

ankle injury. She noted the constant standing required by her federal employment. The employing establishment controverted the claim.

Appellant was treated by Dr. Noreen Lewis, an osteopath. In an attending physician's report dated February 24, 2005, Dr. Lewis indicated that she had lower extremity edema in her right ankle as a result of being on her feet all day in her federal employment. In a note dated February 22, 2005, he indicated that appellant was unable to return to work until approximately March 15, 2005. By letter dated April 11, 2005, the Office accepted appellant's claim for aggravation of a subchondral cyst, left ankle.

In a medical report dated April 18, 2005, Dr. Joseph Bernstein, a Board-certified orthopedic surgeon, indicated that in February 2004 appellant sprained her ankle. He stated that he could not explain the ankle swelling on the basis of an injury and that it appeared to be cardiovascular in origin or possibly lymphedema. Dr. Bernstein recommended consultation with a vascular surgeon.

By letter dated April 25, 2005, the Office asked Dr. Lewis to respond to various questions with regard to appellant. In an attending physician's report dated April 26, 2005, Dr. Lewis reiterated that appellant's left ankle injury was caused and aggravated by her work. He indicated that she was totally disabled commencing January 20, 2005 and that appellant would be totally disabled through July 11, 2005.

By letter dated May 4, 2005, the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated May 26, 2005, Dr. Hanley diagnosed appellant with bilateral ankle swelling of unclear etiology. He noted that she did have swelling of both lower extremities but had no signs of significant musculoskeletal disease of the ankle. Dr. Hanley did not believe that appellant was fit for duty due to the swelling but noted that her condition was not due to her employment. He recommended further investigation. Dr. Hanley stated that appellant did not have an aggravation of a subchondral cyst in her left ankle.

In a note dated July 29, 2005, Dr. Lewis stated that he "cannot at this time, agree/disagree with Dr. Hanley's second opinion." He stated that he would confer with his colleague.

In a medical report dated September 21, 2005, Dr. Ira C. Sachs, an osteopath, listed his impressions as chronic left ankle. A magnetic resonance imaging (MRI) scan revealed degenerative joint disease with exacerbation of same, left ankle synovitis and bilateral ankle edema.

The Office found that a conflict existed between Dr. Lewis, appellant's treating physician, and Dr. Hanley, the second opinion physician, as to whether appellant had recovered from the effects of the January 10, 2005 work injury. It referred appellant to Dr. Edward J. Resnick, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a medical report dated October 11, 2005, Dr. Resnick listed his diagnoses as morbid obesity, chronic edema of both lower extremities and degenerative joint disease (osteoarthritis) of the left ankle and foot. He found that appellant's left ankle osteoarthritis was "probably intrinsic, related to

her morbid obesity and unrelated to an injury.” Dr. Resnick noted that there was no specific injury to either lower limb. He opined:

“[T]here are no work injuries sustained on January 10, 2005 or at any other time leading to [appellant’s] present condition. My opinion is that this is an intrinsic condition, arising from within the body and not produced by external trauma. Thus, I consider it to be unrelated to her work.”

Dr. Resnick found that appellant had work limitations, but they were not related to any work injury or complaint.

On October 25, 2005 the Office issued a notice proposing to terminate appellant’s compensation and medical benefits. It noted that the weight of the medical evidence established that her accepted condition of aggravation of subchondral cyst in her left ankle had ceased or was no longer work related. She no longer had any disability or residuals due to her accepted work condition.

Appellant submitted an April 8, 2004 report from Dr. Armando A. Mendez, a Board-certified orthopedic surgeon, who treated her for an improved left ankle sprain that she sustained on March 17, 2004. She also submitted a February 23, 2005 MRI scan of her left ankle that was interpreted by Dr. John C. Sabatino, a Board-certified radiologist. It showed edema in the soft tissues of the left ankle with mild degenerative changes and small osteophytes arising from the tarsal bones. Dr. Sabatino noted no evidence of tendinitis.

