United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
	)	**Docket No. 08-740**
and	)	**Issued: October 3, 2008**
U.S. POSTAL SERVICE, NEW JERSEY INTERNATIONAL & BULK MAIL CENTER, Jersey City, NY, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2008 appellant, through counsel, filed a timely appeal of a January 26, 2007 merit decision of the Office of Workers' Compensation Programs' hearing representative, affirming the termination of her compensation for wage-loss and medical benefits effective February 19, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this termination case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective February 19, 2006 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury; and (2) whether she had any continuing employment-related residuals or disability after February 19, 2006.

FACTUAL HISTORY

On May 18, 2003 appellant, then a 40-year-old mail handler, filed a traumatic injury claim alleging that on that date she sustained a contusion of the right foot. Her foot was crushed between a bulk mail carrier and the jeep she was driving as a result of getting hit by a forklift. By letter dated August 17, 2003, the Office accepted the claim for right ankle sprain.

Appellant stopped work on July 3, 2003 based on the recommendation of Dr. Julius P.V. Rao, an attending Board-certified orthopedic surgeon. She filed a claim for wage-loss compensation for total disability for the period July 5 through August 4, 2003. Appellant returned to work on August 6, 2003. She stopped work again on August 17, 2003.

In a September 3, 2003 letter, appellant stated that she stopped work effective August 17, 2003 due to increased pain. She filed a claim alleging that she sustained a recurrence of disability on August 17, 2003. A September 3, 2003 disability certificate of Dr. Monica R. Mehta, an attending Board-certified physiatrist, stated that appellant sustained an acute right ankle sprain and that she was totally disabled. In an October 24, 2003 medical report, Dr. Mehta reviewed a history of the May 18, 2003 employment injury. She noted appellant's complaints of severe pain in the right ankle, foot and knee and pain radiating to her right hip and lumbar spine. Dr. Mehta reported her findings on physical examination and stated that appellant sustained right ankle internal derangement, probable early stages of reflex sympathetic dystrophy (RSD), peroneal neuritis, lumbosacral radiculopathy and right knee internal derangement. She opined that these conditions were caused by the May 18, 2003 employment injury. Dr. Mehta further opined that appellant could not work until further notice.

By letter dated March 24, 2004, the Office accepted that appellant sustained a recurrence of disability on August 17, 2003 causally related to her May 18, 2003 employment injury.[1] On April 2, 2004 it paid wage-loss compensation for total disability during the period July 5 through August 3, 2003.

By letter dated May 6, 2004, the Office referred appellant to a field nurse for intervention to determine her treatment plan and assist her return to work.

On April 23, 2004 Dr. Howard Hirsch, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's right knee which demonstrated a probable partial interstitial tear involving the anterior cruciate ligament (ACL). He found no evidence of a meniscal tear.

On June 18, 2004 the nurse advised the Office that she was waiting for a medical report from Dr. Ernesto A. Tolentino, a Board-certified orthopedic surgeon, regarding appellant's right knee condition.

In a May 28, 2004 report, Dr. Mehta stated that appellant sustained right ankle internal derangement which caused acute lumbosacral radiculopathy due to the pelvic obliquely

[1] In the March 24, 2004 letter, the Office also accepted that appellant sustained a recurrence of disability on June 29, 2003 causally related to her accepted employment injury.

emanating from the right ankle and right knee internal derangement. An MRI scan of the right knee revealed a partial interstitial tear involving the ACL. Appellant was advised to refrain from activities that required prolonged standing, kneeling, pushing, pulling and climbing until further notice.

As the Office did not receive a report from Dr. Tolentino, it referred appellant to Dr. Iris A. Drey, a Board-certified orthopedic surgeon, for a second opinion medical examination.

In a June 30, 2004 report, Dr. Mehta stated that appellant could return to light-duty work with restrictions as of June 7, 2004. In a July 15, 2004 disability certificate, she stated that appellant sustained acute right ankle internal derangement and that she was disabled for work.

In a July 13, 2004 report, Dr. Tolentino reviewed a history of appellant's May 18, 2003 employment injury and medical treatment. He noted her complaints of pain in the right lower extremity from the foot to the thigh and right wrist. On physical examination, Dr. Tolentino reported normal findings regarding appellant's right lower extremity including the right knee, and essentially normal findings regarding her right wrist. He noted the findings of the April 23, 2004 MRI scan but noted that on physical examination there was no evidence of any positive Lachman test or positive Drawer sign to the right knee. Dr. Tolentino opined that appellant was status post contusion and sprain of the right ankle and lower extremity. He stated that she may benefit from a pain management program, as well as, a psychiatric evaluation.

