

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JENNY F. QUAN and U.S. POSTAL SERVICE,  
POST OFFICE, Los Angeles, CA

*Docket No. 03-220; Submitted on the Record;  
Issued April 10, 2003*

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DECISION and ORDER

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

The issue is whether appellant was totally disabled for the period November 15 to December 19, 2001, causally related to her accepted employment injuries.

The Office of Workers' Compensation Programs accepted that on June 15, 1994 appellant, then a 45-year-old letter carrier, sustained bilateral plantar fasciitis and a right heel spur in the performance of her ambulatory letter carrier duties, for which she underwent surgery on August 12, 1994 for the left foot and on September 7, 1999 for the right foot. Concurrent disability not due to injury was noted to include left foot sesamoiditis.<sup>1</sup> Appellant received appropriate compensation benefits and was able to resume work intermittently during the year 2000 and again on July 2, 2001 performing limited duty with restrictions of sitting no more than 6 hours, standing no more than 1 hour and no lifting, pushing, or pulling more than 20 pounds.<sup>2</sup>

Appellant was performing limited duty when, on November 15, 2001, she stopped work and filed a claim for temporary total disability beginning that date for the period November 15 to December 15, 2001. On November 20, 2001 she filed another Form CA-7 claim for compensation for wage loss from November 19 to December 19, 2001. In support of her claim, appellant submitted a November 15, 2001 Form CA-20 attending physician's report from Dr. S. Patrick Lai, a podiatric surgeon, who diagnosed "fibrous adhesion surgical site r[ight] heel with keloid" which he indicated was status post right heel surgery. Dr. Lai indicated that appellant had painful scarring at present, which was employment related and opined that she was totally disabled for the period November 15 to December 15, 2001. He noted that he did not advise her that she could return to work and he indicated that she had "fibrous adhesions involving [the] Achilles tendon [of the] right heel with severe pain on standing and [illegible] motion, also risk of rupture." Dr. Lai recommended surgical revision of the right heel.

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<sup>1</sup> This left foot condition was accepted under claim No. 13-0923200.

<sup>2</sup> These restrictions were specified by Dr. Matthew Y.C. Lin, a Board-certified orthopedic surgeon.

Also submitted were August 27, November 7 and 19 and December 17, 2001 reports from Dr. Lin.

In an August 27, 2001 report, Dr. Lin indicated that appellant was working light duty within his previously specified work activity restrictions, but was still complaining of a lot of right heel pain where there was keloid formation. He recommended warm water soaks and continued light duty.

By report dated November 7, 2001, Dr. Lin noted that appellant had a large keloid formation of the right ankle and that she claimed that this keloid had gradually become more painful and she requested further treatment. He noted that examination demonstrated a large keloid formation near the Achilles tendon insertion region with some local tenderness, thinning of the skin and some contracture, and that appellant walked with a minimal limp on the right. Dr. Lin recommended a plastic surgery consult but did not provide any opinion as to disability.

By CA-20 attending physician's form report dated November 19, 2001, Dr. Lin diagnosed Achilles tendinitis with keloid formation, indicated that appellant was totally disabled for the period November 19 through December 19, 2001 and noted that she was partially disabled for the period November 15, 2001 through January 15, 2002. He remarked that "Light-duty job [with] no heavy lifting, no pushing or pulling over 20 pounds, no prolonged standing or walking for over an hour each day. If no light duty, [appellant] should be disabled."

By narrative report dated December 17, 2001, Dr. Lin diagnosed "large keloid formation, right ankle joint," he noted local tenderness but a softer scar and indicated that appellant was still not able to stand or walk for any prolonged period of time. He indicated that appellant's large keloid formation was causing pain with prolonged walking and standing, and he recommended appellant return to light duty consistent with the activity restrictions he enumerated in his November 19, 2001 report. Dr. Lin recommended that appellant return to sedentary work until her ankle healed and he remarked that "if such light-duty job is available, I will release her on December 19, 2001."

In a Form CA-20 attending physician's report dated December 18, 2001, Dr. Lin diagnosed "calcaneal spur Ach[i]ll[e]s tend[i]n[i]t[i]s/burst," noted that he had recommended physical therapy three times per week for four weeks and indicated that appellant was totally disabled from November 19 through December 18, 2001 and partially disabled thereafter for the period December 19, 2001 through March 19, 2002. He indicated that he had advised appellant that she could return to light duty on December 19, 2001 and he provided her light-duty activity restrictions.<sup>3</sup>

On December 18, 2001 the employing establishment offered appellant a limited-duty position performing carrier markups and centralized forwarding which appellant accepted on

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<sup>3</sup> Dr. Lin required light duty with no heavy lifting over 20 pounds, no pushing or pulling over 20 pounds, no prolonged standing or walking for over 1 hour each day, no continuous walking or standing combined for over 10 minutes each time. These were essentially the same restrictions he had articulated before.

December 20, 2001.<sup>4</sup> The Office noted that the current medical documentation indicated that she was capable of performing temporary limited-duty work effective December 19, 2001.

