U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFRED LAWSON and U.S. POSTAL SERVICE,
POST OFFICE, Tacoma, WA

Docket No. 03-760; Submitted on the Record;
Issued August 19, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits effective March 6, 2001.

On April 14, 1999 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim stating that on April 13, 1999 he was involved in a motor vehicle accident while in the performance of duty. The Office accepted his claim for left rib contusion, cervical strain, left knee contusion, left knee strain and temporary aggravation of left meniscus tear.[1] Appellant returned to limited duty on Apri115, 1999.

By decision dated August 4, 2000, the Office terminated appellant's compensation, as the weight of the medical evidence established that he no longer had any residuals of the

[1] The record indicates that appellant had a preexisting left knee injury No. 14-033239 and 14-0336233 and on August 28, 1998 he underwent a left medial and lateral meniscectomy. He also had a preexisting right ankle injury, wherein he received a schedule award for a 10 percent impairment to the right leg, No. 14-0337213

April 13, 1999 motor vehicle accident.[2] The Office based its decision on the June 6, 2000 report of Dr. Irving Tobin, a Board-certified orthopedic surgeon and impartial medical examiner.[3]

On August 7, 2000 appellant requested a hearing. He also submitted an August 7, 2000 report from Dr. Bede, who stated that appellant had a "permanent physical impairment to his right hind foot as a result of the industrially-related motor vehicular accident of April 13, 1999."

In a decision dated December 13, 2000, the Office hearing representative found that the claim was not in posture for a hearing. He found that Dr. Tobin's report was vague and without rationale and directed the Office to refer appellant for another impartial evaluation. He also directed the Office to amend the statement of accepted facts to include that appellant's right foot was caught under the pedal, when the accident occurred.

On February 1, 2001 the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. William Thieme, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a February 16, 2001 report, Dr. Thieme noted appellant's history of injury and treatment. He diagnosed: advanced right subtalar degenerative arthritis and moderate right mid-tarsal degenerative arthritis with mild residual pain; bilateral pes planus, which was asymptomatic; and fusion left knee with history of arthroscopic medial meniscectomy in 1998, all of which were unrelated to the motor vehicle accident of April 13, 1999. Further, he indicated that appellant's right ankle preexisting osteoarthritis of the subtalar joint was not aggravated by the motor vehicle accident of April 13, 1999. Dr. Thieme explained that there was no evidence from the medical records that appellant injured his ankle or foot at the time of the motor vehicle accident. He noted that appellant did not go for emergency treatment until the day following the accident and made no complaints of ankle pain and neither his ankle nor his foot was examined. Further, Dr. Thieme indicated that appellant was discharged ambulatory and returned to light duty four days after the injury with no restriction on walking. He also pointed out that, in Dr. Bede's April 20 and May 11, 1999 reports, there were no complaints of ankle or foot pain and no treatment provided for the ankle or foot. Dr. Thieme explained that, six weeks following the motor vehicle accident on May 27, 1999, complaints of right ankle or foot pain

[2] On February 23, 2000 the Office issued a notice of proposed termination of compensation.

[3] The Office determined that a conflict existed between the opinions of Drs. W. Brandt Bede and Neal Shonnard, both of whom were Board-certified orthopedic surgeons. Dr. Bede indicated that appellant's preexisting right ankle condition was aggravated by the employment injury, while Dr. Shonnard opined that his symptoms were related to the preexisting disease and, were unaffected by appellant's employment injury. In his June 6, 2000 report, the impartial medical examiner, Dr. Tobin noted that appellant had preexisting osteoarthritis of the right subtalar joint of a moderately advanced degree and had early degenerative changes of the talotibial joint. He stated that the arthritic changes in both areas preexisted the industrial incident of April 13, 1999 although there was no question that the incident of April 13, 1999 was a definite factor in the recurrence of appellant's pain. Dr. Tobin specified that "[t]his was not in any way to suggest or indicate that the arthritic condition, *per se*, that is the anatomical and physiological aspects of that disease process, were altered by the incident, but the incident has produced appellant's awareness of pain." He added that the aggravation was of a permanent nature and it was unlikely that appellant would ever be free of pain, as far as the subtalar and right ankle arthritis are concerned.

were made. He then determined that in the absence of any complaints during that period it was improbable that appellant suffered an ankle or foot injury on April 13, 1999.

