

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARYJEAN P. CORETTI and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 99-1282; Submitted on the Record;
Issued November 15, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 8, 1997.

The Office accepted that appellant, then a 37-year-old letter carrier, sustained an injury to her right foot when she descended some stairs in an ill-illuminated building while delivering mail. Appellant returned to part-time light-duty work for four hours per day on March 26, 1996. The Office accepted the claim for right foot ankle strain and paid appropriate compensation.

In a May 8, 1997 decision, the Office terminated appellant's compensation effective the same day on the grounds that appellant had no continuing disability or work-related residuals as a result of the accepted work-related condition and was capable of working her full duties with no restrictions. The Office found that the weight of the medical evidence rested with the January 3 and February 7, 1997 reports of Dr. Robert P. Yamokoski, a Board-certified orthopedic surgeon, who acted as the impartial examiner to resolve the conflict in medical evidence. Appellant requested an oral hearing and, in a February 4, 1999 decision, the Office hearing representative affirmed the May 8, 1997 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective May 8, 1997.

Where, as here, the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In this case, appellant's treating physician, Dr. John D. Okun, a Board-certified orthopedic surgeon, noted that appellant had persistent symptoms which appeared to be turning into a chronic ankle sprain. A magnetic resonance imaging (MRI) scan of the right ankle completed on June 12, 1996 revealed joint effusion. Accordingly, he referred appellant to Dr. Arthur K. Walling, a Board-certified orthopedic surgeon, to evaluate appellant's persistent pain and effusion of her right ankle and recommend the continuation of physical therapy and light-duty status. In a report dated August 9, 1996, Dr. Walling noted appellant's history of injury and her subjective complaints and set forth his examination findings. Dr. Walling found that with appellant's ankle corset removed, there was no observable swelling in the ankle. There was no medial swelling in the ankle. There was no medial tenderness. Appellant was tender laterally over the anterior talofibular ligament as well as the calcaneofibular ligament. She had full dorsiflexion and plantar flexion. The subtalar motion was full. She had no evidence of instability to either lateral or anterior drawer stress testing although some guarding was noted. Her midfoot and forefoot are normal. Appellant was neurovascularly intact. X-rays revealed no evidence of osteochondral fracture or other injury and the MRI scan from June 12, 1996 showed no evidence of fusion within the joint or osteochondral lesions. Dr. Walling stated that he agreed with Dr. Okun that appellant had chronic ankle sprain. He opined that appellant could either reinstitute physical therapy to see if the pain pattern could be improved or that she could be examined under anesthesia to verify that there was no subtle ligamentous instability, which he felt was unlikely. Dr. Walling further stated that if there was no evidence of ligamentous instability, appellant could undergo an arthroscopy of her ankle for debridement, but opined that the therapeutic value of this procedure had an extremely low yield.

The Office referred appellant to Dr. Frank K. Kriz, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the extent of appellant's continuing employment-related disability. In an October 28, 1996 report, Dr. Kriz reviewed appellant's history of injury and history of medical treatment. He concluded that appellant's diagnoses were strain of the lateral ligaments of the right ankle with no evidence of instability. Regarding the issue of continuing disability, Dr. Kriz explained that the physical examination both by himself and Dr. Walling on August 9, 1996 revealed full range of motion of the right ankle with no evidence of effusion or ligamentous laxity. There was no evidence of crepitation. He stated that there were no positive objective physical or neurologic examination findings which would preclude appellant from working an eight-hour duty day. Appellant has persistent subjective complaints and feels better wearing the right ankle splint and is able to perform full duties. She is able to drive her own car and she can return to driving at her normal duty. Dr. Kriz opined that appellant was fit for full duty on an eight-hour day basis without restrictions. Dr. Kriz further stated that appellant had reached maximum medical improvement status. There was no muscle atrophy, as noted by both himself and Dr. Walling, which indicated that appellant was utilizing both lower extremities in an even manner. He noted that although appellant had persistent subjective complaints of pain about the lateral side of the right ankle and at times in

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

the calf, there were no positive objective physical or neurologic examination findings to document a need for further treatment nor a basis for any disability or restrictions in her work status or activities.

The Office thereafter received a November 26, 1996 report from Dr. Okun in which he related that, after reviewing Dr. Kriz's report, he found that he could not agree with almost anything he said. Dr. Okun stated that Dr. Kriz found the physical examination to be normal, that appellant had no pain or tenderness, and that she walked with a normal gait. Dr. Okun stated that one needs simply to watch appellant ambulate to see that she has a very pronounced limp. Dr. Okun stated that Dr. Walling raised the possibility of an arthroscopic evaluation of appellant's ankle. He stated that while there was certainly no guarantee that this would help appellant, there was increasing evidence that some people develop chronic inflammation and synovitis after severe ankle sprains and they can often be helped by an arthroscopic debridement and synovectomy. Dr. Okun recommended the arthroscopic evaluation and stated that he did not see any other approach which would be medically appropriate or beneficial to appellant.