By decision dated February 1, 2002, the Office rejected appellant's claim for compensation finding that the medical evidence from her treating physician, Dr. Lin, did not establish total disability for work for the period November 19 through December 19, 2001, as his opinion that appellant was disabled for that period rested on the false assumption that no light duty was available to appellant.

Appellant disagreed with this decision and requested a review of the written record by an Office hearing representative.

In support appellant also submitted a March 18, 2002 report from Dr. Lin, who diagnosed status post excision of calcaneal spur with keloid formation and indicated that appellant was able to walk but not able to stand for any prolonged period of time. He further noted: "[Appellant] did not have a light-duty job from November 19 until December 19, 2001. She was offered a light-duty job on December 19, 2001. She did return to work on December 20, 2001. No light-duty job was available or offered to her, I believe she is qualified to be on temporary total disability from November 19 until December 19, 2001."

In support she submitted a March 26, 2002 narrative report from Dr. Lai which noted her complaints of a very painful right heel which worsened on extended standing or walking, observed that she had keloid formation with marked fibrous adhesion over a linear posterior surgical incision line with pain to palpation of the right heel and pain on dorsiflexion of the right ankle with a thickened and taut Achilles tendon, and opined as follows:

"Painful right heel due to Achilles tendinitis with marked fibrous adhesion and keloid formation over the surgical incision line of the posterior right heel. Limited dorsiflexion of the right ankle due to taut Achilles tendon. Despite surgery, a large superio[r]-posterior prominence of the calcaneus and a sword-shaped posterior calcaneal spur are shown on x-ray film taken November 15, 2001.

"Recommend continuation of conservative treatments and rest. [Appellant] was authorized by me to be temporary (sic) disabled for four weeks from November 15 to December 15, 2001 so that [she] could rest her right foot and avoid stretching the swollen Achilles tendon. If conservative treatments fail to give adequate relief, surgical intervention of excision of fibrous adhesion, revision of hypertrophic scar, and excision of retrocalcaneal prominence and posterior calcaneal spur may be considered."

By decision dated August 28, 2002, the hearing representative set aside the February 1, 2002 decision and remanded the case for further development, noting that Dr. Lin's report established that appellant was capable of light-duty work and that his finding of total disability

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<sup>4</sup> This limited-duty position was consistent with Dr. Lin's December 18, 2001 work activity restrictions and was virtually the same limited-duty job she had been performing prior to her November 15, 2001 work stoppage.

was predicated upon the absence of any available light duty at the employing establishment. The hearing representative found that the employing establishment stated that light duty was available, but that there was no evidence in the case record advising appellant that such light duty was available. The hearing representative found that the Office should require the employing establishment to submit a statement verifying that light duty was available and then issue a *de novo* decision. The hearing representative found that Dr. Lin's reports outweighed the report of Dr. Lai but did not explain why.

In a September 20, 2002 letter, the employing establishment noted, in response to the Office's question of whether limited duty was work available from November 11 to December 19, 2001, that "Prior of [appellant] being taken off work she did have a job assignment. That assignment was given to her when she returned from her prior disability.... Also would like to point out that Dr. Patrick Lai completed a Form CA-20 dated November 15, 2001 taking her off work...." The employing establishment indicated that Dr. Lai was not appellant's physician of record.

By decision dated October 7, 2002, the Office denied appellant's claim for compensation for the period November 19 through December 19, 2001. It found that Dr. Lin's reports outweighed Dr. Lai's report as Dr. Lai was not appellant's treating physician, which diminished its probative value, and that, since Dr. Lin's finding of total disability was predicated upon the lack of light duty available and since the employing establishment now indicated that limited duty was continuously available, appellant was not totally disabled for the period claimed.

The Board finds that this case is not in posture for decision.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that she cannot perform the light duty.<sup>5</sup> As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.<sup>6</sup>

In this case, appellant returned to light duty on July 2, 2001 working with the activity restrictions recommended by Dr. Lin. She worked successfully at that limited-duty position until November 15, 2001 when Dr. Lai found her to be totally disabled due to increased pain, a taut swollen Achilles tendon and Achilles tendinitis with marked fibrous adhesions and keloid formation over the surgical incision line of the posterior right heel. Dr. Lai opined that appellant was totally disabled due to her right heel conditions and consequential scarring for the period November 15 to December 15, 2001. Dr. Lai's reports, therefore, support appellant's recurrence claim by identifying a change in the nature and extent of her injury-related conditions.

The Board notes that, in his November 7, 2001 report, Dr. Lin also noted that appellant had a large keloid formation of the right ankle which had gradually become more painful until

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<sup>5</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>6</sup> *Id.*

that date when she finally sought treatment for the condition. He noted upon examination that appellant had a large keloid formation near the Achilles tendon insertion region with local tenderness, thinning of the skin and some contracture, which caused a minimal limp and he recommended a plastic surgery consultation. In this report, Dr. Lin did not discuss whether appellant was disabled by these findings; however, on November 19, 2001 he found that appellant was disabled for the period November 19 through December 19, 2001. These reports from Dr. Lin ostensibly support that appellant experienced a November 2001 change in the nature and extent of her injury-related conditions and their sequelae.

