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C.M., Appellant)	
)	
and)	Docket No. 11-175
)	Issued: October 11, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Indianapolis, IN, Employer)	
)	

Case Submitted on the Record

DECISION AND ORDER

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On October 28, 2010 appellant filed a timely appeal from a May 10, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the termination of her compensation benefits for her accepted work injury. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits for her accepted injury effective January 16, 2007; and (2) whether appellant established that she had any continuing disability or residuals relating to her accepted conditions after January 16, 2007.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This is the second appeal in the present case. In an August 21, 2009 decision, the Board affirmed a February 5, 2008 OWCP decision, which denied appellant's request for reconsideration. Appellant filed a petition for reconsideration and, on March 26, 2010, the Board granted the petition and vacated the prior decision. The Board found that the new report from appellant's treating physician was sufficient to require reopening appellant's case for further review of the merits.² The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.

Appellant came under the treatment of Dr. John Tzucker, a Board-certified family practitioner. On February 18, 2003 Dr. Tzucker diagnosed plantar fasciitis and reflex sympathetic dystrophy. He noted a history of appellant's condition and subsequent treatment and opined that she was totally disabled. On October 8, 2003 Dr. Tzucker treated her for seizures or pseudo seizures caused by pain, anger and depression related to previous work-related nerve damage.

On April 5, 2004 OWCP referred appellant to Dr. Alois E. Gibson, a Board-certified orthopedic surgeon, and to Dr. Larry M. Davis, a Board-certified psychiatrist, for second opinions. In a April 26, 2004 report, Dr. Gibson reviewed the medical records provided and examined appellant. He diagnosed subjective complaints not explainable by objective physical findings in both lower extremities, anxiety resulting in physical complaints, no evidence of reflex sympathetic dystrophy in either lower extremity and probable narcotic dependency. Dr. Gibson noted examination of both legs did not reveal signs of reflex sympathetic dystrophy, unusual color, warmth, coolness, moisture or dryness. Waddell's signs were positive and palpation of the extremities and pinprick testing was not possible due to appellant's protests of discomfort that were out of proportion to the examination. Dr. Gibson found no objective evidence of continued aggravation of preexisting right plantar fasciitis or reflex sympathetic dystrophy. He noted that, based on the physical examination from an orthopedic standpoint, appellant's lower extremity difficulties did not prevent her from returning to her previous employment with minimal restriction on standing and walking distances. Dr. Gibson noted anxiety symptoms and recommended psychiatric evaluation. He indicated that there was no need for further orthopedic treatment of the legs.

In a May 6, 2004 report, Dr. Davis diagnosed major depression by history in partial remission, somatization disorder with marked secondary gain, plantar fasciitis, generally resolved many years ago, generalized pain and stress mild to moderate. He opined that there was no direct relationship between appellant's psychological condition of marked pain and her original foot injuries in 1987. Dr. Davis noted that she could perform sedentary work after further psychotherapy. In a supplemental report dated May 14, 2004, he opined that, due to the

² Docket No. 08-1549 (issued August 21, 2009), *petition for recon*, granted (issued March 26, 2010). On September 29, 1989 appellant, then a 33-year-old mark-up clerk, filed an occupational disease claim which OWCP accepted for aggravation of preexisting plantar fasciitis of the right foot and mild bilateral reflex sympathetic dystrophy of the legs. It authorized a plantar fasciotomy performed on April 21, 1989 and bilateral decompression of the tibial tarsal tunnels performed on June 2, 1990. Appellant was placed on the periodic compensation rolls on March 22, 1996.

many stressors and responses that occurred over a long disability, he was not able to conclude that there was a direct relationship between appellant's present psychological pain condition and her original foot condition and treatment from 1987 to 1989.

Appellant submitted a June 8, 2004 report from Dr. Tzucker, who reviewed the report from Dr. Gibson and disagreed with his findings. Dr. Tzucker found Dr. Gibson's history of her injury to be sketchy and his lack of detail regarding her diagnosis of reflex sympathetic dystrophy to be improper.

On July 19, 2004 OWCP requested a supplemental report from Dr. Davis. In reports dated August 5 and October 13, 2004, Dr. Davis found that appellant was not totally disabled from work in view of the complete lack of an organic explanation and lack of depressive intensity that would prevent her from working from a psychiatric perspective. In a December 29, 2004 report, he reviewed the Minnesota Multiphasic Personality Inventory -- 2, which revealed that she was not greatly anxious or depressed about her symptoms and demonstrated conversion disorder or somatic disorder.