In an August 6, 2004 report, Dr. Drey reviewed a history of appellant's May 18, 2003 employment injury, employment, medical and social background. On physical examination, he reported normal range of motion of appellant's right and left shoulders, elbows, wrists, hips, knees, feet and ankles, and cervical and thoracolumbar spines. Dr. Drey diagnosed right hip bursitis and right knee meniscal symptoms and possible instability. He opined that the right hip condition may be secondary to appellant's right knee symptoms, the origin of which he was unable to determine at that time. Dr. Drey further opined that she was unable to work at her regular job as a mail handler. He recommended reevaluation following her completion of physical therapy. Dr. Drey stated that appellant did not appear to have any continuing disability of the employment-related right ankle condition. There was no diagnosis of right ankle derangement and he was unable to state that this condition caused her acute lumbosacral radiculopathy. Dr. Drey opined that appellant's right ankle and knee symptoms were related to the May 18, 2003 employment injury. Appellant appeared to have some decreased range of motion of the lumbosacral spine which was possibly related to altered walking due to her right knee injury and accepted employment-related right ankle condition. In an August 6, 2004 work capacity evaluation, Dr. Drey stated that appellant could not perform her regular work duties, but she could work four hours per day with restrictions.

The Office found a conflict in the medical opinion evidence between Dr. Mehta and Dr. Drey as to whether appellant had any continuing employment-related residuals or disability. By letter dated January 12, 2005, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Paul A. Foddai, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 9, 2005 report, Dr. Hirsch stated that an x-ray and an MRI scan of appellant's right ankle were negative.

In a February 17, 2005 report, Dr. Foddai reviewed a history of appellant's May 18, 2003 employment injury and medical treatment. He noted her complaints of persistent back and right knee, foot and ankle pain but reported an essentially normal physical examination of the lumbosacral spine, right knee and right ankle. Dr. Foddai also reported that the neurovascular examination was intact. He stated that an MRI scan of appellant's ankle revealed no evidence of bony or soft tissue abnormality or ligamentous tear. Dr. Foddai reviewed her case record including, Dr. Rao's medical records. He noted that appellant initially injured and contused her foot and ankle. Dr. Foddai believed that appellant received excellent orthopedic care and that routine x-rays of the foot and ankle and an MRI scan were negative. He opined:

> "The clinical examination did not demonstrate any evidence of ankle instability nor did it demonstrate any evidence of ankle swelling or reduced motion. Foot examination was nonfocal. Examination of the knee did not show any evidence of meniscal or ligamentous injury. I realize that the anterior cruciate ligament has been felt to be compromised but this is not readily apparent on clinical examination. Furthermore, the mechanism that [appellant] stated caused the knee injury does not correspond to a mechanism that would have given a tear of the cruciate ligament. If she had sustained a cruciate ligament injury at the time of her initial evaluation, she would have had a tremendous amount of pain and swelling in the knee itself. Dr. Rao does not mention this at all in any of his notes. Consequently, although there is evidence of anterior cruciate ligament insufficiency on MRI [scan] examination, it is not clinically apparent and does not appear to me to have been accepted as a clinical problem in [appellant]. If it is ever accepted as a clinical problem, then the history that [appellant] gave for injuring does not fit the mechanism that would lead to a tear of the anterior cruciate ligament. Let me explain once more. At the time of [appellant's] initial evaluation by Dr. Rao, shortly after her work[-]related event, she complained of foot and ankle pain which he treated accordingly. If she had injured her anterior cruciate ligament at the time of the initial injury, this injury is associated with bleeding into the knee joint and caused a hemoarthrosis and is quite painful. [Appellant] did not complain of knee pain according to Dr. Rao's notes when he treated her. Secondly, when she did develop knee pain at the time of her recurrence of pain, the mechanism by which she describes first noting knee pain is not consistent with the mechanism that would lead to a tear of the anterior cruciate ligament. Consequently, [appellant] may indeed have a tear of the cruciate ligament but it does not appear at this point in time to be related to the work event. I feel that she has reached maxim[um] therapeutic benefit of treatment. [Appellant] was quite adamant to me that she had severe and unrelenting pain. I believe that her subjective complaints outweigh her objective

clinical findings.[2] I believe that she is capable of resuming work without restrictions. I believe that a psychological evaluation would be in order as well."

