United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 06-564**
	)	**Issued: September 7, 2006**
DEPARTMENT OF THE ARMY, U.S. ARMY GARRISON, Miami, FL, Employer	)	

Appearances:
Jeffrey P. Zeelander, 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 January 9, 2006 appellant filed a timely appeal from a December 21, 2005 decision of a hearing representative of the Office of Workers' Compensation Programs that affirmed a December 7, 2004 decision terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's benefits effective December 26, 2004; and (2) whether appellant established that she had any continuing employment-related disability or condition after December 26, 2004.

FACTUAL HISTORY

On May 14, 2002 appellant, then a 41-year-old police officer, filed a traumatic injury claim alleging that she sustained a right wrist and back strain when attempting to stop her vehicle after her brakes failed. The Office accepted the claim for right wrist strain and right foot strain. The Office authorized right wrist surgery, which was performed on November 6, 2003.

Appellant stopped work on May 14, 2002 and returned to a light-duty position on July 29, 2002 and full duty on January 30, 2004.

Appellant came under the care of Dr. Nicholas D.A. Suite, a Board-certified orthopedic surgeon, who treated appellant since May 15, 2002. In reports dated May 15 and June 14, 2002, Dr. Suite noted a history of appellant's work injury and diagnosed cervical sprain/strain, lumbar sprain/strain, right wrist sprain and possible posterior interosseous nerve syndrome. He recommended physical therapy and a wrist splint and advised that appellant was totally disabled from work.

Treatment notes from Dr. Fernando A. Moya, a Board-certified pediatrician, dated August 28 and October 14, 2002, noted a history of appellant's work-related injury and diagnosed severe right wrist sprain and right wrist carpal tunnel syndrome. He noted that appellant could continue light duty.

On October 2, 2002 Dr. Suite noted appellant's continued symptoms of neck and right wrist pain. A magnetic resonance imaging scan of the right wrist of September 25, 2002 revealed a small component of radiocarpal joint and distal radial ulnar space fluid/synovitis. An electromyogram and nerve condition tests of the upper extremities revealed no abnormalities. Dr. Suite diagnosed right wrist internal derangement and cervical myofascial syndrome.

In a decision dated January 31, 2003, the Office found that appellant's actual earnings as a modified inspector fairly and reasonably represented her wage-earning capacity.

On May 30, 2003 the Office referred appellant to Dr. Barry Lotman, a Board-certified orthopedic surgeon, for a second opinion evaluation. On June 18, 2003 Dr. Lotman discussed appellant's work history. He noted an essentially normal physical examination. Dr. Lotman advised that appellant did not have residuals of her accepted right wrist strain or, right foot strain but did have evidence of persistent lateral epicondylitis. He noted that there was no explanation for the marked lateral elbow pain of the right wrist or weakness in flexion of the right index and long fingers. Dr. Lotman advised that appellant was not a candidate for surgical intervention. He opined that appellant could return to her regular position without restrictions.

In a letter dated July 17, 2003, the Office requested clarification from Dr. Lotman, as to whether the lateral epicondylitis condition was causally related to appellant's May 11, 2002 work injury and whether arthroscopic surgery was warranted. On July 28, 2003 Dr. Lotman opined that the diagnosed condition of lateral epicondylitis was causally related to the May 11, 2002 work injury. He noted that there was no objective evidence of lateral epicondylitis and the diagnosis was based on appellant's subjective report of pain on examination. Dr. Lotman opined that appellant was not a candidate for arthroscopic surgery and could return to work without restrictions.

Appellant submitted reports from Dr. Harris Gellman, a Board-certified orthopedic surgeon, dated January 31 to August 26, 2003. Dr. Gellman noted a history of injury and diagnosed lateral epicondylitis. He advised that appellant could work light duty with no lifting over five pounds. Dr. Gellman recommended surgical arthroscopy of the wrist and a lateral epicondyle release. On August 26, 2003 he released appellant to light-duty work with no lifting

over five pounds, no forceful pushing or pulling, no climbing ladders, no heights, no reaching overhead and no repetitive motion on the right side.

