

On June 16, 1988 appellant, then a 37-year-old letter carrier, filed a claim alleging that walking five hours daily in the course of his federal employment aggravated the plantar fibromatosis in his left foot. He first became aware of this condition in 1986. Appellant stopped work as a regular letter carrier in June 1988 and began limited duty. His supervisor assigned other employees to carry his bid route. Appellant cased his route and then carried condos or

special deliveries, which did not involve much walking. The Office accepted his claim for aggravation of plantar fibromatosis, left foot.¹

Appellant accepted a modified assignment as a call center associate, one that was tailored to meet his physical limitations.² On June 6, 1996 the Office found that his actual earnings in this position fairly and reasonably represented his wage-earning capacity. Effective February 17, 1996, the date of appellant's reemployment, the Office reduced his entitlement to wage-loss compensation to zero.

Appellant accepted a modified carrier position in November 2003, one that required four hours of walking and four hours of standing. In 2007, he claimed compensation for intermittent wage loss because the employer had no work available. The Office paid compensation for brief periods of disability. When the employer withdrew appellant's limited duty in 2008, the Office paid compensation for wage loss on the periodic rolls.

On May 28, 2009 Dr. Gary J. Kelman, a Board-certified orthopedic surgeon and an Office referral physician, related appellant's history of injury and complaints. He described findings on physical examination. After reviewing the statement of accepted facts and the medical records, Dr. Kelman diagnosed left foot plantar fibromatosis.

Dr. Kelman stated that appellant's work activities as a letter carrier exacerbated his underlying plantar fibromatosis, which would be expected to resolve completely with rest. He explained that work activities did not cause this condition; they merely made the condition symptomatic. Appellant advised that his symptoms were absent during rest and that he was able to work under restrictions for 20 years without difficulty. Further, he was currently not working only because limited duty was no longer available.

Dr. Kelman stated that it was medically probable that the 1986 work injury had resolved and that appellant's current condition was due to a natural progression of age and his nonwork-related condition of plantar fibromatosis. He explained that plantar fibromatosis was developmental and not a post-traumatic condition. Dr. Kelman concluded that appellant's objective findings were unrelated to the 1986 work injury and were preexisting in nature. The aggravation was temporary and ceased within six weeks of appellant's discontinuing the prolonged standing and walking that had caused the aggravation.

Dr. Kelman found no clinical evidence to indicate that the work itself caused a material worsening of appellant's condition; it merely made the condition temporarily symptomatic. The condition returned to the baseline level of progression after appellant ceased his usual and

¹ A notice of proposed termination in 2009 indicated that the Office at some point expanded its acceptance to include aggravation of bilateral plantar fibromatosis, but the record shows no letter of acceptance for a bilateral condition. The 2009 statement of accepted facts acknowledged acceptance of an aggravation only on the left.

² The duties of a call center associate consisted of accepting customer inquiries regarding rates, ZIP codes, products and services, etc.; accepting and reviewing telephone inquiries regarding service irregularities; assembling all pertinent existing data and determining type of inquiry require; resolving customer concerns immediately when possible; initiating necessary action to develop case analysis or investigation; and using the computer system to access information and input data.

customary duties as a letter carrier. Dr. Kelman therefore concluded that appellant currently had no residuals of his 1986 work injury that would prevent him from returning to his date-of-injury job as a mail carrier. He noted, however, that appellant's bilateral plantar fibromatosis would become symptomatic again were appellant to return to that type of work. Any work restrictions would thus be for prophylactic reasons and not a consequence of the 1986 work injury.

In a decision dated July 15, 2009, the Office terminated appellant's medical and wage-loss benefits effective that date.³ It found that Dr. Kelman's opinion represented the weight of the medical evidence and established that appellant's accepted foot condition was no longer related to his federal employment.

Appellant requested reconsideration. He submitted an August 25, 2009 report from his podiatrist, Dr. Samuel N. Cantor, who reviewed appellant's medical records beginning in August 2003. Dr. Cantor limited appellant to four hours of standing in October 2006. In June 2009, appellant complained that the pain became much more intense after standing and walking more than four hours.

Dr. Cantor concluded that appellant's condition was exacerbated by his work duties, which required him to stand for an extended period of time while sorting the mail and then walking long distances while delivering. He discussed the nature of plantar fibromatosis and reasserted that appellant's vocation, which required extended hours of standing and walking, aggravated his plantar fibromatosis. Dr. Cantor added that this also aggravated a heel spur noted on x-rays obtained on May 20, 2008.⁴ He recommended that appellant avoid any work-related duties that required standing or walking more than one hour at a time.

