

FACTUAL HISTORY

This case has previously been before the Board. In the first appeal, the Board reversed decisions dated August 22, July 10 and March 15, 2001 after finding that the Office failed to meet its burden of proof to terminate compensation benefits effective March 12, 2001.² The Board determined that the medical evidence did not clearly establish that appellant could resume her regular employment and had no further restrictions due to her accepted conditions of a resolved left shoulder contusion, resolved left ankle sprain, right foot sprain and right tarsal tunnel syndrome. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

The Office reinstated compensation benefits. In a work restriction evaluation dated November 19, 2003, Dr. Lawrence Mandel, a podiatrist, found that appellant could resume work for eight hours per day with restrictions. On October 25, 2004 the Office referred appellant to Dr. Don Miskew, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated December 1, 2004, Dr. Miskew diagnosed right foot pain unsupported by objective findings. He opined that she could resume full-time employment without restrictions.

The Office determined that a conflict in medical opinion existed between Dr. Mandel and Dr. Miskew on the extent of appellant's work-related disability. The Office referred her to Dr. McPherson S. Beall, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated May 3, 2005, Dr. Beall found that appellant had no residuals of her sprained ankle or foot. He noted that the most recent electromyogram (EMG) did not show evidence of tarsal tunnel. Dr. Beall stated:

“The current diagnoses are right tarsal tunnel syndrome, although this is not confirmed by the most recent electrodiagnostic study. This frequently falls into a category of more difficulty in confirming this diagnosis and subjective complaints will take on more importance. Since this is an accepted diagnosis of a work[-]related problem, I will consider her subjective complaints as evidence of ongoing tarsal tunnel syndrome.”

Dr. Beall found that she could not perform her usual job and recommended a tarsal tunnel release. In a work restriction evaluation, he found that she could work for eight hours per day with restrictions.

² *Tressia Lewis*, Docket No. 02-56 (issued August 1, 2002).

On September 22, 2005 the Office informed Dr. Beall that the “acceptance of a condition by this Office as being work related is not medical rationale that supports the existence of such a condition.” The Office requested clarification from Dr. Beall regarding the current diagnosis of tarsal tunnel syndrome, its relationship to employment and the need for surgery.³

In a response dated November 25, 2005, Dr. Beall asserted, “It would be my opinion based on the second EMG regarding a tarsal tunnel syndrome and the solely subjective complaint of pain that a surgical procedure would not be required for this tarsal tunnel problem.” In a November 7, 2005 internal memorandum, the Office noted that Dr. Beall had not been fully responsive to its request for additional information.

On November 21, 2005 the Office referred appellant to Dr. Dale D. Dalenberg, a Board-certified orthopedic surgeon, for a second impartial medical examination. In a report dated June 12, 2006, Dr. Dalenberg discussed the history of injury and the results of diagnostic testing. He noted that appellant indicated that her left shoulder condition had “largely resolved except for residuals of poor internal rotation and locking up when combine hair. She said also that she hurt a knee at the time but cannot remember which one.” Dr. Dalenberg described appellant’s complaints of bilateral foot pain. On physical examination, he found negative tarsal Tinel’s tests and tarsal compression tests bilaterally and no plantar fascial tenderness. Dr. Dalenberg noted that an early EMG showed possible tarsal tunnel syndrome and a subsequent EMG was normal. He found no objective evidence of tarsal tunnel syndrome. Dr. Dalenberg diagnosed possible plantar fasciitis unrelated to employment. He opined that plantar fasciitis “does not come about as a result of this claimant’s type of injury mechanism.” Dr. Dalenberg stated: “[B]ased on the objective exam[ination] and history, there is no objective medical evidence that the claimant could not return to her full[-]duty job. The claimant has a hodgepodge of subjective complaints, but there are no objective finding[s] to substantiate her complaints.” He concluded that appellant had no residuals from her employment injury. In an accompanying work restriction evaluation, he opined that appellant could work full time without restrictions.

On June 15, 2006 the Office notified appellant that it proposed to terminate her compensation and entitlement to medical benefits on the grounds that the weight of the medical evidence established that she had no further employment-related condition or disability. In a

³ On January 18, 2005 the employing establishment noted that appellant worked limited duty until she was removed for cause effective March 24, 2000 and questioned her entitlement to compensation. In a decision dated September 23, 2005, the Office found that she was not entitled to further compensation. By decision dated October 14, 2005, the Office reduced her compensation effective September 4, 2005 after finding that she worked four hours per day until she was removed for cause. By order dated February 7, 2006, the Board set aside the September 23, 2005 decision after finding that it was unclear whether the Office was terminating or reducing her compensation. Order Remanding Case, Docket No. 06-389 (issued February 7, 2006). By decision dated April 13, 2006, the Office reduced appellant’s compensation effective September 4, 2005 because she was released to work for four hours per day when she was removed for cause. In an order dated August 21, 2006, the Board set aside the October 14, 2005 decision as it did not discuss appellant’s job requirements and found the April 13, 2006 decision null and void as it was issued while the Board had jurisdiction over the case. Order Remanding Case, Docket No. 06-393 (issued August 21, 2006) In a decision dated November 14, 2006, the Office reduced appellant’s benefits effective September 4, 2005 and found that she had not established a recurrence of disability beginning July 27, 2004. As previously noted, appellant has not appealed this decision and thus it is not before the Board at this time.

