

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

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**S.H., Appellant**

**and**

**HOMELAND SECURITY, TRANSPORTATION  
SECURITY ADMINISTRATION, Reston, VA,  
Employer**

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**Docket No. 06-1387  
Issued: November 8, 2006**

*Appearances:*  
*John Whitehouse, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 19, 2006 appellant filed a timely appeal from the October 25, 2005 merit decision of the Office of Workers' Compensation Programs terminating his compensation benefits effective September 27, 2004 and a June 12, 2006 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision and the nonmerit decision in this case.

**ISSUES**

The issues on appeal are: (1) whether the Office properly terminated appellant's wage-loss compensation effective September 27, 2004; (2) whether appellant met his burden of proof to establish that he had any disability after September 27, 2004 causally related to the May 8, 2003 employment injury; and (3) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On June 4, 2003 appellant, then a 39-year-old transportation security screener, filed a traumatic injury claim alleging that, on May 8, 2003, he began to feel pain in his right foot while in the performance of duty.

In a report dated August 15, 2003, appellant's treating physician, Dr. Ewald R. Mendeszoon, Jr., a podiatrist, noted that appellant related that his right foot pain continued. He recommended physical therapy which he opined would "hopefully" address appellant's right foot calcaneal spur and plantar fasciitis.

On October 30, 2003 the Office accepted the claim for right foot calcaneus spur and plantar fasciitis. Appellant received appropriate compensation benefits. He was placed on temporary total disability on August 15, 2003 as the agency could not accommodate his injury-related condition.

A November 13, 2003 magnetic resonance imaging (MRI) scan of the right foot, read by Dr. Arie Herskovits, a diagnostic radiologist, found no evidence of abnormality of the fascia or soft tissue structures of the medial inferior mid foot. He noted that the flexor and extensor tendons of the foot and ankle appeared to be intact.

In a December 23, 2003 report, Dr. Joseph S. Barr, Jr., a Board-certified orthopedic surgeon and treating physician, diagnosed a chronic sprain of the right foot. He noted that an electromyography (EMG) examination conducted on December 18, 2003 did not reveal any abnormality of the right foot and that appellant did not have tarsal tunnel syndrome. Dr. Barr recommended physical therapy and electrical stimulation. In his March 9, 2004 report, Dr. Barr noted that appellant had "faithfully gone to physical therapy" but it had done little to relieve the pain in his foot. X-rays obtained that day did not reveal any evidence of bony abnormalities. Dr. Barr diagnosed "[m]edial right foot pain, cause undetermined." He referred appellant to Dr. Michael G. Wilson, a Board-certified orthopedic surgeon.

In a May 10, 2004 report, Dr. Wilson noted that the MRI and EMG scans were normal. He conducted an examination and found that appellant was tender over the Baxter's nerve and the medial cord insertion of his Achilles plantar fascia. Dr. Wilson determined that appellant "appears to have some slight heel cord symptoms."

By letter dated May 25, 2004, the Office referred appellant for a second opinion examination, with Dr. Richard B. Hawkins, a Board-certified orthopedic surgeon.

In a June 17, 2004 report, Dr. Hawkins noted appellant's history of injury and treatment which included that the December 18, 2003 EMG of the right foot was "negative with no evidence of tarsal tunnel syndrome." He conducted a physical examination and noted that appellant walked normally and had full range of motion of both feet and ankles. Dr. Hawkins also advised that there was no swelling and that appellant had tenderness over the medial heel of the right foot. He also indicated that no Achilles tendon tenderness was present, dermatome sensation was normal and deep tendon reflexes were normal, bilaterally. Dr. Hawkins concluded that there "were no physical findings to warrant ongoing disability" and that appellant had

returned to his preinjury status. He opined that appellant could return to full, unrestricted duties as a transportation security screener.

In an August 2, 2004 treatment note, Dr. Barr opined that appellant had pain in the right foot, with an undetermined cause. He continued to treat appellant for right foot pain.