On September 15, 2003 the Office requested clarification from Dr. Lotman with regard to the right lateral epicondylitis and whether appellant was able to return to work in her regular position as a police officer. In a report dated September 24, 2003, Dr. Lotman noted that the diagnoses of lateral epicondylitis was based on appellant's subjective complaints and that she was magnifying her symptoms. He indicated that appellant was not capable of performing her date-of-injury job as a police officer because of her inability to fully use her right hand. Dr. Lotman opined that the accepted conditions of right wrist, hand and foot sprain have resolved; however, her nonaccepted condition of lateral epicondylitis was symptomatic and causally related to the work injury of May 11, 2002. He advised that appellant could work full time with restrictions on pushing and pulling 15 pounds up to 1 hour and lifting 25 pounds up to 2 hours.

On October 7, 2003 the Office included lateral epicondylitis and authorized arthroscopic surgery.

On November 6, 2003 Dr. Gellman performed a release of the right lateral epicondyle with debridement and reattachment.

On November 17, 2003 the Office requested that Dr. Gellman review the report of Dr. Lotman and comment on whether appellant was able to return to work subject physical restrictions.

In reports dated November 28, 2003 to March 16, 2004, Dr. Gellman noted that appellant was progressing well post surgery and could return to light duty on February 2, 2004 and regular duty six hours per day on March 16, 2004. On May 4, 2004 he noted that appellant had reached maximum medical improvement. Dr. Gellman returned appellant to work without restrictions and advised that she sustained no impairment due to her condition.

Treatment notes from Dr. Robert H. Sheinberg, a podiatrist, dated April 21 to June 14, 2004, addressed appellant's complaints of right foot pain. He diagnosed plantar fasciitis and recommended a night splint. On June 14, 2004 Dr. Sheinberg noted tenderness of the right plantar medial tubercle and proximal plantar fascia and diagnosed acute right ankle sprain. He recommended physical therapy and an ankle brace and opined that appellant could return to work in a sedentary desk job.

In a note dated August 2, 2004, the employing establishment advised the Office that appellant was restricted from using a shoulder holster or a modified holster due to her condition and it was unable to accommodate this restriction.

On August 16, 2004 the Office found that there was a conflict of medical opinion with regard to appellant's right foot strain between Dr. Sheinberg, who found that she experienced right foot pain and could only work in a sedentary position and Dr. Lotman, who determined that appellant did not have residuals of her accepted right foot strain and found that she could return to work full time with restrictions only for her lateral epicondylitis.

The Office referred appellant to Dr. Orestes G. Rosabel, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a September 8, 2004 report, Dr. Rosabel reviewed the medical record, the history of appellant's work-related injury and provided findings on examination. He noted an essentially normal physical examination of the left and right elbow with full range of active and passive motion with no muscle atrophy. Examination of the right foot and ankle revealed a moderately severe planovalgus unilateral deformity associated with full range of ankle motion actively and passively, with tenderness about the plantar-medial aspect of the os calcis. X-rays of the right and left elbow were unremarkable and an x-ray of the right foot demonstrated a small spur on the dorsal aspect of the talonavicular joint. He diagnosed status post lateral release of the right elbow for lateral epicondylitis, resolved "TFCC" sprain of the right wrist, resolved right ankle sprain, preexisting severe planovalgus deformity of the right foot and chronic plantar fasciitis of the right heel. Dr. Rosabel did not attribute her current right heel pain to the May 11, 2002 incident because plantar fasciitis was typically related to a repetitive overuse syndrome and not a single event as appellant experienced. Dr. Rosabel concurred with Dr. Gellman who discharged appellant from his care with no impairment and indicated that she could return to work without restrictions on the use of her right elbow. Dr. Rosabel opined that appellant's inability to return to work as a police officer was completely related to her chronic plantar fasciitis, which was symptomatic and not causally related to the work injury of May 11, 2002.

On September 17, 2004 the Office requested that Dr. Rosabel further address whether appellant's right foot and right wrist strain had resolved, whether she had any physical limitations with regard to her right elbow condition and whether her current restrictions were related to plantar fasciitis of the right heel which was not work related. On October 8, 2004 Dr. Rosabel noted that appellant's right ankle and right wrist sprain had resolved and that she had no physical limitations in relation to her right elbow condition. Appellant's on going work restrictions were related to the diagnosed condition of plantar fasciitis, a nonwork-related condition.

On October 25, 2004 the Office proposed to terminate appellant's compensation benefits on the grounds that Dr. Rosabel's report established no residuals of the accepted work-related employment injuries.