In a March 14, 2005 report, Dr. Mehta stated that appellant had limited range of motion of her right knee, wrist, shoulder and ankle and lumbar spine. She opined that appellant's back and right knee symptoms were aggravated by her employment-related right ankle condition. Dr. Mehta stated that special studies revealed a posterior subligamentous disc bulge at L4-5 and L5-S1. An MRI scan of the right knee revealed a partial interstitial tear involving the ACL. In reports dated March 25 and July 15, 2005, Dr. Mehta prescribed medication for pain radiating from appellant's back down to her lower extremities.

By letter dated September 9, 2005, the Office issued a notice of proposed termination of compensation for wage-loss and medical benefits based on Dr. Foddai's medical opinion. The Office provided 30 days in which appellant could respond to this notice.

In a September 28, 2005 report, Dr. Mark A.P. Filippone, a Board-certified physiatrist, opined that appellant sustained internal derangement of the right ankle and knee and low back due to the May 18, 2003 employment injury. He stated that the knee pain resulted from twisting and sheering the right knee at the time of the May 18, 2003 employment incident. Dr. Filippone stated that he needed to see the results of electromyogram (EMG), MRI scan and x-ray studies because he believed that there may be RSD given the severity and persistence of the described pain. He opined that appellant remained totally disabled due to the May 18, 2003 employment injury.

By decision dated February 15, 2006, the Office terminated appellant's wage-loss and medical benefits effective February 19, 2006.

On March 14, 2006 appellant requested an oral hearing before an Office hearing representative.

In an April 5, 2006 report, Dr. Filippone requested authorization to perform EMG and nerve conduction velocity (NCV) studies of appellant's upper and lower extremities based on her complaints of pain in the right knee and hip and low back, and his findings on physical examination. He opined that she remained totally disabled.

On May 16, 2006 appellant filed a claim for an occupational disease. She alleged that on April 29, 2005 she first became aware of her major depressive disorder and realized that this condition was caused by the May 18, 2003 employment injury. In a May 17, 2006 attending physician's report, Dr. Devendra Kurani, a Board-certified psychiatrist, stated that appellant sustained major depressive disorder causally related to her May 18, 2003 employment injury.

In a June 5, 2006 report, Dr. Filippone opined that appellant's right knee and hip injuries were caused by the May 18, 2003 employment injury. He stated that the history was consistent

[2] The Board notes that it appears Dr. Foddai inadvertently stated that appellant's subjective complaints outweighed the objective clinical findings as he found no clinical evidence of any residuals or disability causally related to the May 18, 2003 employment injury.

with the clinical presentation. Dr. Filippone further opined that appellant had continuing residuals of her employment-related injury as she had right ankle symptoms. He opined that she was totally disabled from performing her mail handler duties.

By letter dated June 21, 2006, the Office advised appellant that, since she claimed that her emotional condition was caused by the May 18, 2003 employment-related foot condition, her occupational disease claim would be adjudicated as a claim for a consequential injury.

In reports dated July 12, August 29 and October 26, 2006, Dr. Filippone noted appellant's complaints of pain in her left foot, lumbar and cervical spines and right ankle and knee. He reiterated his prior opinion that she remained totally disabled. In a November 7, 2006 report, he stated that his EMG/NCV studies revealed evidence of right L5-S1 radiculopathy and mild right carpal tunnel syndrome. Dr. Filippone opined that these abnormalities were directly caused by the May 18, 2003 employment injury.

By letter dated December 11, 2006, appellant, through counsel, requested that the Office expand the acceptance of her claim to include right knee and low back conditions. Counsel contended that appellant continued to have employment-related residuals. He also contended that there was a conflict in the medical opinion evidence between Dr. Foddai and Dr. Drey, Dr. Mehta and Dr. Filippone as to whether appellant's right knee problems were related to the accepted employment injury. Appellant submitted Dr. Mehta's November 29, 2006 report. Dr. Mehta opined that appellant's right knee internal derangement, lumbosacral radiculopathy and cervical radiculopathy on the left, right ankle and wrist sprain, RSD and ACL tear on the right, posterior ligamental disc bulges at L4-5 and L5-S1 and mechanical imbalance of the pelvis and resultant spine imbalance were caused by the May 18, 2003 employment injury. In a November 15, 2006 report, she noted appellant's complaints of right ankle and foot pain. Dr. Mehta opined that appellant was totally disabled due to the May 18, 2003 employment injury.