On August 18, 2004 the Office proposed to terminate appellant's compensation for wage-loss and medical benefits for the reason that appellant's work-related condition had ceased. The Office found that the report of Dr. Hawkins carried the weight of the medical evidence.

In a response received by the Office on August 30, 2004, appellant disagreed with the Office's proposal to terminate his compensation. He alleged that his work-related condition had not improved and he was still in pain that limited his ability to walk and stand. Appellant contended that he had not returned to his preinjury status.

In an August 16, 2004 work capacity evaluation, Dr. Barr diagnosed right foot calcaneus spur and plantar fasciitis. He checked the box "no" in response to whether appellant could return to his usual job and advised that appellant's restrictions were indefinite. Dr. Barr also advised that there was no change in his examination of the foot.

In an August 6, 2004 report, Dr. Wilson noted that appellant was still having persistent pain in the plantar aspect of the right heel. He noted that the MRI scan was reviewed which showed no abnormality and advised that a repeat MRI scan "ought to at least have some signs on the MRI scan of the plantar fasciitis." Dr. Wilson noted that appellant was "tender at the anteromedial heel."

In an October 16, 2003 report, Dr. Mendezsoon noted appellant's history of injury and treatment. He indicated that appellant was first seen in his office on May 5, 2003 for right foot pain. Dr. Mendezsoon noted that it was the first time that appellant had the occurrence of any foot pain of this nature. He conducted an examination and found "palpable pedal pulses, sensory grossly intact bilaterally, and right foot exhibited severe pain at medial tubercle of the calcaneus and along plantar fascia." Dr. Mendezsoon diagnosed right calcaneal spur and plantar fasciitis. He described the treatment appellant received which included a flexible cast, ibuprofen, stretching and cortisone injections. Dr. Mendezsoon indicated that when appellant was last seen on September 29, 2003 appellant "apparently had some recurrence of the heel spur pain and still with some plantar fasciitis, although not at the same level." He recommended a second opinion examination as appellant's condition was "chronic in nature and not responding well to treatment."

By decision dated September 27, 2004, the Office terminated appellant's compensation benefits effective that day. The Office determined that the weight of the medical evidence established that appellant no longer had residuals of his work-related right foot calcaneus spur and plantar fasciitis.

A September 11, 2004 MRI scan of the lower foot read by Dr. Amy Lecomte, a radiologist, noted that the bone marrow appeared preserved and the Achilles tendon and plantar fascia appeared normal in signal characteristics. She also indicated that the sinus tarsi appeared unremarkable and the flexor, extensor and peroneal tendons appeared normal in signal

characteristics. Additionally, Dr. Lecomte advised that the medial and lateral ligament complexes appeared intact and determined that appellant had a normal ankle.

On October 5, 2004 appellant requested reconsideration. He submitted an undated report from Dr. Wilson who noted that appellant was under his care since May 10, 2004 and was diagnosed with plantar fasciitis and internal inflammation of the right foot and small tears in the fascia. Appellant was currently wearing an air cast boot, needed surgery to correct the problem and was totally disabled until January 1, 2005. In a September 27, 2004 report, Dr. Wilson opined that appellant continued to be disabled. He noted that the MRI scan showed some streaking in the proximal plantar fascia with some underlying fluid. Dr. Wilson also noted mild edema at the inner surface of the calcaneus and referred appellant for additional treatment including possible evaluation of high intensity ultrasound lithotripsy, physical therapy, brace immobilization, cast immobilization, and possible surgical intervention.

In an October 5, 2004 report, Dr. Barr diagnosed chronic plantar fasciitis of the right foot which was work related. He indicated that his condition caused by excessive standing and walking at his work. Dr. Barr also indicated that he concurred with Dr. Wilson's plan for further treatment.

By decision dated January 18, 2005, the Office denied modification of the September 27, 2004 decision. The Office found that the September 11, 2004 MRI scan reported a normal study and did not comport with Dr. Wilson's diagnosis.

