

on the periodic rolls in receipt of compensation. He returned to limited duty for four hours a day on August 16, 2003¹ and his compensation was appropriately reduced. He again stopped work on October 20, 2003, based on the recommendation of his attending podiatrist, Dr. Patricia Antero.

On December 9, 2003 the Office referred appellant, together with a statement of accepted facts, the medical record and a set of questions, to Dr. Howard Leslie Fowler, a Board-certified orthopedic surgeon. He was asked to determine the relationship of appellant's present condition to the work injury and to determine the extent and degree of any remaining disability.

By report dated December 16, 2003, Dr. Fowler noted appellant's long-standing history of insulin-dependent diabetes and that Dr. Antero had been treating him for eight years for problems with his right foot. He diagnosed chronic diabetic ulceration, of the right foot and opined that appellant was permanently restricted from returning to his regular duties as a letter carrier but could work modified duty, eight hours per day. Dr. Fowler advised that any restrictions placed on appellant were due to the diabetic ulceration and not because of a work injury. He opined that appellant's preexisting diabetic condition was the direct cause of the chronic diabetic ulceration and that his current disability was due to his diabetic condition. In a work capacity evaluation dated December 23, 2003, Dr. Fowler advised that appellant could work eight hours per day with permanent restrictions on walking, standing, twisting, bending, lifting, squatting, kneeling, climbing, stooping and operating a motor vehicle due to his chronic diabetic ulcer.

On January 23, 2004 the Office asked that an Office medical adviser respond to Dr. Fowler's report. In a January 27, 2004 report, the medical adviser concurred with Dr. Fowler's opinion that appellant's current disability was unrelated to work and was due to his long-standing diabetes with peripheral neuropathy, which caused a consequential foot ulceration. The Office provided the reports of Dr. Fowler and the Office medical adviser to Dr. Antero for her review. In a report dated March 1, 2004, she disagreed that appellant's current disability was solely due to his diabetic condition, stating that weight-bearing at work aggravated the condition.

The Office determined that a conflict in medical evidence was created between the opinions of Drs. Antero and Fowler regarding the relationship between appellant's current condition and work factors. It referred appellant, together with a statement of accepted facts with an addendum, a set of questions and the medical record, to Dr. H. Chester Boston, Board-certified in orthopedic surgery, for an impartial evaluation. He was asked whether the accepted work-related aggravation had ceased.

In a report dated April 28, 2004, Dr. Boston reviewed the medical record and appellant's long-standing diabetic history with bilateral peripheral neuropathy secondary to diabetes. He noted that since 1995, Dr. Antero had provided appellant with podiatric care, noting that since 1998 appellant had been treated for diabetic neuropathy and chronic ulceration involving the right foot. Dr. Boston advised that these findings were consistent with a natural history of

¹ The limited-duty position had restrictions of no walking, standing, lifting, squatting, kneeling, climbing; may reach, push, pull 2 to 4 hours per day; may drive 10 minutes to/from work; and must elevate foot 15 minutes per hour.

diabetic peripheral neuropathy and foot ulceration and were present long before appellant's January 15, 2003 injury. His examination of the plantar surface of the right foot revealed a chronic draining sinus. He did not support Dr. Antero's opinion that the condition was somehow related to appellant's work activities and concluded that there was no scientific or medical basis for ascribing appellant's foot condition to an occupational injury. Rather, it was due to the natural history of appellant's ongoing and incurable diabetic condition.

By letter dated May 25, 2004, the Office proposed to terminate appellant's compensation benefits on the grounds that he had no continuing employment-related disability. Appellant, through his attorney, disagreed with the proposed termination. In a decision dated July 7, 2004, the Office terminated appellant's compensation benefits effective that day, on the grounds that the medical evidence established that his current condition and disability were not employment related but due to his preexisting diabetic condition.

On July 16, 2004 appellant requested a hearing, that was held on March 31, 2005. At the hearing, appellant testified about his right foot condition and submitted reports from Dr. Antero dated August 13 and September 15, 2004 in which she reiterated her prior conclusions. In an April 25, 2005 report, Dr. Antero noted her review of Dr. Boston's report and stated that appellant's chronic foot ulcerations were aggravated by walking and standing at work. By decision dated August 8, 2005, an Office hearing representative credited the opinion of Dr. Boston, the impartial examiner and affirmed the July 7, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

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.² 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.³

Section 8123(a) of the Federal Employees' Compensation Act⁴ provides that 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 an examination.⁵ When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁶

² *Gloria J. Godfrey*, 52 ECAB 486 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8123(a); see *Geraldine Foster*, 54 ECAB 435 (2003).

⁶ *Manuel Gill*, 52 ECAB 282 (2001).

ANALYSIS -- ISSUE 1

The Office found that a conflict in the medical evidence had been created between the opinions of appellant's treating podiatrist, Dr. Antero and Dr. Fowler, a Board-certified orthopedic surgeon, who provided a second opinion evaluation for the Office. The conflict arose over whether appellant's continuing right foot condition was employment related. The Office properly referred appellant to Dr. Boston, Board-certified in orthopedic surgery, for an impartial evaluation.⁷

The Board finds Dr. Boston's report sufficiently well rationalized to establish that appellant's ongoing foot condition with ulceration and disability is not causally related to his employment factors.⁸ The Office met its burden of proof to terminate appellant's compensation benefits effective July 7, 2004.⁹ In a comprehensive report dated April 28, 2004, Dr. Boston advised that, while appellant continued to have a right foot ulcer, this condition was not related to employment factors but due to his preexisting, long-standing diabetic condition. He reviewed the medical record and appellant's history of bilateral peripheral neuropathy secondary to diabetes and reported that since 1995 Dr. Antero had provided appellant with podiatric care. Dr. Boston noted that since 1998, Dr. Antero had treated appellant for diabetic neuropathy and chronic ulceration involving the right foot. He advised that these findings were consistent with a natural history of diabetic peripheral neuropathy and foot ulceration and were present long before appellant's January 15, 2003 injury. He did not support Dr. Antero's opinion that the condition was related to appellant's work activities and concluded that there was no scientific or medical basis for ascribing appellant's foot condition to his employment, but to the progression of his ongoing diabetic condition.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had any continuing disability causally related to his accepted injuries.¹⁰ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹¹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹² Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the

⁷ *Supra* note 5.

⁸ *Manuel Gill, supra* note 6.

⁹ *Gloria J. Godfrey, supra* note 2.

¹⁰ *Manuel Gill, supra* note 6.

¹¹ *Id.*

¹² *Donna L. Mims, 53 ECAB 730 (2002).*

implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

ANALYSIS -- ISSUE 2

The medical evidence submitted after the July 7, 2004 termination of benefits consists of reports from Dr. Antero dated August 13 and September 15, 2004 and April 27, 2005. In these reports, Dr. Antero merely reiterated her opinion that employment factors had aggravated appellant's underlying right foot condition. A subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹⁴ The Board therefore finds that since appellant submitted insufficient medical evidence to establish that he continued to be disabled from the accepted employment-related aggravation of a right foot ulcer, he has not met his burden of proof.¹⁵

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 7, 2004. The Board further finds that appellant failed to meet his burden of proof to establish that he had any disability after July 7, 2004 causally related to employment.

¹³ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁴ *Richard O'Brien*, 53 ECAB 234 (2001).

¹⁵ *Leslie C. Moore*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 8, 2005 be affirmed.

Issued: March 8, 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