On August 13, 2004 OWCP referred appellant to Dr. Arthur Rosen, a Board-certified neurologist, for a second opinion. In an August 26, 2004 report, Dr. Rosen diagnosed chronic anxiety syndrome with psychophysiological phenomenon, no evidence of organic disease of the central nervous system or peripheral nervous system, no evidence of disease of the peripheral autonomic nervous system and no evidence of reflex sympathetic dystrophy or seizure disorder. He noted that the neurological examination revealed intact cranial nerves, bilateral nonphysiological giveaway weakness of appellant's upper and lower extremities, reflexes were even and symmetrical bilaterally with no pathology, normal pain, touch, vibration and position sense, there was no evidence of cerebellar dysfunction or hyperhidrosis, no dystrophic changes and no temperature changes. Dr. Rosen opined that there was no objective evidence to indicate that she had reflex sympathetic dystrophy as there was an absence of temperature changes in her lower extremities, the absence of hyperhidrosis and anhidrosis in her lower extremities coupled with her nonphysiological response to any sensory stimulation of her body. He noted that appellant had no physical condition which would preclude her from returning to her job as a mark-up clerk but her psychiatric problem might preclude a return to work. Dr. Rosen indicated that from a physical perspective appellant could perform any type of gainful activity and none would be precluded by her current neurological evaluation. He recommended psychiatric treatment.

OWCP found that a conflict of medical opinion existed between Dr. Tzucker, who found that appellant had residuals of her work-related injuries of reflex sympathetic dystrophy and was totally disabled and Dr. Rosen, who determined that appellant's bilateral reflex sympathetic dystrophy of the legs had resolved and she could return to her preinjury position as a mark-up clerk without restrictions related.

On March 17, 2006 OWCP referred appellant to a referee physician, Dr. Richard S. French, a Board-certified neurologist. In an April 18, 2006 report, Dr. French noted reviewing the record, including the history of her work injury and examining her. Examination revealed an unusual vertical head tremor which was irregular and dyssynergic and appellant began to cry and developed jerking movements when tested. Dr. French noted that her motor examination was

difficult to assess because she had giveaway type weakness but there was no atrophy or fasciculations. Examination of appellant's deltoids and biceps revealed giveaway weakness with dramatic effort displayed in an exaggerated sense. Reflexes were normal and symmetrical. Scars beneath her medial malleoli from the tarsal surgery were well healed. Appellant's feet were warm and her skin and toenails appeared healthy. Dr. French opined that she did not have reflex sympathetic dystrophy but noted a great deal of obvious psychogenic overlay on the neurologic examination and she demonstrated a histrionic personality. He advised that no further diagnostic testing was necessary. Dr. French did not believe that appellant could return to work as a mark-up clerk due to psychological restrictions and believed that she was disabled due to her psychiatric problems. He agreed that she had somatization disorder and that she was physically dependent on narcotic pain medicine.

Appellant submitted a September 6, 2006 report from Dr. Tzucker, who noted that she was restricted to working no more than 15 minutes an hour. Dr. Tzucker noted that she spent most of the day in bed. He advised that appellant's condition was chronic and would not improve.

On November 13, 2006 OWCP proposed to terminate all benefits finding that Dr. French's April 18, 2006 report established no continuing residuals of appellant's work-related condition.

In a December 25, 2006 report, Dr. Tzucker disagreed with Dr. French, the referee physician, as to whether appellant had reflex sympathetic dystrophy. He opined that her examination revealed differences in skin temperatures, thinning hair and hypersensitivity to touch in the lower extremities, which were symptoms of reflex sympathetic dystrophy. Dr. Tzucker concurred that appellant no longer had plantar fasciitis. He opined that she was totally disabled and could work as a mark-up clerk as it would exacerbate her pain and disrupt the work environment if she had pseudo seizures.

By compensation order dated January 16, 2007, OWCP terminated appellant's medical and compensation benefits effective the same day finding that the medical evidence established that she had no continuing residuals of her accepted conditions.

On January 14, 2008 appellant requested reconsideration and submitted a January 12, 2008 report from Dr. Tzucker, who noted treating her on January 11, 2008 and found her symptoms compatible with reflex sympathetic dystrophy specifically noting that she had continuing pain, hyperesthesia, cold lower legs despite socks, allodynia to the light and to moderate touch, weakness of gait and decreased leg hair. Dr. Tzucker found no signs of addiction to pain medicine and advised her mental distress increased over time. He opined that as appellant's treating physician he was better able to understand her history and the evolution of her condition than any OWCP referral physicians who only saw her briefly.

