

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY M. STARK and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, Mo.

*Docket No. 96-1522; Submitted on the Record;
Issued January 6, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation effective October 21, 1994; (2) whether appellant established that he had any disability after October 21, 1994 causally related to the January 29, 1994 employment injury; and, (3) whether appellant established that his plantar fasciitis was causally related to his employment.

On January 29, 1994 appellant, then a 29-year-old sorting machine operator, sustained employment-related thoracic and lumbar strains. He returned to limited duty on February 7, 1994, missed intermittent periods thereafter, and filed recurrence claims on June 1 and August 22, 1994. Following further development, by decision dated September 1, 1994, the Office denied compensation for the period May 27 through July 5, 1994. In a June 26, 1995 decision, the Office found that appellant had no employment-related disability after August 19, 1994 and that his plantar fasciitis was not employment related. Appellant requested a hearing and, by decision dated December 8, 1995, an Office hearing representative found that a conflict in the medical opinions existed between appellant's treating physician, Dr. Donald Zipper, an osteopathic orthopedic surgeon, and Dr. Satish Bansal, a Board-certified orthopedic surgeon, who performed a second opinion evaluation for the Office. The hearing representative remanded the case to the Office for an impartial medical evaluation by a Board-certified orthopedic surgeon. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference.

By letter dated January 11, 1996, the Office referred appellant, along with an statement of accepted facts, the medical record and a set of questions, to Dr. Richard E. Whitehead, a Board-certified orthopedic surgeon, for an impartial medical evaluation. Dr. Whitehead provided a report dated January 24, 1996, and appellant submitted a January 23, 1996 report from Dr. Frank C. Ferguson, a chiropractor. Based on Dr. Whitehead's report, by decision dated February 22, 1996, the Office found that appellant's plantar fasciitis was not employment related and terminated his wage loss and medical benefits, effective October 21, 1994, on the grounds

that he had recovered from all residuals of his January 29, 1994 employment injury. Compensation was paid from August 24 to October 21, 1994. The instant appeal follows.

Initially, the Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation, effective October 21, 1994.

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

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 a specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.² Here the Office determined that a conflict of medical opinion existed between appellant's treating physician, Dr. Zipper and Dr. Bansal who provided a second opinion evaluation for the Office. The Office then referred appellant to Dr. Richard E. Whitehead, a Board-certified orthopedic surgeon, to resolve the conflict.

In a thorough and well-rationalized report dated January 24, 1996, Dr. Whitehead noted appellant's history of injury and subjective complaints. Examination revealed minimal tenderness of the thoracic and lumbar spines, and x-rays of the thoracic and lumbar spines and pelvis were negative. Dr. Whitehead advised that, while appellant had recurrent thoracolumbar sprains which were partly the result of the January 29, 1994 employment injury, these were minimally symptomatic at the time of his examination when there were with no objective findings to support a specific orthopedic diagnosis. He found no medical evidence to support total disability from May 27 to July 5, 1994. Regarding the period August 19 to October 21, 1994, the doctor noted that although appellant had a positive nerve conduction study on August 24, 1994, he had a negative lumbar myelogram and computerized tomography and should, therefore, have been able to work light duty.³ After reviewing appellant's job description, Dr. Whitehead advised that he could return to full duty on the OSS and ISS machines but should not work on the DBCS machine because of the repetitive nature of the work required and past flare-ups of his condition. In an attached work capacity evaluation, Dr. Whitehead advised that appellant could work eight hours a day with restrictions on twisting, reaching and lifting, indicating that these restrictions were partly due to the January 19, 1994 employment injury. He advised that appellant had reached maximum medical improvement in October 1995. As Dr. Whitehead's report is well rationalized and is, therefore, deserving of special weight,⁴ the Board finds appellant had no employment-related disability on or after

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

² See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

³ The record indicates that at the time appellant filed a recurrence claim on August 11, 1994, he was working in a limited-duty position.

⁴ *Supra* note 2.

October 21, 1994, and the Office met its burden of proof to terminate appellant's compensation benefits on that date.

The Board further finds that appellant failed to establish that he had any continuing disability causally related to his accepted employment injury.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had disability causally related to his accepted injury.⁵ 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.⁶

The only evidence submitted by appellant subsequent to the December 8, 1995 decision of the Office hearing representative is the January 23, 1996 report from Dr. Frank C. Ferguson, who advised that he had been treating appellant since October 30, 1995 for thoracic and thoracolumbar pain. The Board notes that a chiropractor cannot be considered a physician under the Federal Employees' Compensation Act⁷ unless it is established that there was a subluxation demonstrated by x-ray. The record in this case does not contain such a diagnosis.⁸ Appellant thus failed to present sufficient rationalized medical evidence to establish that his disability after October 21, 1994 was causally related to his employment injury.

The Board, however, finds that the Office erred in terminating appellant's authorization to receive medical treatment under the Act. The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁹ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹⁰

In this case, the Office accepted that appellant sustained employment-related thoracic and lumbar strains and approved the payment of compensation benefits for the claimed period and for medical treatment. By its February 22, 1996 letter which accompanied decisions of the same date, the Office terminated appellant's authorization for medical treatment. The Office, however, did not establish that appellant no longer had residuals of any employment-related condition which would require further medical treatment. In his January 24, 1996 report, Dr. Whitehead noted findings on examination and advised that appellant was minimally symptomatic. As the record does not contain any probative evidence establishing that

⁵ See *George Servetas*, 43 ECAB 424 (1992).

⁶ See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, *supra* note 2.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8101(2); see *Samuel Theriault*, 45 ECAB 586 (1994).

⁹ See *Marlene G. Owens*, 39 ECAB 1320 (1988).

¹⁰ See *Furman G. Peake*, 41 ECAB 361 (1990).

appellant's work-related condition had totally resolved, the Office did not meet its burden in terminating appellant's medical benefits for orthopedic residuals of his employment injury.

Lastly, the Board finds that appellant did not meet his burden of proof to establish that his bilateral plantar fasciitis was employment related.

In his January 24, 1996 report, Dr. Whitehead, who provided the impartial medical evaluation, reported that there was no evidence of plantar fasciitis on examination and advised that appellant's previous plantar fasciitis was not employment related, stating that back pain and a change in walking would not cause any type of plantar fasciitis. Dr. Whitehead based this decision on his "many years" as a spinal surgeon and noted that he had consulted four textbooks regarding the feet in reaching his conclusion. As Dr. Whitehead's report is well rationalized and is, therefore, deserving of special weight,¹¹ the Board finds appellant failed to establish that his foot condition was employment related.

The decisions of the Office of Workers' Compensation Programs dated February 22, 1996 are affirmed in part and reversed in part, in accordance with this decision of the Board.

Dated, Washington, D.C.
January 6, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Supra* note 2.