By decision dated March 6, 2001, the Office found that the weight of medical evidence established that appellant no longer suffered residuals of the left knee, cervical strains, left rib and left pelvis and the preexisting osteoarthritis was not worsened by the accident.

By letter dated March 12, 2001, appellant requested a hearing, which was held on November 7, 2001. At the hearing, he submitted an October 26, 2001 report from Dr. Eddie Davis, a podiatrist, who stated that it was possible that the accident affected primarily the subtalar joint, more than the ankle, while the ankle joint may have had residual affects from the sprain he had previously and together the severe arthritis in the right subtalar joint would under normal circumstances need to be treated via subtalar joint fusion or more likely a triple arthrodesis. He also provided an impairment rating.

By decision dated February 5, 2002, the Office hearing representative affirmed the Office's March 6, 2001 termination of benefits, finding that appellant's right ankle condition was not aggravated by the April 13, 1999 accident and there was no medical evidence to support that appellant continued to have residuals of the employment injury of April 13, 1999.

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits effective March 6, 2001.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[4] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[6] 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.[7]

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Bede, appellant's Board-certified orthopedist and Dr. Shonnard, a Board-certified orthopedic surgeon and Office referral physician.[8] Therefore, the Office properly referred appellant to an

[4] *Curtis Hall,* 45 ECAB 316 (1994).

[5] *Jason C. Armstrong,* 40 ECAB 907 (1989).

[6] *Furman G. Peake,* 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[7] *Calvin S. Mays,* 39 ECAB 993 (1988).

[8] As previously noted, appellant's treating physician reported that his right ankle condition was aggravated by the April 13, 1999 injury and he continued to be disabled, while Dr. Shonnard, the Office referral physician, indicated that appellant no longer had any residuals of the accepted work injury and his right ankle condition was not aggravated by the April 13, 1999 injury. *See supra* note 3.

impartial medical examiner,[9] Dr. Thieme, a Board-certified orthopedic surgeon. The impartial medical examiner diagnosed advanced right subtalar degenerative arthritis and moderate right mid-tarsal degenerative arthritis with mild residual pain; bilateral pes planus, which was asymptomatic; and fusion left knee with history of arthroscopic medial meniscectomy in 1998 and opined that they were unrelated to the motor vehicle accident of April 13, 1999. Dr. Thieme noted the records and history of injury and explained that appellant's right ankle preexisting osteoarthritis was not aggravated by the motor vehicle accident of April 13, 1999 as there was no evidence from the medical records at the time of the accident that his foot or ankle was injured. He noted that appellant did not make any complaints of ankle or foot pain on the date of the injury and appellant was returned to light duty four days after the incident with no restrictions on walking. Dr. Thieme also explained that because there were no complaints of foot or ankle pain until six weeks after the date of injury, there was no evidence appellant injured his foot or ankle at the time of the motor vehicle accident.

The Board finds that the Office properly relied on the impartial medical examiner's February 16, 2001 report as a basis for terminating benefits. Dr. Thieme's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed his medical records. Dr. Thieme also reported accurate medical and employment histories. The Office properly accorded determinative weight to the impartial medical examiner's February 16, 2001 findings.[10] Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, he must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.[11]

Appellant submitted an October 26, 2001 report from Dr. Davis, who indicated that it was possible that the accident affected the subtalar joint more than the ankle. However, he did not explain how or why the accepted employment injury would cause this condition, as it was preexisting. Without such medical rationale addressing the crucial issues of causal relationship and continuing disability, his reports are of diminished probative value.[12] Further, his report was

[9] The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994). A simple disagreement between two physicians does not, of itself, establish a conflict. To constitute a true conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale. 20 C.F.R. §§ 10.321(a), 10.502 (1999); *see Robert D. Reynolds*, 49 ECAB 561, 565-66 (1998).

[10] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[11] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

[12] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

speculative.[13] Consequently, appellant has not established that his condition on and after March 6, 2001 was causally related to his accepted employment injury.

The February 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[13] The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).