Appellant's representative contended that Dr. Cantor's opinion supported a causal relationship between the extended periods of standing and walking required of a letter carrier and appellant's plantar fibromatosis. He argued that Dr. Cantor's opinion created a conflict with Dr. Kelman, who argued that the employer should accommodate appellant with light duty and that the Office should provide vocational rehabilitation.

In a decision dated April 5, 2010, the Office reviewed the merits of appellant's case and denied modification of its prior decision. It found that Dr. Cantor did not have an accurate factual background, as it was well documented that appellant had not been exposed to the injurious factors of his federal employment since 1988. Further, Dr. Cantor provided no objective findings to support a material worsening or permanent aggravation of the preexisting plantar fibromatosis. The Office added that the representative's arguments concerning reemployment and vocation rehabilitation were irrelevant to the medical issue raised by the July 15, 2009 termination.

On appeal, appellant's representative argues that the Office improperly terminated benefits without resolving the conflict in medical opinion; that the Office did not meet its burden

³ See *A.P.*, Docket No. 08-1822 (issued August 5, 2009). Where the evidence is sufficient to terminate compensation benefits, it may also negate the loss of wage-earning capacity determination.

⁴ He noted no similar finding on October 13, 2003 x-rays.

of proof to establish that appellant was no longer disabled or that his continued disability was not caused by a work-related event; and that the employer and the Office failed to follow established procedures by placing him on compensation instead of reemploying him in his date-of-injury job when the Office determined that his accepted injury had resolved.

LEGAL PRECEDENT

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.⁵ “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁶

Wage-earning capacity is a measure of the employee’s ability to earn wages in the open labor market under normal employment conditions.⁷ The wage-earning capacity of an employee is determined by the employee’s actual earnings if the employee’s actual earnings fairly and reasonably represent his wage-earning capacity.⁸ Generally, wages actually earned are the best measure of a wage-earning capacity and in the absence of evidence showing that they do not fairly and reasonably represent the injured employee’s wage-earning capacity must be accepted as such measure.⁹

Once wage-earning capacity 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. The burden of proof is on the party attempting to show modification of the determination.¹⁰

Once the Office issues a formal decision on wage-earning capacity, the rating should be left in place until the claimant requests resumption of compensation for total wage loss for more than a limited period of disability, in which instance the Office will need to evaluate the request according to the customary criteria for modifying a formal wage-earning capacity decision.¹¹

When the employer has withdrawn a light-duty assignment made to accommodate the claimant’s work restrictions and a formal loss of wage-earning capacity decision has been issued, the decision will remain in place. Any claim for a recurrence of disability should be treated as a

⁵ 5 U.S.C. § 8102(a).

⁶ 20 C.F.R. § 10.5(f).

⁷ *Albert L. Poe*, 37 ECAB 684, 690 (1986); *David Smith*, 34 ECAB 409, 411 (1982).

⁸ 5 U.S.C. § 8115(a).

⁹ *Lee R. Sires*, 23 ECAB 12 (1971).

¹⁰ *Daniel J. Boesen*, 38 ECAB 556 (1987).

¹¹ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

request for a modification of a loss of wage-earning capacity decision, not as a recurrence of disability.¹²

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹³ When it meets that burden, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.¹⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.¹⁵

When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, however, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in his employment because of the effect that the employment factors might have on the underlying condition. Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.¹⁶

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁷

ANALYSIS

On June 6, 1996 the Office issued a formal decision on appellant's wage-earning capacity. It found that appellant's actual earnings in his modified assignment as a call center associate fairly and reasonably represented his capacity to earn wages. As these earnings were at least equal to the current wages of his date-of-injury position, the Office determined that he had

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7(5) (October 2009).

¹³ *Harold S. McGough*, 36 ECAB 332 (1984).

¹⁴ *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

¹⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

¹⁶ *Gaeten F. Valenza*, 39 ECAB 1349 (1988); *James L. Hearn*, 29 ECAB 278 (1978).

¹⁷ 5 U.S.C. § 8123(a).

no loss of wage-earning capacity as a result of the accepted aggravation of his left foot plantar fibromatosis.

The Office determined that appellant had regained his capacity, notwithstanding the 1986 injury, to earn the wages he was receiving at the time of injury. As a consequence, apart from some limited periods of disability, appellant would not be entitled to compensation for wage loss absent a modification of the 1996 wage-earning capacity decision.