On November 19, 2001 Dr. Lin diagnosed Achilles tendinitis, which would be a change in the nature and extent of appellant's injury-related conditions and their sequelae, and indicated that appellant was totally disabled for the period November 19 through December 19, 2001, and partially disabled for the period November 15 through January 15, 2002. Dr. Lin provided work activity restrictions for appellant's return to light duty which were essentially the same as his earlier restrictions. The Board notes that these periods of partial and total disability are inconsistent as they overlap and Dr. Lin failed to provide any explanation of the overlap. However, in his subsequent December 18, 2001 report, Dr. Lin specifically stated that he was releasing appellant to return to light duty on December 19, 2001, which possibly implies that he considered her to be totally disabled prior to that date, but not necessarily solely or specifically due to the lack of limited duty.

In yet a subsequent March 18, 2002 report, Dr. Lin stated that appellant was totally disabled for the period November 19 until December 19, 2001 but he opined that this was because no light duty was available or offered to appellant. The Board notes that this rationale is inconsistent with his August 27, 2001 report in which he acknowledged that appellant was continuing to work limited duty in accordance with his previously specified work activity restrictions. As Dr. Lin noted that on August 27, 2001 that appellant was continuing to work limited duty in accordance with his restrictions but was having consistent right heel pain, that on November 7, 2001 her keloid formation was gradually becoming more painful causing her to seek treatment and that on November 19, 2001 appellant had Achilles tendinitis, the Board is not persuaded that the Office's interpretation that Dr. Lin found appellant capable of light duty beginning November 15, 2001 when she stopped light-duty work in accordance with Dr. Lai's recommendations, is correct. Dr. Lin instead seems to have documented a gradual worsening of appellant's discomfort accompanied by the development of Achilles tendinitis from August 27 to November 19, 2001, when he opined that she was totally disabled. In his November 19, 2001 report, Dr. Lin did not mention that appellant was totally disabled due to lack of limited duty and in his December 17, 2001 report he indicated that appellant could return to limited duty on December 19, 2001 if available. These inconsistencies reduce the probative value of Dr. Lin's reports

In this case, Dr. Lai, a podiatric surgeon,<sup>7</sup> opined that appellant became totally disabled for the period November 15 to December 15, 2001 due to positive x-ray findings, fibrous adhesions at the injury-related surgical site with keloid formation involving the Achilles tendon, and a taut, swollen Achilles tendon. Therefore, Dr. Lai's reports identify a change in the nature

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<sup>7</sup> A podiatric surgeon is a specialist in the treatment of foot disorders.

and extent of appellant's injury-related conditions and their sequelae, support disability for the period claimed and are not of diminished probative value simply because he was not the authorized treating physician, as the Office improperly found.

Dr. Lin also noted that appellant had injury-related keloid formation that was gradually becoming more painful, despite appellant working light duty, which would be a change in the nature and extent of her injury-related conditions and their sequelae, and on November 19, 2001 he diagnosed Achilles tendinitis with a large keloid formation, thinning of the skin and some contracture, causing appellant to walk with a minimal limp. He opined that appellant was totally disabled for the period November 19 through December 19, 2001 ostensibly due to her right ankle and foot condition, but also simultaneously indicated that appellant was partially disabled for the period November 15, 2001 through January 15, 2002, without further explanation given for this determination. In a later report, however, Dr. Lin seemed to contradict himself by stating that appellant was disabled for that period, not due to Achilles tendinitis, but because no light duty was available, despite his demonstrated knowledge, as evidenced in his August 27, 2001 report, that appellant had been working light duty in accordance with his previous activity restrictions prior to November 15, 2001. Because Dr. Lin's reports are not entirely clear or consistent with each other, the Board finds that they cannot constitute the weight of the medical evidence in this case and therefore do not establish or controvert that appellant sustained a change in the nature and extent of her injury-related conditions or their sequelae.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>8</sup> This holds true in recurrence claims as well as in initial traumatic and occupational claims. In the instant case, although none of appellant's physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained a recurrence of total disability commencing November 15, 2001, causally related to her 1999 surgery, they constitute substantial evidence in support of appellant's claim and raise an inference of causal relationship between her November 15, 2001 allegedly disabling complaints and disability and her original occupational injuries, that is sufficient to require further development of the case record by the Office.<sup>9</sup> Additionally, as Dr. Lin's reports are conflicting, there is no substantive opposing medical evidence in the record.

Therefore, the case must be remanded for further development including a referral of appellant, together with a statement of accepted facts, specific questions to be addressed and the relevant case record, to a Board-certified foot specialist, for a rationalized second medical opinion as to whether appellant sustained a change in the nature and extent of her injury-related conditions, and was, therefore, totally disabled for the period November 15 to December 19, 2001, causally related to consequential sequelae of her 1999 right foot surgery or to her accepted occupationally-related foot conditions.

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<sup>8</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Consequently, the decisions of the Office of Workers' Compensation Programs dated October 7, August 28 and February 1, 2002 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC  
April 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member