

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
King of Prussia, PA, Employer**

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**Docket No. 06-644  
Issued: August 10, 2006**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 25, 2006 appellant, through counsel, filed a timely appeal from a merit decision of an Office of Workers' Compensation Programs' hearing representative dated September 26, 2005, which affirmed the termination of his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 22, 2004 on the basis that he no longer had any disability or residuals due to his accepted employment injury.

**FACTUAL HISTORY**

On April 7, 2002 appellant, a 52-year-old mail handler, filed a traumatic injury claim alleging that on April 5, 2002 he fractured bones in his right foot when it got caught in a footrest. The Office accepted the claim for right foot multiple fractures and paid wage-loss compensation. In a letter dated August 26, 2002, appellant was placed on the periodic rolls for temporary total

disability. Appellant returned to part-time limited-duty working four hours a day on March 10, 2003.

In reports dated February 4 to April 1, 2003, appellant's treating physician Dr. Wen Chao, diagnosed metatarsal fractures. He noted x-rays revealed "mild degenerative changes across the tarsal metatarsal joints" and a physical examination revealed "tenderness to palpation along the second, third and fourth metatarsal heads on the right." On neurological examination, Dr. Chao, reported bilateral light touch sensation "around the entire foot and ankle region." A neurological examination conducted of April 1, 2003 revealed decreased sensation "to light touch due to neuropathy." He also reported an abnormal gait pattern and bilateral flat foot syndrome.

In a July 15, 2003 report, Dr. Steven J. Valentino, a second opinion osteopathic Board-certified orthopedic surgeon, diagnosed healed right foot multiple fractures. A physical examination of the foot showed normal hind foot, forefoot and midfoot evaluations, negative metatarsal compression tests and symmetric callus formation on plantar evaluation. He reviewed x-rays of February 4 and April 1, 2003, which revealed healed metatarsal multiple fractures and mild degenerative changes. A May 23, 2003 left shoulder x-ray interpretation showed "moderate to prominent degenerative arthritic changes" and "similar degenerative changes about the lumbar spine with spondylolysis at L5-S1." As to appellant's accepted condition of right foot multiple fractures, he concluded that the fractures had resolved and there were no continuing residuals based upon the normal foot examination.

In a June 24, 2003 report, Dr. Chao reported an abnormal gait, "misalignment and asymmetry in his right midfoot compared to the left" and "tenderness to palpation around the midfoot compared to the right." Diagnoses included midfoot arthritis and "[s]tatus post multiple metatarsal stress fracture." Dr. Chao opined that appellant "will have permanent residual effects from this injury."

The Office found a conflict in the medical opinion evidence between Dr. Chao and Dr. Valentino on the issue of the cause and extent of appellant's continuing disability. Appellant was referred to Dr. Richard P. Whittaker, a Board-certified orthopedic surgeon, selected as the impartial medical examiner.<sup>1</sup>

In a report dated September 22, 2003, Dr. Whittaker noted that he examined appellant, reviewed his magnetic resonance imaging scan, x-rays and the medical reports of record. He diagnosed obesity, diabetes with diabetic peripheral neuropathy, shoulder degenerative arthritis, extensive degenerative changes of the spine with spondylolisthesis unrelated to the April 5, 2002 employment injury and healed work-related metatarsal multiple fractures. On physical examination, appellant revealed "fairly good strength on dorsiflexion and plantar flexion." As to

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<sup>1</sup> Dr. Chao in his various reports diagnosed bilateral shoulder pain and right sciatica which he attributed to use of a specialized walker and crutches due to appellant's accepted employment injury. In a letter dated April 7, 2003, appellant's counsel requested the Office to expand acceptance of his claim to include a shoulder condition and aggravation of low back condition. In the referral letter to Dr. Whittaker, the Office also found a conflict in the medical evidence as to whether appellant's bilateral shoulder and back pain were consequence of using a specialized walker and crutches due to his April 5, 2002 employment injury.

the metatarsal multiple fractures, Dr. Whittaker opined that they had resolved based upon x-ray evidence showing the fractures had healed. He concluded that appellant's work condition resolved the date his metatarsal fractures healed and that symptoms after that date were related to his nonemployment-related degenerative conditions. Dr. Whittaker opined that appellant had no residuals due to his accepted employment injury and required no further medical treatment.

On October 14, 2003 the Office issued a notice of proposed termination of appellant's compensation on the basis that appellant had no continuing residuals or disability due to his accepted employment injury.

In a decision dated September 8, 2004, the Office finalized the termination of appellant's compensation. Appellant subsequently requested a hearing before an Office hearing representative, held on June 25, 2005.

By decision dated September 26, 2005, the Office hearing representative affirmed the September 8, 2004 decision terminating appellant's compensation. The hearing representative found Dr. Whittaker's report sufficient to establish that appellant had fully recovered from the accepted right foot multiple fractures.<sup>2</sup>

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>3</sup> After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>6</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "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

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<sup>2</sup> Although the Office found a conflict in the medical opinion evidence as to appellant's alleged consequential shoulder condition and low back condition, it has not issued. As the Office has not issued a final decision, the Board may not address this aspect of appellant's claim for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>3</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> *James F. Weikel*, 54 ECAB 660 (2003).

an examination.”<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

In this case, the Office properly determined that a conflict existed in the medical opinion evidence as to whether appellant had any residuals due to his accepted his April 5, 2002 employment injury. Dr. Chao, a treating physician, opined that appellant had permanent residuals from his accepted employment injury while Dr. Valentino, an Office referral physician, opined that the accepted fractures had resolved.

In a report dated September 22, 2003, Dr. Whittaker, based upon a review of the medical records, statement of accepted facts and physical examination, concluded that appellant’s right foot multiple fractures had resolved. The physical examination revealed “fairly good strength on dorsiflexion and plantar flexion” and Dr. Whittaker found that the metatarsal multiple fractures had healed based upon x-ray evidence. He concluded that appellant’s work condition resolved the date his metatarsal fractures healed and that appellant’s symptoms after that date were related to his preexisting degenerative conditions. Dr. Whittaker opined that appellant had no residuals due to his accepted employment injury and required no further medical treatment.

The Board finds that Dr. Whittaker’s September 22, 2003 report is sufficiently well rationalized and based upon a proper factual background. Dr. Whittaker examined appellant, reviewed the medical records and reported accurate medical and employment histories. His opinion is entitled to special weight as the impartial medical specialist.<sup>9</sup> The weight of the medical evidence establishes that appellant’s accepted right foot multiple fractures has resolved. The Office properly terminated his wage-loss compensation and medical benefits based on the weight of the medical evidence of record.

### CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant’s wage-loss compensation and medical benefits effective January 22, 2004.

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<sup>7</sup> 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>8</sup> *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>9</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve the conflict in the medical opinion evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Bryan O. Crane*, 56 ECAB \_\_\_\_ (Docket No. 05-232, issued September 2, 2005); *Gary R. Sieber*, *supra* note 8 at 225.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 26, 2005 is affirmed.

Issued: August 10, 2006  
Washington, DC

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

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