In 2008, the employer withdrew appellant's limited duty. A "recurrence of disability" includes an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn.¹⁸ However, when a formal wage-earning capacity decision has been issued, as was the case here, that decision remains in place and any claim of disability should be treated as a request for modification of the wage-earning capacity decision, not as a recurrence of disability.

The fact that the employer withdrew appellant's limited duty in 2008 did not establish an entitlement to compensation for wage loss. Compensation for wage loss is based upon loss of the capacity to earn, not on actual wages lost.¹⁹ Absent a modification of the 1996 wage-earning capacity decision, appellant should not have received compensation for wage loss following the withdrawal of his limited duty. His capacity to earn wages was already established.

When the Office terminated appellant's benefits on July 15, 2009 he had no entitlement to wage-loss compensation. The only issue on which it could properly terminate was his entitlement to medical benefits for the 1986 work injury. The Office found that the opinion of Dr. Kelman, the referral orthopedic surgeon, represented the weight of the medical evidence and established that the temporary aggravation caused by prolonged walking and standing ceased after appellant stopped his usual and customary duties as a letter carrier in the 1980s.

Appellant did not appeal the termination decision to the Board. Instead, he requested reconsideration and submitted additional medical evidence and argument to support his entitlement to continuing medical benefits. The burden thus falls to appellant to establish that his current plantar fibromatosis is causally related to his 1986 work injury.

In an August 25, 2009 report, Dr. Cantor, appellant's podiatrist, opined that extended periods of standing and walking long distances in federal employment exacerbated appellant's foot condition. The Office accepted that long periods of standing and walking as a letter carrier caused an aggravation of his plantar fibromatosis. The issue raised by Dr. Kelman and the Office's termination is whether the accepted aggravation ceased when appellant was no longer exposed to prolonged standing and walking, such that his developmental plantar fibromatosis returned to its baseline progression without clinical evidence of a material worsening.

¹⁸ 20 C.F.R. § 10.5(x) (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force).

¹⁹ *Roy Mathew Lyon*, 27 ECAB 186 (1975).

Dr. Cantor did not discuss this issue. He gave no indication that he was aware that appellant had stopped his regular letter carrier duties in 1988 to begin limited duty without much walking or that appellant had accepted a modified assignment in 1996 as a call center associate, which was essentially a sedentary customer service position or that appellant's modified carrier position in 2003 complied with the four-hour standing limitation Dr. Cantor prescribed in 2006. Dr. Cantor gave the impression that appellant continued to spend an extended period of time sorting the mail and then walking long distances while delivering. When appellant complained in June 2009 that his foot pain became much more intense after standing and walking more than four hours, Dr. Cantor did not acknowledge that appellant had been without work for about a year. Dr. Cantor recommended, as though appellant was still working, that appellant avoid any work-related duties requiring standing or walking more than one hour at a time. Medical conclusions based on inaccurate or incomplete histories are of diminished probative value.²⁰ Because Dr. Cantor did not base his opinion on a proper factual history, his opinion carries reduced probative weight.²¹

Dr. Cantor did not review or disagree with Dr. Kelman's analysis. Because his opinion is of diminished probative value on the issue of causal relationship, the Board finds that it is insufficient to create a conflict with Dr. Kelman to warrant referral to an impartial medical specialist under section 8123(a) of the Act.

The Board finds that appellant has not met his burden to establish that his current plantar fibromatosis is causally related to his 1986 work injury. The Board will therefore affirm the Office's April 5, 2010 decision denying compensation for medical benefits.

On appeal, appellant's representative argues that the Office improperly terminated benefits without resolving the conflict in medical opinion. As noted, the Board finds that Dr. Cantor's opinion is insufficient to create a conflict. The representative argues that the Office did not meet its burden of proof. However, as the Office had already determined appellant's wage-earning capacity and terminated his compensation for medical benefits, the burden on reconsideration shifted to him to establish that his current foot condition was causally related to the 1986 work injury. As for the representative's argument that the employer should have reemployed appellant and the Office should have provided vocational rehabilitation, these are not issues adjudicated by the Office's April 5, 2010 decision and are not properly before the Board.²² The Board has no jurisdiction to review these matters.

²⁰ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

²¹ Dr. Cantor did not explain how appellant's duties as a letter carrier in the 1980s could have caused a heel spur in 2008, when no such heel spur was noted on x-rays obtained in 2003. Medical conclusions unsupported by rationale are also of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

²² *See* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant has not met his burden to establish that his current plantar fibromatosis is causally related to his 1986 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2010 decision of the Office of Workers' Compensation Programs is set aside on the issue of wage-loss compensation and is otherwise affirmed.

Issued: April 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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