In a December 5, 2005 report, Dr. Resnick responded to additional questions sent by the Office. He indicated that, after reviewing the additional files, he stood by his earlier opinion. Dr. Resnick stated:

“I do not feel that [appellant] has any residual impairment due to any work injury sustained January 10, 2005, because I found no evidence of such an injury having been sustained. Nevertheless, it is my opinion that [she] has swelling and pain in the lower limbs and has osteoarthritis of the left ankle. However, it remains my opinion that these conditions are, as I stated in my earlier report, ‘most probably intrinsic, related to [appellant’s] morbid obesity and unrelated to any injury.’ I further stated ‘this is an intrinsic condition, arising from within the body and not produced by external trauma. Thus, I consider it to be unrelated to [appellant’s] work.’ I did note physical impairment and limitations but, as I said, I felt that these were ‘unrelated to any work injury or other work complaint.’”

In an undated attending physician’s report, Dr. Brent Wenerman, an osteopath, indicated that appellant was totally disabled from January 10 to December 1, 2005 and ongoing due to her work-related left ankle injury.

In a decision dated December 19, 2005, the Office terminated appellant’s compensation benefits effective that date.

On December 27, 2005 appellant requested review of the written record. No new medical evidence was submitted.

In a decision dated April 11, 2006, an Office hearing representative affirmed the December 19, 2005 decision terminating benefits.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that requires further medical treatment.³

Section 8123(a) provides in pertinent part: If there is a 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.⁴ 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.⁵

ANALYSIS

The Office properly found that a conflict arose in medical opinion between Dr. Lewis, appellant's treating physician, and Dr. Hanley, the second opinion physician. They disagreed as to whether appellant had any continuing residuals or disability related to her accepted aggravation of the subchondral cyst of the left ankle. Accordingly, the Office properly referred her to Dr. Resnick to resolve the conflict.⁶

In a report dated October 11, 2005, Dr. Resnick provided a comprehensive review of the medical evidence and reported his findings on examination. He listed his diagnoses as morbid obesity, chronic edema of both lower extremities and degenerative joint disease of the left ankle and foot. Dr. Resnick opined that appellant's left ankle osteoarthritis was related to her morbid obesity and unrelated to the injury. He believed that the condition was intrinsic, such as her morbid obesity, arising from the body and not produced by external trauma and, therefore, unrelated to appellant's work. Dr. Resnick further explained in a December 5, 2005 supplemental report that, although he did note physical impairment and limitations, these were

¹ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

² *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

³ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁴ 5 U.S.C. § 8123(a).

⁵ *See Roger Dingess*, 47 ECAB 123 (1995); *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁶ *See* 5 U.S.C. § 8123(a).

unrelated to any work injury or other work complaint. Moreover, he noted that there was no residual impairment, as there was no objective evidence that appellant had sustained an injury.

The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant's accepted injury to her left ankle had resolved. Dr. Resnick'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. Resnick explained that any remaining disability was not related to her federal employment.

Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings. Therefore, as the weight of the medical evidence establishes that appellant's accepted work condition had resolved, the Office properly terminated her wage-loss compensation and medical benefits with respect to the aggravation of the subchondral cyst in the left ankle.

Prior to the finalization of the proposed termination, appellant submitted additional evidence in an attempt to show that she remained disabled due to the accepted employment injuries. However, these reports are insufficient to overcome the special weight of the evidence as represented by Dr. Resnick.

Dr. Mendez reported on April 8, 2004 that he was treating appellant for improved left ankle sprain sustained at work. The Board notes that this condition was not accepted by the Office as a part of her occupational disease claim. Moreover, Dr. Mendez did not provide any rationale explaining the nexus between appellant's employment factors and the diagnosed left ankle sprain. Dr. Sabatino's interpretation of a February 23, 2005 MRI scan did not address causal relationship between the findings and appellant's employment. Dr. Wenerman provided no explanation to support his conclusion that appellant had employment-related disability.

There is no medical evidence of sufficient weight to either overcome the special weight of the reports of Dr. Resnick or of comparable weight to create a conflict therewith. The Board finds that the Office has met its burden of proof in terminating appellant's compensation benefits effective December 19, 2005.

CONCLUSION

The Office met its burden of proof to terminate compensation benefits effective December 19, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 11, 2006 and December 19, 2005 are affirmed.

Issued: January 17, 2007
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