July 11, 2006 response, she disagreed with the termination, arguing that EMGs obtained on April 14, 2000 and August 7, 2003 showed mild tarsal tunnel syndrome.

By decision dated July 20, 2006, the Office terminated appellant's compensation and entitlement to medical benefits effective August 6, 2006 based on its finding that the opinion of Dr. Dalenberg, the impartial medical examiner, represented the weight of the evidence and established that she had no residual condition or disability from her work injury.

On August 2, 2006 appellant requested a review of the written record. In a decision dated December 6, 2006, an Office hearing representative affirmed the July 20, 2006 termination 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.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

Section 8123(a) 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.⁶ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁷ In situations where there exist 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 upon a proper factual background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a left shoulder contusion, left ankle sprain, right foot sprain and right tarsal tunnel syndrome due to a June 17, 1999 employment injury. The employing establishment terminated her for cause on March 24, 2000. On August 1, 2002

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

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

⁶ 5 U.S.C. § 8123(a).

⁷ 20 C.F.R. § 10.321.

⁸ *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

the Board found that the Office failed to meet its burden of proof to terminate compensation benefits. The Office returned appellant to the periodic rolls.

Appellant's attending physician, Dr Mandel, found that she could work full time with restrictions. Dr. Miskew, an Office referral physician, diagnosed right foot pain unsubstantiated by objective findings and opined that she had no restrictions due to her employment injury. The Office found a conflict in medical opinion between Dr. Mandel and Dr. Miskew on the extent of appellant's work-related disability and referred her to Dr. Beall for an impartial medical examination. In a report dated May 3, 2005, Dr. Beall opined that appellant had no residuals of her ankle and foot sprain and noted that a recent EMG did not show tarsal tunnel syndrome. He found that her subjective complaints supported a continuing tarsal tunnel condition "[s]ince this is an accepted diagnosis of a work[-]related problem." The Office requested clarification from Dr. Beall regarding whether appellant continued to experience tarsal tunnel syndrome due to her employment injury and whether she required surgery. On November 25, 2005 Dr. Beall asserted that she did not need surgery for tarsal tunnel as her complaints were "solely subjective." As he did not adequately elaborate on his opinion regarding the relationship between her tarsal tunnel syndrome and her employment, the Office properly referred appellant to Dr. Dalenberg, a Board-certified orthopedic surgeon, for a second impartial medical examiner.⁹

Where there exist opposing medical reports 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 upon a proper factual background, must be given special weight.¹⁰ In a report dated June 9, 2006, Dr. Dalenberg reviewed the history of injury and listed detailed findings on physical examination. He noted that appellant had no significant left shoulder complaints but complained of bilateral foot pain. On examination, Dr. Dalenberg found that objective tests were negative for tarsal tunnel syndrome. He opined that there was no objective evidence supporting appellant's subjective complaints of bilateral foot pain. Dr. Dalenberg diagnosed possible plantar fasciitis which he found was unrelated to her work injury based on the mechanism of injury. He concluded that appellant had no residuals of her employment injury and could resume her usual employment.

The Board finds that the Office properly relied upon the opinion of Dr. Dalenberg in terminating compensation benefits effective August 6, 2006. Dr. Dalenberg based his opinion on a proper factual and medical history and accurately summarized the medical evidence. He provided rationale for his conclusion by explaining that the objective findings did not support appellant's complaints. The Board has reviewed the opinion of Dr. Dalenberg and finds that it has reliability, probative value and convincing quality with respect to the conclusions reached.¹¹

⁹ In situations where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion. If the specialist is unwilling or unable to clarify and elaborate on his or her opinion, the case should be referred to another appropriate impartial medical specialist. *Guiseppa Aversa*, 55 ECAB 164 (2003).

¹⁰ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹¹ *Manuel Gill*, 52 ECAB 282 (2001).

Thus, his opinion is entitled to the special weight accorded an impartial medical examiner and establishes that appellant has no further employment-related disability.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹² To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹³

ANALYSIS -- ISSUE 2

The Office met its burden of proof to terminate authorization for medical benefits for the accepted conditions of right foot sprain and tarsal tunnel syndrome through the opinion of Dr. Dalenberg, the impartial medical examiner, who found that appellant had no residuals of her accepted employment injury and that her current complaints were not work related. He provided rationale for his opinion by explaining that the findings on physical examination did not support ongoing problems from her employment injury. As the impartial medical specialist, Dr. Dalenberg's opinion is entitled to special weight and establishes that appellant requires no further treatment for her accepted conditions.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and authorization for medical benefits effective August 6, 2006 on the grounds that she had no further disability due to her June 17, 1999 employment injury.

¹² *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 6 and July 20, 2006 are affirmed.

Issued: July 23, 2007
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