On November 22, 2004 appellant, through her attorney, submitted a brief contending that there was not a medical conflict in this case. Appellant asserted that she still had residuals of her right wrist and foot strains and lateral epicondylitis. Appellant submitted physical therapy notes for her right foot from September 27 to October 27, 2004. On October 6, 2004 Dr. Sheinberg noted appellant's continued complaints of pain in the right heel. He found tenderness posterior to the plantar fascia, no swelling or discoloration and negative Tinel's sign. Dr. Sheinberg diagnosed chronic plantar fasciitis.

By decision dated December 7, 2004, the Office terminated appellant's compensation and medical benefits effective December 26, 2004. It found that the weight of the medical evidence established that she had no continuing disability resulting from her accepted employment injury.

On September 23, 2005 appellant requested a review of the written record. She asserted that there was no conflict of medical opinion as Dr. Lotman did not examine her after the right

arm surgery and failed to examine her foot. Appellant submitted treatment notes from Dr. Sheinberg dated September 17, 2004, who diagnosed chronic plantar fasciitis and chronic inflammation in the plantar fascia. He indicated that appellant presented with this injury on February 20, 2004 and exhibited neurogenic symptoms consistent with an abnormal gait which may have predisposed her to tarsal tunnel syndrome. Dr. Sheinberg advised that appellant was treated conservatively with physical therapy, anti-inflammatories, cortisone injections and bracing. On May 11, 2002 appellant was in an automobile accident while at work and tried to apply the brakes of the car and experienced foot pain. Dr. Sheinberg recommended appellant work in a sedentary position that allowed her to walk 5 minutes every 30 minutes. On December 31, 2004 Dr. Sheinberg disagreed with Dr. Rosabel that plantar fasciitis could not be traumatically induced. He opined that many of his patients developed plantar fasciitis due to a similar injury mechanism as experienced by appellant.

In a decision dated December 21, 2005, the hearing representative affirmed the December 7, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his or her 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.[2] 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 a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[3]

ANALYSIS -- ISSUE 1

The Board finds that the opinion of Dr. Rosabel is well rationalized, based upon a proper factual background and constitutes the weight of the medical evidence in establishing that appellant's work-related right wrist strain, right foot strain and right lateral epicondylitis resolved.

Although the Office found a medical conflict and referred appellant to Dr. Rosabel as an impartial specialist, the Board finds that, as contended by appellant, there was no medical conflict at the time appellant was referred to Dr. Rosabel. The reports of Dr. Sheinberg, the podiatrist whose reports were the basis of the Office's declaration of a conflict of medical opinion, were not sufficient to create such a conflict. In his report dated April 21 to June 14, 2004, he noted appellant's complaints of right foot pain and diagnosed plantar fasciitis and recommended a night splint. On June 14, 2004 Dr. Sheinberg noted tenderness of the right plantar medial

[1] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[2] *Mary A. Lowe*, 52 ECAB 223 (2001).

[3] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

tubercle and proximal plantar fascia and diagnosed acute right ankle sprain. He recommended physical therapy and an ankle brace and opined that appellant could return to work in a sedentary desk job. However, Dr. Sheinberg neither noted a history of the injury or the employment factors believed to have caused or contributed to appellant's condition.[4] Additionally, he failed to provide a specific or a rationalized opinion regarding the causal relationship between appellant's right foot pain and the factors of employment believed to have caused or contributed to such condition.[5]

Even though the reports of Dr. Rosabel are not entitled to the special weight afforded to the opinion of an impartial medical specialist resolving a conflict of medical opinion,[6] his reports can still be considered for their own intrinsic value[7] and can still constitute the weight of the medical evidence.[8] As noted above, the Board finds that Dr. Rosabel's opinion establishes that appellant's work-related right wrist strain, right foot strain and right lateral epicondylitis has resolved.

The Board has stated that the weight of medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into such evaluation.[9]

Dr. Rosabel reviewed the prior medical evidence, reported findings of an extensive examination of appellant and, most importantly, provided convincing rationale that appellant's work-related disability ceased. In his report of September 8, 2004, Dr. Rosabel noted that appellant exhibited no objective complaints or definite abnormality in her condition. He noted an essentially normal physical examination of the left and right elbow with full range of active and passive motion with no muscle atrophy, examination of the right foot and ankle revealed moderately severe planovalgus unilateral deformity associated with full range of ankle motion actively and passively, with tenderness about the plantar-medial aspect of the os calcis. He

---

[4] *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[5] *See Jimmie H. Duckett,* 52 ECAB 332 (2001).

