

January 7, 2003 reported increased osseous activity at the plantar aspect of the right calcaneus. Appellant's attending podiatrist, Dr. Joseph Anain, Jr., diagnosed a calcaneal stress fracture as a result of federal employment. The Office accepted the claim for a right calcaneal spur.

The Office referred appellant for a second opinion examination by Dr. John Aquino, a podiatrist. In a report dated June 17, 2003, Dr. Aquino provided a history and results on examination. He diagnosed a probable chronic heel spur syndrome; he indicated that although he could not rule out a stress fracture there did not appear to be a stress fracture based on the magnetic resonance imaging (MRI) scan. Dr. Aquino reported that, although appellant's heel spur syndrome had not resolved, he could return to full-time work with physical restrictions. In a report dated August 20, 2003, Dr. Anain indicated that appellant should remain off work.

The Office found that a conflict in the medical evidence existed. A statement of accepted facts and medical record were sent to Dr. Elizabeth Doherty, a neurologist. In a report dated May 19, 2004, Dr. Doherty provided results on examination and indicated that she was not sure why the case had been referred for neurological examination. Dr. Doherty reported that she would defer to more appropriate specialists.

The case was referred to Dr. David Nichols, a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated August 4, 2004, he provided a history and results on examination and reviewed evidence of record. Dr. Nichols reported that appellant complained of pain on palpation of the plantar aspect to the right heel, otherwise the examination was normal. He diagnosed a plantar spur. Dr. Nichols indicated that the evidence included a videotape from an investigation of appellant performing various activities from September 17, 2003 to January 8, 2004.¹ He further stated in pertinent part:

“[Appellant's] job requirements, which included walking five to six miles per day, were a temporary aggravation of a preexisting condition. His plantar spur was present on the MRI scan dated October 16, 2002. Plantar spurs take many years to develop. [Appellant] experienced pain with walking. His bone scan showed increased activity on the right foot in the area of the plantar spur in January 2003. Another bone scan done in July 2003 showed no increased activity in the right plantar spur area indicating healing and resolution of increased bone activity in the plantar spur on the right foot.

“Viewing the audiovisual presentation indicates that [appellant] was able to walk, climb and stand on his right foot without any assistive device. This indicates resolution of the previous disability that he had from the calcaneal spur.”

Dr. Nichols completed a work capacity evaluation (Form OWCP-5c) which indicated that appellant could return to work without restriction.

In a letter dated October 4, 2004, the Office advised appellant that it proposed to terminate his compensation on the grounds that the medical evidence showed that his

¹ The record contains an investigative memorandum from the employing establishment regarding appellant's activities while receiving compensation for wage loss.

employment-related condition had resolved. By decision dated November 30, 2004, the Office terminated compensation for wage-loss and medical benefits.

Appellant requested an oral hearing before an Office hearing representative, which was held on May 26, 2005. In a report dated January 10, 2005, Dr. Paul Anain, a vascular surgeon, stated that appellant had been under his care for venous insufficiency, with bilateral leg swelling, resulting from an injury at work on May 1, 2001.

By decision dated September 19, 2005, the Office hearing representative affirmed the November 30, 2004 termination decision. The hearing representative found that the weight of the evidence rested with Dr. Nichols.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.³ The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴

The Federal Employees' Compensation Act provides that, if there is a 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 the examination.⁵ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶

It is well established that, when 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.⁷

² *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

³ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁴ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁵ 5 U.S.C. § 8123(a).

⁶ 20 C.F.R. § 10.321 (1999).

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS

In the present case, there was a disagreement between the attending podiatrist, Dr. Anain and a second opinion podiatrist, Dr. Aquino, with respect to the degree of disability from the accepted conditions of plantar fasciitis and calcaneal spur. There was also a disagreement as to the diagnosis of a stress fracture as opposed to a calcaneal spur. The Office properly referred the case to an impartial medical specialist to resolve of the conflict pursuant to 5 U.S.C. § 8123(a).

In his August 4, 2004 report, the physician selected to resolve the conflict, Dr. Nichols, provided a reasoned medical opinion that appellant's employment-related condition had resolved. Although appellant argues that Dr. Nichols' report was not based on the statement of accepted facts because he did not accept a calcaneal spur as employment related, Dr. Nichols did acknowledge that appellant's employment activities contributed to a plantar spur. He opined, however, that the plantar spur had resolved, noting the diagnostic tests and appellant's ability to engage in activities without assistance.

Dr. Nichols provided a complete background and a reasoned medical opinion on the issues presented. He provided an unequivocal opinion that appellant did not have a continuing employment-related condition. As a physician selected as an impartial medical specialist, his opinion is entitled to special weight. The Board finds that his opinion represents the weight of the medical evidence and therefore the Office met its burden of proof to terminate compensation in this case.

CONCLUSION

The Office properly terminated compensation effective November 30, 2004 as the weight of the medical evidence established that his employment-related condition had resolved.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2005 is affirmed.

Issued: April 20, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board