

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
San Francisco, CA, Employer)

Docket No. 07-1073
Issued: September 24, 2007

Appearances:
Appellant, pro se
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 March 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 30, 2007 which affirmed the termination of her compensation benefits as of August 26, 2004 and denied continuing disability benefits. Pursuant to C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits as of August 26, 2004; and (2) whether appellant has established that she had any continuing disability after August 26, 2004 due to her accepted employment injury.

FACTUAL HISTORY

On June 12, 2001 appellant, then a 56-year-old flat sort machine operator, filed a claim for recurrence of disability alleging that she sustained disability on May 20, 2001 due to a December 28, 1999 employment injury. She explained that she had been taken off light duty and placed on a new machine which required prolonged standing, causing her feet to hurt. The

Office adjudicated appellant's claim as a new injury claim and accepted the claim for right planter fasciitis based on a July 26, 2001 report from Dr. Alexander Reyzelman, a podiatrist.

In a March 20, 2002 letter, the Office referred appellant for a second opinion examination. Dr. Jerrold Sherman, a Board-certified orthopedic surgeon, conducted an evaluation of appellant on April 16, 2002. He found that she had no disability due to right foot fasciitis or injury-related factors. Dr. Sherman concluded that appellant had no residuals of the accepted injury. He explained that appellant had no disability due to her accepted condition and that her subjective complaints were not consistent with her normal physical examination. Appellant had no tenderness over the plantar fascia nor at the insertion of the fascia on the heel. Dr. Sherman opined that appellant was able to perform all work activities without restrictions.

In a May 15, 2002 report, Dr. Reyzelman found that appellant had bilateral planter fasciitis with the right side greater than the left. In a June 11, 2002 report, he reported that appellant was now sitting at work all day and had not experienced pain. Dr. Reyzelman noted appellant's diagnostic impression as resolved bilateral planter fasciitis. However, he recommended that appellant not stand for more than four hours and not lift more than 10 pounds.

The Office determined that a conflict in medical opinion arose between Dr. Reyzelman and Dr. Sherman. It referred appellant to Dr. Roger D. Danier, an osteopath, Board-certified in orthopedic surgery, for an impartial medical examination. On June 2, 2003 Dr. Danier opined that appellant did not have any residuals of the accepted right planter fasciitis condition nor did she have any work restrictions. He based his opinion on his clinical examination, which revealed normal findings, and the review of medical reports from Dr. Reyzelman and Dr. Sherman. Dr. Danier noted that appellant had subjective slight pain involving her right foot but that she was not precluded from performing her customary occupation.

On June 23, 2004 the Office proposed termination of wage-loss compensation and medical benefits.

In an August 18, 2004 report, Dr. Reyzelman reviewed the report of Dr. Danier. He agreed that appellant could return to her customary occupation without restriction. However, she did have residuals of her planter fasciitis because she had flare-ups of right heel and arch pain. Dr. Reyzelman noted that, if prophylactic work restrictions were not absented, appellant would develop flare-ups of her condition and possible new injury to her feet.

On August 26, 2004 the Office terminated appellant's compensation benefits as of that day, on the grounds that the medical evidence established that appellant had no disability or residuals of her employment injury.

On February 15, 2005 appellant requested an oral hearing. The hearing took place on November 22, 2005. At the hearing an October 20, 2005 magnetic resonance imaging (MRI) scan report and a November 6, 2005 report from Dr. Reyzelman were accepted into the record. The October 20, 2005 MRI scan examination found some thickening and signal abnormality in the proximal plantar fascia compatible with inflammatory changes as well as other findings. Dr. Reyzelman opined that the MRI scan findings supported his diagnosis of bilateral planter fasciitis.

In a February 7, 2006 decision, the Branch of Hearings and Review affirmed the August 26, 2004 decision terminating appellant's compensation benefits. The case was remanded for further development regarding the issue of continuing disability.

On November 13, 2006 the Office referred the October 20, 2005 MRI scan report and Dr. Reyzelman's opinion to Dr. Danier to determine if they changed his opinion regarding continuing residuals and whether the MRI scan findings existed at the time of his 2003 evaluation of appellant. In a December 4, 2006 report, Dr. Danier stated that his opinion had not changed from his prior report. He explained that the MRI scan findings of October 8, 2005 revealed some objective findings, not all of which were discussed by Dr. Reyzelman. These consisted largely of inflammatory changes and a moderate amount of fluid in the flexor tendon. Dr. Danier stated that the findings did not necessarily correlate with appellant's clinical presentation. As two years had passed since his 2003 examination to the MRI scan it was not medically possible to determine whether the same findings existed at the time of his evaluation of appellant on June 2, 2003. Dr. Danier opined that an MRI scan was not pertinent to the need for further evaluation or treatment. He based his opinion on the clinical examination and diagnostic studies in June 2003, which showed no specific tenderness about the right ankle or foot or on the plantar fascial area.