[6] In situations where there are opposing medical reports of virtually equal weight and rationale and 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. *Solomon Polen,* 51 ECAB 341 (2000).

[7] *See Cleopatra McDougal-Saddle*, 47 ECAB 480 (1996) (for a discussion of the use or exclusion of reports of purported impartial medical specialists where a conflict of medical opinion was mistakenly identified by the Office).

[8] *Id.; see also Leanne E. Maynard*, 43 ECAB 482 (1992) (The Board found that a physician's "opinion is probative even though he was not an impartial medical examiner" and that the opinion of this physician and another physician were sufficient to establish causal relation.); *Rosa Whitfield Swain*, 38 ECAB 368 (1987) (The Board found that a physician was improperly designated as an impartial medical specialist, but that his opinion nonetheless constituted the weight of the medical evidence).

[9] *Melvina Jackson*, 38 ECAB 443 (1987); *Naomi A. Lilly*, 10 ECAB 560 (1959).

indicated that x-rays of the right and left elbow were unremarkable and an x-ray of the right foot demonstrated a small spur on the dorsal aspect of the talonavicular joint. Dr. Rosabel diagnosed status post lateral release of the right elbow for lateral epicondylitis, resolved sprain of the right wrist, resolved right ankle sprain, preexisting severe planovalgus deformity of the right foot and chronic plantar fasciitis of the right heel. He did not attribute appellant's current right heel pain to the May 11, 2002 incident and advised that plantar fasciitis is typically related to a repetitive overuse syndrome not a single event as appellant experienced. Dr. Rosabel concurred with Dr. Gellman who indicated that appellant could return to work without restrictions. He opined that appellant's inability to return to work as a police officer was completely related to the chronic plantar fasciitis, which was symptomatic but which was not causally related to the work injury of May 11, 2002. In a supplemental report dated October 8, 2004, Dr. Rosabel indicated that appellant's right ankle and right wrist sprain had resolved and that appellant had no physical limitations in relation to her right elbow condition. He further opined that appellant's work restrictions were related to the diagnosed condition of plantar fasciitis, a nonwork-related condition. Dr. Rosabel examined appellant, reviewed her history and relevant medical records and found no basis on which to attribute any continuing condition to her accepted employment injury.

After issuance of the pretermination notice, appellant submitted physical therapy notes for her right foot from September 27 to October 27, 2004. The Board has held that treatment notes signed by a physical therapist are not considered medical evidence as a physical therapist is not a physician under the Federal Employees' Compensation Act.[10] Also submitted was a report from Dr. Sheinberg dated October 6, 2004, who noted appellant's continued complaints of pain in the right heel and diagnosed chronic plantar fasciitis. However, as noted above, this report neither provided a history of injury or a rationalized opinion addressing how any continuing condition was causally related to the May 11, 2002 injury.[11]

For these reasons, the Office met its burden of proof in terminating appellant's benefits for the accepted right wrist strain, right foot strain and right lateral epicondylitis.

LEGAL PRECEDENT -- ISSUE 2

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability causally related to her accepted employment injury.[12] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a

[10] *See* 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley,* 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[11] *See Jimmie H. Duckett, supra* note 5; *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[12] *Manuel Gill,* 52 ECAB 282 (2001); *George Servetas,* 43 ECAB 424, 430 (1992).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the 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.

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her right wrist strain, right foot strain and right lateral epicondylitis. Appellant submitted treatment notes from Dr. Sheinberg dated September 17, 2004, who diagnosed chronic plantar fasciitis and chronic inflammation in the plantar fascia. He indicated that appellant presented with this injury on February 20, 2004. In his report of December 31, 2004, Dr. Sheinberg disagreed with the Dr. Rosabel with regard to his opinion that plantar fasciitis could not be traumatically induced and opined that many of his patients developed plantar fasciitis due to a similar injury mechanism as suffered by appellant. Although Dr. Sheinberg gave some support for causal relationship, he did not provide a rationalized opinion specifically explaining how any continuing condition or medical restrictions were causally related to the accepted May 11, 2002 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[13]

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury of May 11, 2002. Therefore, appellant did not meet her burden of proof.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective December 26, 2004. The Board further finds that appellant failed to establish that she had any continuing disability after December 26, 2004.

[13] *See Jimmie H. Ducket, supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 21, 2005 is affirmed.

Issued: September 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