

**United States Department of Labor
Employees' Compensation Appeals Board**

T.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 12-444
Issued: August 1, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 29, 2011 appellant, through counsel, filed a timely appeal from a December 7, 2011 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits effective November 6, 2008 on the grounds that he had no residuals due to the accepted left foot injury; and (2) whether appellant established that he had any continuing employment-related disability or condition after that date due to his accepted injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board. In a decision dated June 28, 2010, the Board affirmed OWCP's November 6, 2008 decision terminating appellant's compensation and medical benefits effective that date and the June 18, 2009 decision denying merit review.² The Board found that the weight of the medical evidence, which was represented by the report of an impartial medical adviser, established that appellant had no further disability or residuals due to his accepted left foot injury. The facts and law contained in those decisions are incorporated herein by reference. Relevant facts are delineated below.

OWCP accepted appellant's May 20, 2004 traumatic injury claim for left foot contusion, left ankle strain, left tarsal tunnel syndrome and lesion of the left plantar nerve. Appellant underwent approved left foot surgery on May 14, 2007. OWCP found a conflict in medical opinion between appellant's treating physician, Dr. Carol DeCosta, a Board-certified physiatrist, who opined that appellant was disabled due to his left foot injury, and its second opinion physician, Dr. Andrew Weiss, a Board-certified orthopedic surgeon, who opined that appellant's accepted conditions had resolved. Appellant was referred to Dr. Stanley Soren, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict. Based on his examination of appellant and the medical record, Dr. Soren opined in a June 10, 2008 report that appellant's accepted conditions had resolved and that any objective findings related to preexisting arthritis in appellant's first big toe.

On October 2, 2008 OWCP proposed to terminate appellant's compensation and medical benefits based on Dr. Soren's June 10, 2008 referee report. By decision dated November 6, 2008, it finalized the termination of appellant's compensation and medical benefits. By decision dated June 18, 2009, OWCP denied appellant's request for merit review. In a decision dated June 28, 2010, the Board affirmed OWCP's November 6, 2008 and June 18, 2009 decisions.

On January 10, 2011 appellant requested reconsideration.

Appellant submitted an August 19, 2008 prescription for physical therapy from Dr. DeCosta, who provided a diagnosis of radiculopathy and left foot neuropathy.

In an October 1, 2008 follow-up report, Dr. DeCosta noted appellant's continuing complaints of left foot pain. Examination of the left foot revealed positive Tinel's sign in the distal tibial areas, pain on palpation in the lateral aspect and good range of motion. Muscle strength was 4/5 in all planes. Dr. DeCosta stated that appellant had a left lower extremity nerve injury secondary to direct trauma on the job. She also indicated that there was evidence of lumbosacral radiculopathy and occult post-traumatic arthritic changes. The record contains a March 18, 2009 report of a nerve conduction study from Dr. Alla Mesh, a Board-certified neurologist.

² Docket No. 09-1911 (issued June 28, 2010).

On June 10, 2009 appellant filed a notice of recurrence, alleging that he was experiencing increased pain.

The record contains an October 23, 2009 operative report from Dr. Kenneth Mroczek, a Board-certified orthopedic surgeon, reflecting that appellant underwent hallux metatarsophalangeal joint chielectomy and debridement on that date. Dr. Mroczek indicated that appellant was status post crush injury to the left foot in 2004 and that x-rays showed advanced hallux metatarsophalangeal joint arthritis.

In a December 22, 2009 letter, OWCP informed appellant that it could take no action on his recurrence claim.

In a June 30, 2010 report, Dr. DeCosta opined that appellant was permanently partially disabled and had nerve damage in his left foot and low back pain due to his on-the-job injury. She stated that appellant underwent surgery and was unable to work until May 10, 2010.

On August 29, 2010 appellant submitted a request for a schedule award.

The record contains an October 17, 2010 prescription for orthotics signed by Dr. Mroczek.

In an October 20, 2010 report, Dr. DeCosta opined that appellant had a 57 percent left lower extremity impairment. She diagnosed left foot and ankle joint crush injury with resulting peripheral neuropathy and post-traumatic arthritis with objective changes on MRI scan and electrodiagnostic testing. Examination revealed reduced range of motion in the left ankle and big toe as follows: 1st IP joint extension -- 10 degrees; left ankle inversion -- 10 degrees; left ankle eversion -- 5 degrees; dorsiflexion -- 15 degrees and plantar flexion -- 15 degrees. Motor strength was 4/5 in all areas. There was pain on palpation of the medial malleolar areas and decreased sensation in the medial aspect of the left foot. Dr. DeCosta stated that appellant's symptoms had worsened to the extent that he underwent left foot and ankle surgery in October 2009. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), she assigned 14 percent impairment due to class 2 peripheral nerve impairment (page 530); 7 percent impairment due to post-traumatic arthritis (page 549-50); 5 percent and 2 percent, respectively for ankle inversion and eversion; 7 percent for ankle dorsiflexion; 7 percent for ankle plantar flexion and 12 percent for hind foot varus deformity, for a total impairment of 57 percent.

In a September 8, 2011 report, the district medical adviser disagreed with Dr. DeCosta's opinion regarding the degree of appellant's permanent impairment. He noted that Dr. DeCosta had apparently combined several different methods to arrive at a very high rating. The district medical adviser also questioned which nerve roots or peripheral nerves were involved. Dr. DeCosta recommended that OWCP obtain a second opinion from an orthopedic surgeon who is familiar with the various sixth edition methods.