The Office thereafter found that Drs. Kriz's and Okun's reports were in conflict as to whether appellant had any residuals of the accepted employment injury which caused continuing disability. The Office thus referred appellant to Dr. Yamokoski, a Board-certified orthopedic surgeon, for an impartial medical evaluation. 5 U.S.C. § 8123(a) provides that 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.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

In his report dated January 3, 1997, Dr. Yamokoski reviewed appellant's history of injury and history of medical treatment. He reviewed the medical evidence of record including Dr. Walling's August 9, 1996 report and Dr. Kriz's October 28, 1996 report as well as the objective evidence of record. Dr. Yamokoski noted that as appellant did not bring her x-rays or the MRI scan, he relied entirely on the reports in the record. Dr. Yamokoski concluded that, based upon his physical examination of appellant and his evaluation of the medical record, appellant lacked any significant objective findings on examination. Although there was a slight puffiness noted about her ankle, Dr. Yamokoski stated that appellant had had the corset wrapped tightly about her lower leg which might have caused some soft tissue edema. He stated that there was no evidence of any intra-articular swelling, as no puffiness was noted over the anterior lateral aspect of the ankle. Additionally, no effusion was noted by an MRI scan. Dr. Yamokoski stated that all of these things would suggest a lack of any intra-articular pathology of significance. Dr. Yamokoski found no evidence from either his examination or the medical records to suggest that arthroscopy was warranted at this time due to the incident of January 11, 1996. Dr. Yamokoski, however, found appellant's subjective findings of a markedly antalgic appearing gait and remarkably exquisite tenderness to palpation about the lateral ligamentous

³ *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

structures and the dorsum of her midfoot to be remarkable and recommended a limited three phase bone scan to see whether there was any evidence of any pathology including the possibility of a reflex dystrophy. Dr. Yamokoski opined that if the bone scan was negative or nonrevealing, he would return appellant to full duty with no restrictions. In a February 7, 1997 report, Dr. Yamokoski noted that the January 3, 1997 three phase bone scan revealed some increased uptake in the right midfoot in the area of the navicular or cuneiform bone. The plane x-rays revealed no osseous or bony abnormality. Dr. Yamokoski stated that as this was not the area of appellant's complaint, he thinks that it is unrelated to appellant's areas of tenderness and did not relate to the ankle joint itself. Accordingly, Dr. Yamokoski opined that appellant could return to full duty without restrictions.

The Board concludes that Dr. Yamokoski's opinion that appellant no longer had residuals of the accepted employment injury and could return to full duty without restrictions was based upon the proper history of injury, a thorough review of the medical evidence of record, and appellant's current physical examination. His report was based on a proper factual and medical background, was well rationalized and must be given special weight. Thus, the Board finds that the Office could properly rely on Dr. Yamokoski's reports, that appellant is capable of working and that there are no continuing residuals of the work injury of January 11, 1996, when it terminated appellant's compensation effective May 8, 1997.

Appellant subsequently requested an oral hearing and submitted additional evidence.

A December 16, 1998 report from Dr. Okun summarized appellant's treatment from the time of her work injury of January 11, 1996. He related that appellant underwent an arthroscopy of her right ankle including a synovectomy, removal of loose body, and debridement of a large mass and cartilage lesion on October 13, 1997. Dr. Okun reported that appellant's ankle pain and other symptoms eventually resolved following physical therapy and home strengthening exercises designed to wean her from a right ankle lace-up brace. Appellant was seen on February 13, 1998 with complaints of right knee pain. Appellant related that she injured her knee on January 11, 1996 when she twisted her leg and fell down stairs. As appellant's knee was unstable, a right knee arthroscopy with chondroplasty of the medial femoral condyle and patella was performed as well as excision of pathologic plica. Dr. Okun related that appellant first complained of pain in the mid-portion of her first metatarsal on July 28, 1998. Appellant eventually underwent an arthrotomy of the first tarsometatarsal joint with a fusion of her first tarsometatarsal joint of her right foot on October 26, 1998. Dr. Okun described appellant's postoperative complications including an unusual stress-related eczema of the foot. Regarding causal relationship, Dr. Okun stated, "It is my opinion that [appellant's] condition relates back to her initial work-related injury of January 11, 1996." He stated that it was possible that if appellant had undergone the initial ankle surgery when it was first recommended, she may not have had to undergo the two subsequent surgeries.

Although Dr. Okun opined that appellant's subsequent conditions related back to the work injury of January 11, 1996, his opinion is of diminished probative value. Dr. Okun's brief conclusive statement that it was possible that if appellant had undergone the initial ankle surgery, then the other surgeries may not have been warranted, does not provide a probative rationalized opinion that appellant's subsequent conditions were caused or aggravated by the accepted right

foot ankle sprain. Causal relationship must be established by rationalized medical opinion evidence. As Dr. Okun's December 16, 1998 report does not contain medical rationale for his stated conclusions, his opinion is of diminished probative value and, thus, his report is not sufficient to create a conflict in the medical evidence or to overcome the weight of the medical evidence as represented by the reports of Dr. Yamkoski.

The decision of the Office of Workers' Compensation Programs dated February 4, 1999 is affirmed.

Dated, Washington, D.C.
November 15, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member