

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

DIANA L. KADY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Poland, OH, Employer**

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**Docket No. 06-307
Issued: July 7, 2006**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 November 21, 2005 appellant filed a timely appeal from an October 31, 2005 decision of an Office of Workers' Compensation Programs' hearing representative who found that appellant's compensation benefits were properly terminated. 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 compensation benefits effective April 1, 2003 on the grounds that her accepted left foot conditions had resolved.

FACTUAL HISTORY

On September 2, 1998 appellant, then a 44-year-old letter carrier, sustained an employment-related left foot sprain when she twisted her foot while delivering mail. She returned to duty the next day. On January 24, 2000 the Office accepted that appellant sustained

an employment-related left Achilles tendon strain.¹ On May 30, 2000 and February 27, 2001, Dr. James D. Solmen, Board-certified in orthopedic surgery, performed surgical repairs. Appellant received appropriate compensation and, after both procedures, returned to limited duty.² In a September 19, 2002 report, Dr. Solmen advised that appellant had mild tenderness to palpation along the left Achilles tendon with excellent strength.

On November 11, 2002 the Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Oscar F. Sterle, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated December 10, 2002, he reviewed the record including the history of injury and appellant's complaints of weakness while carrying a mailbag down steps. On examination of the left ankle, the physician noted the surgical scars and found slight tenderness with full range of motion, good muscle strength and no neurological deficit in her left lower extremity. He diagnosed status post chronic Achilles tendinitis with debridement of the Achilles tendon and flexor hallucis longus tendon transfer due to her injuries and surgeries of May 30, 2000 and February 27, 2001. Dr. Sterle opined that, based on his examination, appellant had no residuals of the left foot and ankle condition but noted her report that she had difficulty walking down stairs and that she could not simulate carrying her mailbag due to a separate cervical spine injury. He advised that she had a temporary restriction that she could case but only deliver curb line until her cervical condition resolved. He concluded that he had no specific treatment recommendations. In an attached work capacity evaluation, he advised that she could work eight hours a day with the only restriction that she could not climb.

On December 20, 2002 the Office requested that Dr. Sterle clarify his opinion regarding whether appellant's current medical condition was caused by the accepted conditions and to explain the "no climbing" work restriction as he had opined that she had no residuals of the accepted conditions. In a January 2, 2003 report, Dr. Sterle advised that appellant had no residuals of the accepted conditions but was under medical management for conditions related to other work-related claims. He stated that the "no climbing" restriction was for her condition as a whole and concluded that there were no work restrictions based solely on her left foot and ankle employment injuries. On January 15, 2003 the Office asked Dr. Solmen to review Dr. Sterle's reports. In a February 11, 2003 report, he stated that he had not seen appellant since September 2002 and she had interim problems since that visit including stress fractures of the right lower extremity and cervical problems. She reported that her left ankle was feeling good and denied pain or other problems in the Achilles tendon region. On examination, left ankle range of motion and strength were within normal limits and the Achilles tendon was not tender to palpation. He diagnosed left Achilles tendinitis resolved status post debridement of her flexor hallucis longus tendon transfer and noted that she had reached maximum medical improvement.

¹ The two claims were adjudicated by the Office under file numbers 090455200 and 090444317 respectively, and were doubled, with the latter becoming the master file.

² On February 9, 2003 appellant filed a Form CA-1, traumatic injury claim, alleging that on January 13, 2003 she sustained a stress fracture of the toes of her right foot and stopped work on January 27, 2003. This claim is being developed by the Office under file number 092030696. She also has an accepted cervical strain, Office file number 092005388, and a right thumb injury claim, Office file number 092046234.

By letter dated February 27, 2003, the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that the accepted left ankle condition and disability had ceased. In a decision dated April 1, 2003, the Office terminated appellant's compensation benefits, effective that day, on the grounds that the medical evidence established that she no longer had residuals of her accepted left ankle condition.

On April 4, 2003 appellant, through her attorney, requested a hearing that was held on November 19, 2003. In a decision dated February 18, 2004, an Office hearing representative affirmed the April 1, 2003 decision. On March 7, 2004 appellant filed an appeal with the Board. By order dated August 27, 2004, the Board remanded the case to the Office for reconstruction of the case record it was incomplete.³

By decision dated November 9, 2004, the Office again terminated appellant's compensation benefits effective April 1, 2003. On November 14, 2004 appellant, through counsel, requested a hearing that was held on July 18, 2005. At the hearing appellant testified that she still experienced aching and burning in her Achilles tendon, but was no longer under medical care for the condition. She stated that she was working full time on a curb-line route that did not require climbing steps. Appellant submitted a January 16, 2004 attending physician's report in which Dr. Solmen noted normal range of motion and strength and diagnosed resolved left Achilles tendinitis. In an October 31, 2005 decision, an Office hearing representative affirmed the November 9, 2004 decision.

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. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for her left ankle condition on April 1, 2003. In reports dated December 10, 2002 and January 2, 2003, Dr. Sterle provided a second opinion evaluation for the Office. He reviewed the record, including the history of injury and appellant's complaints of weakness while carrying a mailbag down steps. Examination of the left ankle demonstrated full range of motion, good muscle strength and no neurological deficit in the left lower extremity. He diagnosed status post chronic Achilles tendinitis with debridement of the Achilles tendon and flexor hallucis longus tendon transfer due to her injuries and surgeries of May 30, 2000 and

³ Docket No. 04-1094.

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

February 27, 2001. He advised that she had no residuals of the left ankle injury and could work eight hours a day with the only restriction that she could not climb, explaining that it was a prophylactic restriction for her condition as a whole. He concluded that there were no work restrictions based solely on her left foot and ankle employment injuries.

The medical evidence, as represented by the opinion of Dr. Sterle, supports that appellant's left ankle condition resolved and she no longer disability or residuals due to the accepted condition. Appellant's attending physician, Dr. Solmen, advised on September 19, 2002 that appellant had mild tenderness along the Achilles tendon with excellent strength. In a February 11, 2003 report, he noted that she had no problems with the left ankle and found left ankle range of motion and strength were within normal limits and the Achilles tendon was not tender to palpation. He diagnosed a resolved left Achilles tendinitis. The record therefore does not support that appellant had any residuals of her accepted left ankle and Achilles tendon strains, and the Office met its burden of proof to terminate appellant's compensation benefits effective April 1, 2003.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 1, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 31, 2005 be affirmed.

Issued: July 7, 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