In a December 7, 2011 decision, OWCP denied modification of its prior decision, finding that the evidence was insufficient to establish that appellant had any residuals due to his work-related traumatic injury. The claims examiner found that the weight of medical evidence remained with Dr. Soren, who provided a well-rationalized medical report and found that

appellant's ongoing condition is a result of preexisting conditions unrelated to his federal employment.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.⁶

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict. The opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁷

ANALYSIS -- ISSUE 1

As noted, the Board found in its June 28, 2010 decision that the weight of the medical evidence, represented by the well-rationalized report of the impartial medical examiner, was sufficient to establish that appellant had no residuals or disability due to his accepted conditions as of November 6, 2008. In support of his reconsideration request, appellant submitted additional medical evidence, which he contends established that he had employment-related residuals at the time OWCP terminated his benefits. The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits as of November 6, 2008.

Relevant medical evidence submitted by appellant included an August 19, 2008 prescription for physical therapy from Dr. DeCosta, which contained a diagnosis of radiculopathy and left foot neuropathy. Dr. DeCosta's note did not provide any examination findings or an opinion as to the cause of appellant's diagnosed conditions. Therefore, it is of limited probative value.

³ A.W., 59 ECAB 593 (2008); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *Id.*

⁵ T.P., 58 ECAB 524 (2007).

⁶ I.J., 59 ECAB 408 (2008); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁷ B.P., Docket No. 08-1457 (issued February 2, 2009); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

In an October 1, 2008 report, Dr. DeCosta provided examination findings. She stated that appellant had a left lower extremity nerve injury secondary to direct trauma on the job and indicated that there was evidence of lumbosacral radiculopathy and occult post-traumatic arthritic changes. Dr. DeCosta did not identify the accepted injury as the cause of the nerve injury. She did not describe how the referenced trauma caused the claimed nerve injury or explain how the diagnosed lumbosacral radiculopathy and occult post-traumatic arthritic changes were causally related to the accepted injury. Medical conclusions unsupported by rationale are of little probative value.⁸

The Board finds that evidence submitted by appellant in support of his reconsideration request is insufficient to overcome the weight of Dr. Soren's well-rationalized referee opinion or to create a new conflict in medical opinion.⁹ Accordingly, the Board finds that OWCP properly terminated appellant's compensation and medical benefits effective November 6, 2008 on the grounds that his accepted conditions had resolved by that time.¹⁰

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective November 6, 2008, the burden shifted to him to establish that he had any continuing disability or residuals causally related to his accepted left foot injury, following the date of the termination of benefits.¹¹ 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 factual and medical background, supporting such a causal relationship.¹² Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹³ Rationalized medical evidence is medical 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.¹⁴

⁸ *Willa M. Frazier*, 55 ECAB 379 (2004).

⁹ *Supra* note 7.

¹⁰ The Board notes that medical evidence submitted which addresses appellant's condition subsequent to November 6, 2008 is not relevant to the issue of whether OWCP properly terminated his benefits as of that date.

¹¹ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹² *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹³ *Id.*

¹⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence to establish that he continued to be disabled or had residuals after November 6, 2008 due to the accepted left foot injury.

In a June 30, 2010 report, Dr. DeCosta opined that appellant was permanently partially disabled and had nerve damage in his left foot and low back pain due to his on-the-job injury. She stated that appellant underwent surgery and was unable to work until May 10, 2010. Dr. DeCosta did not, however, explain how appellant's current condition was causally related to the accepted left foot injury. Such an explanation is particularly important, given Dr. Soren's opinion that any residuals related to appellant's preexisting arthritis condition. The Board finds that Dr. DeCosta's report is insufficiently rationalized to establish appellant's claim for continuing disability or residuals.

On October 20, 2010 Dr. DeCosta diagnosed left foot and ankle joint crush injury with resulting peripheral neuropathy and post-traumatic arthritis with objective changes on MRI scan and electrodiagnostic testing. Examination revealed reduced range of motion in the left ankle and big toe, as well as pain and decreased sensation in the medial aspect of the left foot. Dr. DeCosta stated that appellant's symptoms had worsened to the extent that he underwent left foot and ankle surgery in October 2009 and opined that appellant had a 57 percent left lower extremity impairment pursuant to the A.M.A., *Guides*. The Board notes that appellant's claim was accepted for left foot contusion, left ankle strain, left tarsal tunnel syndrome and lesion of the left plantar nerve. Dr. DeCosta did not explain how appellant's accepted foot injury was competent to have caused his current diagnosed conditions, which included peripheral neuropathy and post-traumatic arthritis. Absent a rationalized explanation relating appellant's current conditions to the accepted 2004 injury, Dr. DeCosta's report is of diminished probative value.¹⁵

The remaining medical evidence included results of nerve conduction studies, operative reports and prescriptions. As these documents do not contain an opinion on the cause of appellant's diagnosed conditions, they are of limited probative value and are insufficient to establish appellant's claim.¹⁶

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective November 6, 2008. The Board also finds that he failed to establish that he had any disability or residuals after November 6, 2008 causally related to his accepted left foot injury.

¹⁵ *Willa M. Frazier, supra* note 8.

¹⁶ *Michael E. Smith, 50 ECAB 313 (1999).*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2011 is affirmed.

Issued: August 1, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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