. He was provided with appellant's case file and a statement of accepted facts. Dr. Kodros reviewed the factual and medical background in the record, including diagnostic test results. He noted that appellant complained of left foot pain but denied the presence of any residual swelling, numbness, weakness or other focal neurologic complaints. Appellant denied locking, giving way or mechanical symptoms. Dr. Kodros provided detailed findings on physical examination. Examination of appellant's left foot and ankle revealed no ecchymosis or discoloration. There was no increased warmth, erythema or sign of any inflammation. Palpation produced generalized tenderness over the dorsum of the mid and forefoot. There was no plantar foot tenderness or ankle tenderness. Musculotendinous units about the foot and ankle were intact with good strength and without pain on resistance throughout.

Neurologic examination revealed motor power to be 5/5 throughout the foot and ankle. Sensory examination was grossly intact to light touch throughout, including dermatomal distributions of both the deep and superficial peroneal nerves on the dorsum of the forefoot. Appellant ambulated with normal heel-toe gait pattern on the left. She was able to toe-walk and heel-walk on the left without difficulty. X-rays showed no evidence of any prior fractures, bony abnormality or significant degenerative changes. Dr. Kodros stated that appellant's left foot and ankle demonstrated excellent function and were absent of any objective abnormalities. He stated that appellant's residual subjective symptoms were not supported by objective findings. Dr. Kodros found that appellant could return to work without restrictions and no further treatment was required. The Board finds that Dr. Kodros' thorough and well-rationalized report is entitled to special weight.[7] His report establishes that appellant has no continuing disability causally related to her accepted left foot crush injury and contusion sustained on April 18, 2005. Therefore, the Office met its burden of proof in terminating appellant's wage-loss compensation based on the medical opinion of Dr. Kodros.

[5] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[6] *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

[7] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

In a February 2, 2007 report, Dr. Salomon stated that appellant sustained a crush injury and an EMG revealed damage to the peroneal nerve. He stated that the crush injury caused damage to the peroneal nerve. Dr. Salomon reiterated his opinion that appellant had a 21 percent impairment of her left lower extremity causally related to her employment injury due to motor deficit related to peroneal nerve damage. The Board notes that Dr. Salomon had been on one side of the conflict in medical evidence and the February 2, 2007 report merely reiterates his previous findings. An additional report from a claimant's physician, which essentially repeats earlier findings and conclusions, is generally insufficient to overcome the weight accorded to an impartial medical specialist's report.[8] The Office has not accepted peroneal nerve damage as causally related to the April 18, 2005 employment injury. For these reasons, Dr. Kodros' report remains the weight of the medical opinion evidence.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Federal Employees' Compensation Act[9] and its implementing regulation[10] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the accepted employment injury.[11]

ANALYSIS -- ISSUE 2

Dr. Kodros found that appellant had no impairment of her left lower extremity causally related to her accepted left foot contusion and crush injury. He found no deficits in range of motion, motor function or sensory function on examination or any other indications of impairment. Although appellant complained of pain, he characterized her complaints as subjective and not supported by his findings on examination. Dr. Kodros provided thorough medical rationale for his medical opinion that appellant had no left lower extremity impairment at the time of his examination. The Board finds that the report of Dr. Kodros is entitled to the special weight accorded an impartial medical specialist and constitutes the weight of the medical evidence. His report establishes that appellant has no permanent impairment of her left lower extremity causally related to her April 18, 2005 employment injury. Therefore, appellant is not entitled to a schedule award for her accepted left foot crush injury and contusion.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation. The Board further finds that the weight of the medical evidence fails to establish that she has any permanent impairment of her left foot causally related to her April 18, 2005 employment injury.

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[8] *See Roger G. Payne*, 55 ECAB 535 (2004).

[9] 5 U.S.C. § 8107(a)-(c).

[10] 20 C.F.R. § 10.404.

[11] *See Mark A Holloway,* 55 ECAB 321 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 21, 2007 is affirmed.

Issued: August 14, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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