In a February 5, 2008 decision, OWCP denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision. Following the

Board's remand of the case,³ it in a May 10, 2010 decision, denied modification of the January 16, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁶

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for aggravation of preexisting plantar fasciitis of the right foot and mild bilateral reflex sympathetic dystrophy of the legs. It reviewed the medical evidence and determined that a conflict in medical opinion existed between her attending physician, Dr. Tzucker, a Board-certified family practitioner, who indicated that she still had residuals of bilateral reflex sympathetic dystrophy of the legs and was totally disabled and could not return to her preinjury position and Dr. Rosen, an OWCP referral physician, who determined that her bilateral reflex sympathetic dystrophy of the legs had resolved and that her continuing symptoms were attributable to a nonwork-related psychiatric condition.⁷ Consequently, OWCP referred appellant to Dr. French to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. French is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's mild bilateral reflex sympathetic dystrophy of the legs 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.⁸

³ *See id.*

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁶ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁷ The Board notes that neither Dr. Tzucker nor any of OWCP's referral physicians supported that the aggravation of preexisting plantar fasciitis of the right foot continues. In his December 25, 2006 report, Dr. Tzucker advised that that appellant no longer had plantar fasciitis and that it had not been an active diagnosis for the many years in which he had treated her. Thus, the weight of the medical evidence supports that this condition has resolved.

⁸ *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

On April 18, 2006 Dr. French reviewed appellant's history, reported findings and opined that she did not have reflex sympathetic dystrophy but noted a great deal of obvious psychogenic overlay on the neurologic examination and she demonstrated a histrionic personality. He noted that she had giveaway type weakness but there was no atrophy or fasciculations. Dr. French stated that, on examination of the deltoids and biceps, appellant demonstrated giveaway weakness with dramatic effort displayed in an exaggerated sense. However, he noted that reflexes were normal and symmetrical and sensory examination revealed good vibratory sensation in her toes with pinprick was normal. Dr. French found that the condition of her skin to be normal. He advised that, while appellant could not return to work as a mark-up clerk, this was because she was disabled due to her psychiatric problems. The Board notes that OWCP has not accepted any psychiatric condition as being employment related. Dr. French found no basis on which to attribute any continuing condition to appellant's employment.

In a September 6, 2006 report, Dr. Tzucker addressed appellant's disability status. In a December 25, 2006 report, he disagreed with Dr. French as to whether appellant had reflex sympathetic dystrophy and cited symptoms which were consistent with reflex sympathetic dystrophy. Dr. Tzucker also opined that she no longer had plantar fasciitis. He opined that appellant was totally disabled and could not return to work because it would exacerbate her pain and disrupt the work environment if she had pseudo seizures. However, Dr. Tzucker did not specifically address how any continuing condition or medical restrictions and disability were causally related to the accepted employment injuries. Additionally, he was on one side of the conflict that Dr. French resolved and this report is insufficient to overcome that of Dr. French or to create a new medical conflict.⁹

The Board finds that Dr. French had full knowledge of the relevant facts and evaluated the course of appellant's condition. At the time benefits were terminated he clearly opined that she had absolutely no work-related reason for disability. Dr. French's opinion as set forth in his report of April 18, 2006 is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted condition of mild bilateral reflex sympathetic dystrophy of the legs has ceased. The weight of the medical evidence also supports that the accepted condition of aggravation of preexisting plantar fasciitis of the right foot has resolved.¹⁰

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had continuing disability causally related to her accepted employment injury.¹¹ To establish causal relationship between the claimed disability

⁹ 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. Tzucker's report did not contain new rationale on causal relationship upon which a new conflict might be based.

¹⁰ See *supra* note 7.

¹¹ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹²

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her work-related aggravation of preexisting plantar fasciitis of the right foot and mild bilateral reflex sympathetic dystrophy of the legs on or after January 16, 2007.

After the termination of benefits on January 16, 2007 appellant submitted a January 12, 2008 report from Dr. Tzucker who treated her on January 11, 2008 and found her symptoms of continuing pain, hyperesthesia, cold lower legs despite socks, allodynia to the light and to moderate touch, weakness of gait and decreased leg hair compatible with reflex sympathetic dystrophy. Dr. Tzucker found no signs of addiction to pain medicine and advised her mental distress increased over time. He believed that he was better able to understand appellant's history and the evolution of her condition than OWCP referral physicians who only saw her briefly. On appeal, appellant's counsel asserts that this report establishes continued disability from her employment injury. However, Dr. Tzucker provides only a conclusory statement on causal relationship without providing medical reasoning or rationale to support his opinion. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹³ Additionally, as noted above, Dr. Tzucker's reports do not otherwise provide new medical rationale sufficient to establish that any continuing condition or disability was causally related to the work conditions. He was on one side of the conflict that Dr. French resolved and this report is insufficient to overcome that of Dr. French or to create a new medical conflict.¹⁴

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions. Consequently, appellant did not establish that he had any employment-related condition or disability after January 16, 2007.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate benefits effective January 16, 2007 and that appellant failed to establish that she had any continuing disability due to her accepted condition after January 16, 2007.

¹² *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

¹³ *See Theron J. Barham*, 34 ECAB 1070 (1983).

¹⁴ *See Michael Hughes*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 10, 2010 is affirmed.

Issued: October 11, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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