On February 10, 2005 appellant requested reconsideration and submitted two reports dated January 31, 2005 from Dr. Barr who concurred with Dr. Wilson that a surgical release of the plantar fascia was warranted and opined that appellant remained disabled indefinitely.

In a February 9, 2005 report, Dr. Wilson advised that appellant was under his care and opined that appellant's condition was "recalcitrant, failing all conservative measures." He opined that surgical release and decompression of the right heel was medically necessary.

By decision dated May 12, 2005, the Office denied modification of the January 18, 2005 decision.

On June 30, 2005 appellant requested reconsideration.

In a May 23, 2005 report, Dr. Barr reiterated that both he and Dr. Wilson agreed on the diagnosis and the recommended treatment for appellant. Appellant had a "chronic problem with his right foot which was work incurred." He explained that, while he may have called it a "sprain," this was consistent with plantar fasciitis. In a disability slip also dated May 23, 2005, Dr. Barr advised that appellant was to remain off work indefinitely and needed surgery.

In a June 28, 2005 report, Dr. Wilson opined that appellant was under his care for chronic plantar fasciitis. He explained that, although appellant's MRI scan failed to demonstrate degeneration of the plantar fascia, he believed that his examination and history were consistent with the diagnosis of plantar fasciitis. Dr. Wilson advised that his view was corroborated by Dr. Barr. He advised that appellant would benefit from surgical decompression of the structure.

By decision dated October 25, 2005, the Office denied modification of the May 12, 2005 decision.

On December 27, 2005 appellant's representative requested reconsideration, contending that, at the time of the termination, there was a conflict in medical opinion between Dr. Wilson, appellant's physician, who opined that appellant was totally disabled, and Dr. Hawkins, the second opinion physician, who found that appellant's condition had resolved.

In a November 1, 2005 report, Dr. Barr noted that appellant had plantar fasciitis and surgical treatment was warranted. On February 27, 2006 he repeated the diagnoses and completed a disability slip indicating that appellant remained totally disabled.

By decision dated June 12, 2006, the Office denied appellant's request for reconsideration on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>1</sup> 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.<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

Appellant's claim was accepted for a right foot calcaneus spur and plantar fasciitis. He came under the treatment of Dr. Barr who diagnosed a chronic strain of the right foot with medial pain of an underdetermined etiology. Thereafter, appellant was referred to Dr. Hawkins for examination.

In a June 17, 2004 report, Dr. Hawkins noted appellant's history of injury and treatment and conducted a physical examination. He also reviewed diagnostic test results which included that the MRI scan and EMG findings appeared normal. Dr. Hawkins determined that appellant walked normally and had full range of motion of both feet and ankles. He found that there was no swelling or tenderness over the medial heel of the right foot. Furthermore, Dr. Hawkins indicated that no Achilles tendon tenderness was present, dermatome sensation was normal and deep tendon reflexes were normal, bilaterally. He determined that there "were no physical findings to warrant ongoing disability" and appellant had returned to his preinjury status. Dr. Hawkins opined that appellant could return to full, unrestricted duties as a transportation security screener. He reported no basis on which to attribute any continuing residuals of appellant's accepted conditions.

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<sup>1</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

The Office subsequently received several reports from Dr. Barr who stated that there was no change in his examination of the foot. He diagnosed right foot calcaneus spur and plantar fasciitis and checked the box “no” in response to whether appellant could return to his usual job and advised that appellant’s restrictions were indefinite. However, Dr. Barr did not explain why his restrictions were indefinite, why appellant could not return to work or how any continuing disability was due to the accepted employment injury. The Office also received an August 16, 2004 report from Dr. Wilson which indicated that appellant had right foot pain. The Board notes that statements about appellant’s pain, not corroborated by objective findings of disability do not constitute a basis for payment of compensation.<sup>3</sup> Appellant also provided an October 16, 2003 report from Dr. Mendeszoon, however, this report predated the termination notice by over a year and Dr. Mendeszoon did not specifically address any ongoing work-related condition or disability.

