

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY C. GUZICKI and U.S. POSTAL SERVICE,
POST OFFICE, Denver, Colo.

*Docket No. 95-2306; Submitted on the Record;
Issued February 11, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective April 1, 1995 on the grounds that his employment-related disability had ceased by that date.

On October 17, 1985 appellant, then a 34-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a broken bone in his right foot due to factors of his employment and that he first was aware of the condition on October 15, 1985. The Office accepted the claim on March 18, 1986 for aggravation of sesamoiditis, medial sesamoid right foot. The Office placed appellant on the periodic rolls effective August 2, 1986.

On May 20, 1988 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on May 12, 1988 he became aware that his slight separation of tibial sesamoid in his left foot was due to factors of his employment.

The Office issued appellant a schedule award on October 17, 1988 for 29 percent permanent loss of use of right great toe.

On November 22, 1988 the Office accepted appellant's claim for aggravation, sesamoiditis, left tibia as a consequence of the accepted condition of the right foot.

On March 20, 1989 the Office accepted appellant's claim for permanent aggravation sesmoiditis right great toe.

On April 10, 1989 the Office issued appellant a schedule award for 10 percent permanent loss of use of right foot, less paid 29 percent of right great toe.

In a letter dated July 12, 1989, the Office placed appellant on the periodic rolls effective June 11, 1989. Appellant returned to work four hours per day on August 3, 1990.

In a letter dated July 16, 1992, the Office accepted appellant's claim for aggravation of preexisting sesamoiditis/medial sesamoid, right foot and advised appellant that he would be placed on the periodic rolls for five hours per day commencing July 26, 1992.

In a report dated June 17, 1993, Dr. Paul A. Stone, an attending Board-certified podiatrist, noted:

"I have no specific diagnosis for him. I have made numerous attempts referring him for testing and have sent him for bone scans and x-rays of both feet. None of the diagnostic tests have helped elicit any reasonable diagnosis for this gentleman. His history is complicated by severe mental depression.... I have had him on light-duty status where he was sitting down perching mail for some time at the Postal Annex in Denver. He eventually stopped working completely when his subjective symptoms worsened and he became more depressed." (Emphasis in the original.)

Dr. Stone opined that appellant's "symptoms seem to be consistently subjective" and that based upon the objective evidence he found "little evidence of problem other than a bi-partite tibial sesamoid on the right and heels spurs at the inferior aspect of both calcanei."

By letter dated November 28, 1994, the Office referred appellant, along with the medical record and a statement of accepted facts, to Dr. John Joshua, a Board-certified orthopedic surgeon, for a second opinion on whether appellant had any continuing disability related to his accepted employment injury.

In a note dated January 4, 1995, Dr. Stone noted that appellant had "spurs on both heels on the bottom and the back with the right being worse than the left. His right tibial sesamoid is still bi-partite and the left tibial sesamoid is hypertrophied." Dr. Stone opined that appellant "should be retired from his former position and be given a sit-down job only."

In a report dated January 5, 1995, Dr. Joshua found no pathology in appellant's feet by x-ray. On physical examination, Dr. Joshua noted:

"There was no deformity anywhere, there was no sign of inflammation, there was no tenderness anywhere including under both sesamoids and on the heels. The claimant had an easy, steady gait. He could walk on his toes and heels without difficulty. There was a full range of motion in all the joints of both feet including the big toes. There was no evidence of tendinitis, sesamoiditis, plantar fasciitis or any other kind of 'itis' in either foot."

Dr. Joshua also opined that the objective evidence was insufficient to support appellant's complaints of pain and that appellant was capable of performing his regular duties as a letter carrier.

On February 18, 1995 the Office issued a notice of proposed termination of benefits.

By decision dated March 23, 1995, the Office terminated appellant's compensation benefits. The Office found that the weight of the evidence established that any disability from the accepted employment injury had ceased by April 1, 1995. The Office noted that both the attending physician and second opinion physician agreed that there was no objective evidence to support continuing disability from the accepted employment injury.

In a letter dated April 27, 1995, appellant, through counsel, requested reconsideration and submitted an April 11, 1995 report from Dr. Stone in support of his request for reconsideration.

In the April 11, 1995 report, Dr. Stone disagreed with Dr. Joshua regarding the x-ray evidence. Dr. Stone opined that there was x-ray evidence of inferior calcaneal exostosis with posterior retrocalcaneal exostosis and the posterior heel enthesopathy spurs. Dr. Stone also stated that he found that appellant "has subjective symptoms of tendinitis, sesamoiditis and fasciitis in both feet. These maladies are difficult, if impossible to define objectively."

In a decision dated May 4, 1995, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was insufficient to warrant modification of the prior decision. The Office noted that pain or subjective complaints are insufficient medical evidence to establish entitlement to continuing compensation benefits. The Office found Dr. Stone's April 11, 1995 report insufficient to support modification of the prior decision terminating benefits as Dr. Stone failed to address the issue of whether appellant has any continuing disability due to his accepted employment injury.

The Board finds that the Office met its burden of proof to terminate the employee's compensation effective April 1, 1995 on the grounds that his employment-related disability had ceased by that date.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.¹ After it has determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.²

In the present case, the Office met its burden to terminate appellant's compensation, based upon the well-rationalized report of Dr. Joshua. Rationalized medical opinion evidence includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's presently diagnosed condition and the implicated employment injury. Such an 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

¹ *Harold S. McGough*, 36 ECAB 332 (1984); see Federal (FECA) Procedure Manual, Part 2 – Claims, Periodic Review of Disability Cases, Chapter 2.812.3 (March 1987).

² *Warren L. Divers*, 47 ECAB ____ (Docket No. 95-2883, issued May 8, 1996); *Frank J. Mela, Jr.*, 41 ECAB 115 (1989).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

Dr. Joshua's medical opinion is based upon a complete and accurate factual and medical history, includes a thorough physical examination and evaluation, of reasonable medical certainty, and is supported by a well-rationalized explanation addressing appellant's subjective complaints and noting that there were no objective findings to support appellant's complaints. At the time of Dr. Joshua's report, the other medical evidence of record did not support that appellant had continued employment-related disability.

In a report dated June 17, 1993, Dr. Stone, appellant's attending Board-certified podiatrist, stated that he had no specific diagnosis for appellant and that appellant eventually stopped working due to his severe mental depression. Dr. Stone also noted that appellant's symptoms seemed to be subjective and gave no opinion as to whether appellant was totally disabled due to his accepted employment injury. In a subsequent report dated April 11, 1995, Dr. Stone disagreed with Dr. Joshua's x-ray interpretations, but again gave no opinion as to whether appellant continued to be disabled due to his accepted employment injury. Dr. Stone also noted that appellant's subjective complaints were "difficult, if impossible to define objectively."

The weight of the medical evidence establishes that appellant does not have a continuing disability due to his accepted employment injury. Neither Dr. Joshua, the second opinion physician, nor Dr. Stone, appellant's treating podiatrist, opined that appellant continued to be disabled due to his accepted employment injury.

The decisions of the Office of Workers' Compensation Programs dated May 4 and March 23, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 11, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

³ See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).