

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

SOLINA SIMMONS, Appellant)
and) Docket No. 05-1082
U.S. POSTAL SERVICE, PROCESSING &) Issued: January 12, 2006
DISTRIBUTION CENTER, Carol Stream, IL,)
Employer)

)

Appearances:
Solina Simmons, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 15, 2005 appellant filed a timely appeal of the January 26, 2005 merit decision of the Office of Workers' Compensation Programs, which terminated wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.¹

ISSUE

The issue is whether the Office properly terminated appellant's wage-loss compensation and medical benefits effective January 27, 2005 on the basis that she no longer had any disability or residuals due to her accepted employment injury.

¹ The record also includes a March 21, 2005 schedule award decision. The Board, however, will not exercise jurisdiction over the March 21, 2005 decision because there is an outstanding request for an oral hearing before the Branch of Hearings & Review. This matter is in an interlocutory position before the Office.

FACTUAL HISTORY

Appellant, a 50-year-old mail processor, has an accepted claim for bilateral tarsal tunnel syndrome, which arose on or about September 12, 2002. Appellant's podiatrist, Dr. Ronald P. Pieroni, released her to perform limited-duty work effective January 4, 2002.

In January 2003, appellant missed several days' work due to tarsal tunnel syndrome and knee pain. She explained that she developed a knee effusion and a calf sprain as a result of wearing orthotics. Because Dr. Pieroni treated only foot and ankle problems, appellant requested a change of physicians to Dr. Geoffrey S. Kuhlman, a Board-certified family practitioner.

In a January 10, 2003 report, Dr. Kuhlman indicated that appellant had bilateral tarsal tunnel syndrome and right patellofemoral pain. He recommended corticosteroid injections to treat appellant's bilateral tarsal tunnel syndrome. With respect to her right knee pain, Dr. Kuhlman stated that it developed shortly after initiating usage of custom orthotics in late 2002. He also indicated that it was very possible that the biomechanical changes induced by appellant's orthotics contributed to her knee pain. Dr. Kuhlman anticipated that appellant's knee pain would resolve after several months' adaptation to her orthotics. He noted that both conditions had improved somewhat with physical therapy and he recommended an additional four weeks of physical therapy, three times a week. In an April 2, 2003 report, Dr. Kuhlman indicated that appellant had also developed right anteromedial knee pain because of alteration of her gait in adaptation to tarsal tunnel syndrome, orthotic usage and patellofemoral pain. He recommended physical therapy and steroid injections.

Appellant continued to work limited duty and she occasionally missed work due to her injury and related medical treatment. The Office paid appellant appropriate compensation for intermittent wage loss.

The Office medical adviser did not agree that appellant's right knee pain was a result of her orthotic use. In a May 19, 2003 report, he explained that orthotics were not only used for tarsal tunnel syndrome, but were very often prescribed for patients with patellofemoral pain syndrome. Rather than a cause of this disorder, he explained that orthotics were actually used for treatment. He further stated that, while appellant may have patellofemoral pain syndrome, it was most likely not from the orthotics, but from other causes.

The Office referred appellant for a second opinion evaluation to determine whether her right patellofemoral condition should be considered a consequential injury resulting from the accepted employment injury.

In a report dated October 3, 2003, Dr. Julie M. Wehner, a Board-certified orthopedic surgeon and Office referral physician, noted that a March 11, 2003 right knee magnetic resonance imaging (MRI) scan revealed moderate to severe degenerative changes of the anterior medial compartment, joint effusion, popliteal cyst and a benign enchondroma in the distal femur. She also reviewed a September 23, 2002 electromyography (EMG), which showed mildly abnormal motor nerve conduction studies of the left medial nerve and both lateral plantar nerves. Dr. Wehner stated that, at the times of examination, appellant was not experiencing any knee pain because she reportedly had not been wearing her orthotic arches. She did not believe that

appellant's chondromalacia patella was caused by the tarsal tunnel syndrome in any way. Dr. Wehner explained that appellant appeared to have some ill-fitting orthotics and preexisting degenerative arthritis of her knee. Because orthotics were not a necessity, she advised against wearing them if they did not fit appellant properly. She further explained that any knee pain should be quickly resolved with discontinued use of the orthotics. Dr. Wehner found no evidence of bilateral tarsal tunnel syndrome and only some evidence of mild plantar fasciitis. She also indicated that there was no need for further diagnostic treatment, other than a repeat EMG. Dr. Wehner stated that there was no need for further physical therapy. She concluded that appellant's knee problem was not related to her tarsal tunnel syndrome and there were no restrictions based on the previously diagnosed tarsal tunnel syndrome.

A February 27, 2004 nerve conduction study revealed possible mild sensory polyneuropathy.

The Office found a conflict in medical opinions based on the respective findings of Dr. Kuhlman and Dr. Wehner.

In a July 26, 2004 report, Dr. Joseph G. Thometz, a Board-certified orthopedic surgeon and impartial medical examiner, noted that he examined appellant, reviewed her MRI scan, x-rays and diagnostic studies. He diagnosed bilateral foot pain. Dr. Thometz explained that there were no clear-cut findings of tarsal tunnel on physical examination. While appellant did have degenerative arthritis of the right knee, Dr. Thometz did not believe this condition was related to appellant's foot condition. He also did not believe that her knee condition was a result of her employment or that it developed from using custom orthotics. Dr. Thometz found that appellant had reached maximum medical improvement from her September 12, 2002 injury and no additional treatment was required regarding her bilateral foot condition. While appellant had permanent restrictions due to her underlying degenerative arthritis of the right knee, Dr. Thometz indicated that the restrictions were prophylactic and unrelated to her employment injury.

On November 17, 2004 the Office issued a notice of proposed termination of benefits. The Office found that the impartial medical examiner's July 26, 2004 report established that appellant no longer suffered from residuals of her accepted employment injury. Appellant was afforded 30 days to submit any additional evidence or argument.

By decision dated January 26, 2005, the Office terminated appellant's wage-loss compensation and medical benefits.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² 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.³ The right to medical benefits for an accepted condition is not limited to the period

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

of entitlement to compensation for disability.⁴ 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.⁵

ANALYSIS

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Kuhlman and Dr. Wehner. The Office properly referred appellant to an impartial medical examiner.⁶ Dr. Thometz, the impartial medical specialist, found that appellant did not have any clear-cut findings of ongoing tarsal tunnel syndrome and that additional medical treatment was not required. He further found that appellant's degenerative arthritis of the right knee was not employment related nor was it the result of appellant's foot condition or because of wearing custom orthotics. While appellant had permanent restrictions due to her knee condition, Dr. Thometz clearly indicated that these restrictions did not relate to her accepted employment injury. The Board finds that the Office properly relied on the impartial medical examiner's July 26, 2004 report in determining that appellant no longer was disabled or had residuals of her September 12, 2002 employment injury. Dr. Thometz's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed her medical records. Dr. Thometz also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.⁷ As the weight of the medical evidence establishes that appellant was no longer disabled or had residuals due to her accepted employment injury, the Office properly terminated appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective January 27, 2005.

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁶ 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).

⁷ 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).

ORDER

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

Issued: January 12, 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