The Board finds that, at the time the Office terminated appellant’s compensation for wage-loss and medical benefits, the weight of the medical evidence was represented by Dr. Hawkins who provided findings or rationale<sup>4</sup> to support his opinion on appellant’s condition and established that residuals of appellant’s work-related right foot calcaneus spur and plantar fasciitis had resolved.

For these reasons, the Office met its burden of proof in terminating appellant’s benefits for the accepted right foot calcaneal spur and plantar fasciitis.

### **LEGAL PRECEDENT -- ISSUE 2**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.<sup>5</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between appellant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.<sup>6</sup>

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<sup>3</sup> *Paul D. Weiss*, 36 ECAB 720 (1985); *John L. Clark*, 32 ECAB 1618 (1981).

<sup>4</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>5</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

## **ANALYSIS -- ISSUE 2**

Following the termination of compensation, appellant submitted additional medical evidence which included several reports from Dr. Wilson. They included an undated report received by the Office on October 11, 2004 and a September 27, 2004 report in which Dr. Wilson opined that appellant continued to be disabled because of his plantar fasciitis. Dr. Wilson opined that appellant was disabled due to plantar fasciitis but did not explain whether the continuing disability was work related. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup> Dr. Wilson also opined that appellant would benefit from surgical decompression of the structure. However, he did not provide any specific and reasoned opinion that appellant was disabled on or after September 27, 2004 due to factors of his employment and, thus his reports are of limited probative value.

Appellant also provided several reports from Dr. Barr. They included reports dated October 5, 2004, January 31 and May 23, 2005. Dr. Barr diagnosed chronic plantar fasciitis of the right foot which was work related and opined that appellant remained disabled indefinitely. He also indicated that surgery was warranted. However, Dr. Barr did not provide a rationalized opinion explaining why appellant remained disabled indefinitely due to factors of his employment.<sup>8</sup> Thus, these reports were insufficient to meet appellant's burden of proof. The Board finds that appellant has not met his burden of proof to establish that he had any disability on or after September 27, 2004.

## **LEGAL PRECEDENT -- ISSUE 3**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>9</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office;  
or

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<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB \_\_\_ (Docket No. 05-739, issued October 12, 2005).

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8128(a).

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>10</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>11</sup>

### **ANALYSIS -- ISSUE 3**

Appellant requested reconsideration on December 27, 2005 asserting that he continued having medical residuals due to his accepted injury. The underlying issue is medical in nature, whether appellant continued to experience residuals from his accepted work-related injuries of May 8, 2003. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether appellant continued to suffer residuals due to his accepted employment-related conditions.

The reports from Dr. Barr reiterated his previous opinion. For example, Dr. Barr's May 23, 2005 reports considered by the Office in its October 25, 2005 merit decision addressed appellant's condition in essentially the same manner as his November 1, 2005 and February 27, 2006 reports. Thus, these reports are repetitious of evidence already of record and, therefore, cumulative in nature. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>12</sup>

Appellant's representative alleged that at the time of the termination, there remained a conflict in medical opinion between appellant's physician Dr. Wilson, who opined that appellant was totally disabled and Dr. Hawkins, the second opinion physician who indicated that appellant's condition had resolved and enclosed a copy of Dr. Wilson's September 27, 2004 report. However, as noted, Dr. Wilson's September 27, 2004 report was previously considered.

Appellant did not provide any relevant and pertinent new evidence to establish that he continued to be disabled due to his accepted employment-related conditions. Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's wage-loss compensation effective September 27, 2004. The Board also finds that appellant did not meet his burden of proof to establish that he had any disability on or after September 27, 2004. The Board also

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<sup>10</sup> 20 C.F.R. § 10.606(b).

<sup>11</sup> 20 C.F.R. § 10.608(b).

<sup>12</sup> *Richard Yadron*, 57 ECAB \_\_\_\_ (Docket No. 05-1738, issued November 8, 2005).



finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 12, 2006 and October 25, 2005 are affirmed.

Issued: November 8, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board