On January 30, 2007 the Office denied modification of the February 7, 2006 decision on the grounds that the weight of the medical opinion was represented by the December 4, 2006 report of Dr. Danier.

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.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 To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.³

Section 8123(a) of the Federal Employees' Compensation Act⁴ provides, 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 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

¹ *Paul L. Stewart*, 54 ECAB 824 (2003).

² *Elsie L. Price*, 54 ECAB 734 (2003).

³ *James Weikel*, 54 ECAB 660 (2003).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8123(a).

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

ANALYSIS -- ISSUE 1

Appellant sustained injury on May 20, 2001, accepted by the Office for plantar right foot fasciitis on September 4, 2001. She was treated by Dr. Reyzelman, who diagnosed plantar fasciitis and provided work restrictions that she should not stand for more than four hours. Appellant was referred for examination by Dr. Sherman, who opined that there were no objective findings to support continuing residuals or disability due to the accepted injury. He advised that appellant's condition had resolved and that she had no ongoing medical restrictions. Based on this evidence, the Office properly determined that a conflict in medical opinion arose between appellant's attending physician and the second opinion referral specialist.

Appellant was referred to Dr. Danier, the selected impartial medical specialist. In a report dated June 2, 2003, Dr. Danier reviewed the reports of Dr. Sherman and Dr. Reyzelman. He also conducted a physical examination. On examination, Dr. Danier found that there were no objective findings related to appellant's industrial injury to her right foot. He opined that appellant had no residuals in her right foot that would preclude her customary work activities.

When a case is referred to an impartial medical specialist to resolve a conflict in medical evidence, the opinion of such specialist will be given special weight by the Board when based on an accurate factual and medical history and with a well-rationalized explanation for the conclusions reached.⁷ The Board finds that the weight of medical evidence is represented by the report of Dr. Danier. He provided a review of the factual and medical evidence, detailed his findings on physical examination of appellant and provided discussion for the conclusions he reached. His report establishes that appellant's accepted plantar fasciitis condition had resolved and that she has no further disability or residuals. As Dr. Danier's report is detailed, well rationalized and based on proper factual background, his opinion is entitled to the special weight accorded an impartial medical specialist. It is sufficient to meet the Office's burden of proof to terminate appellant's compensation and medical benefits.⁸

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.⁹ 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 medical and factual background, supporting such a causal

⁶ *Barbara J. Warren*, 51 ECAB 413 (2000).

⁷ *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007).

⁸ *See supra* note 6.

⁹ *Manuel Gill*, 52 ECAB 282 (2001).

relationship.¹⁰ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is 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 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.¹² Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.

ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of her compensation benefits, appellant submitted a medical report from Dr. Reyzelman dated November 6, 2005 and an October 20, 2005 MRI scan report. The Office sent this evidence to Dr. Danier to address whether it would change his opinion regarding any continuing disability due to residuals of plantar fasciitis. Dr. Danier listed the various conditions revealed by the MRI scan. He explained that, while Dr. Reyzelman had only diagnosed plantar fasciitis based upon the October 2005 MRI scan, it also showed inflammation of the Achilles tendon and moderate amount of fluid involving the flexor halusic longus muscle. Dr. Danier explained that Dr. Reyzelman had not described any of the clinical symptoms of sinus tarsi, flexor hallus tenosynovitis or Achilles tendinitis. He noted that "simply using an MRI scan to determine the need for further evaluation and treatment is not necessarily pertinent." Dr. Danier based his findings on appellant's own history, a review of medical records and the clinical examination which showed no specific tenderness about the ankle or foot and no tenderness over the plantar fascial area on clinical testing. He concluded that the new medical evidence did not change his findings based on his prior examination. The Board finds that Dr. Danier's well-rationalized opinion constitutes the weight of the evidence. Appellant has not met her burden of proof to establish continuing employment-related residuals or disability.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that she had no further employment-related disability and properly terminated her authorization for medical treatment. The Board further finds that appellant has not established that she had any continuing disability after August 26, 2004 due to her accepted employment injury.

¹⁰ *Id.*

¹¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 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