In a December 14, 2006 report, Dr. Filippone noted appellant's complaints of pain in her left lumbar and right knee, wrist and hand. He reiterated his prior opinion that she was totally disabled for work.

By decision dated January 26, 2007, the hearing representative affirmed the February 15, 2006 decision. She found the evidence submitted by appellant insufficient to outweigh the special weight accorded to Dr. Foddai's February 17, 2005 medical opinion. The hearing representative, however, found a conflict in the medical opinion evidence between Dr. Foddai, Dr. Mehta and Dr. Filippone as to whether appellant sustained right knee, lumbar and cervical conditions causally related to her May 18, 2003 employment injury. She remanded the case to the Office for referral of appellant to an impartial medical specialist.[3]

[3] The Board notes that the case record does not contain a final decision issued by the Office regarding appellant's claim that she sustained consequential right knee, lumbar, cervical and emotional conditions causally related to her accepted May 18, 2003 employment injury. Therefore, the Board does not have jurisdiction over this issue. *See* 20 C.F.R. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions).

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[4] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.[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.[7]

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that a conflict in the medical opinion evidence arose between Dr. Mehta, an attending physician, and Dr. Drey, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted May 18, 2003 employment-related injury. Dr. Mehta opined that appellant suffered from continuing employment-related residuals and total disability. Dr. Drey opined that appellant's employment-related right ankle sprain had resolved and she could return to part-time work with restrictions.

The Office properly referred appellant to Dr. Foddai as the impartial medical specialist. In a February 17, 2005 report, Dr. Foddai reviewed a history of appellant's May 18, 2003 employment injury and medical treatment. He listed no objective findings of residuals relative to the accepted May 18, 2003 employment-related right ankle sprain. Dr. Foddai noted appellant's complaints of back, right knee, ankle and foot pain. After reporting normal findings on physical examination and reviewing appellant's medical records, Dr. Foddai opined that her subjective complaints did not outweigh his objective findings. He stated that the clinical examination of appellant's ankle did not demonstrate any evidence of instability, swelling or reduced motion. Dr. Foddai noted that "the mechanism by which she describes first noting knee pain is not consistent with the mechanism that would lead to a tear of the [ACL]." He concluded that, if

[4] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[5] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[6] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[7] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

appellant currently had a torn ACL, it was not employment related as she did not complain about this when examined by Dr. Rao. Further, Dr. Foddai explained that this type of injury is associated with bleeding into the knee joint and hemoarthrosis causing pain, which appellant did not complain about on her initial examination. He further reported that appellant's foot was nonfocal. Dr. Foddai stated that appellant received excellent orthopedic care and that routine x-rays and an MRI scan of her foot and ankle were negative. He stated that she had reached maximum beneficial therapeutic treatment and that she could resume working without restrictions.

The Board finds that Dr. Foddai's February 17, 2005 opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record, negative findings on objective examination and normal findings on physical examination, Dr. Foddai found that appellant did not have any residuals or disability causally related to her employment-related right ankle sprain. For this reason, his report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist. The Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits on February 15, 2006.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.[8] 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 factual and medical background, supporting such a causal relationship.[9] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[10] Rationalized medical evidence is medical 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.[11]

ANALYSIS -- ISSUE 2

The Board finds that appellant did not establish that she had any continuing employment-related residuals or disability after February 19, 2006. The relevant medical evidence includes Dr. Filippone's June 5, August 29 and October 26, 2006 reports and Dr. Mehta's November 15, 2006 report which stated that appellant had continuing symptoms of her employment-related

[8] *See Manuel Gill*, 52 ECAB 282 (2001).

[9] *Id.*

[10] *Elizabeth Stanislav*, 49 ECAB 540 (1998).

[11] *Solomon Polen*, 51 ECAB 341 (2000).

right ankle injury and that she remained totally disabled. However, neither Dr. Filippone nor Dr. Mehta provided any medical rationale explaining how or why appellant's residuals and resultant disability were caused by the accepted employment injury.[12] Further, they did not identify any period of total disability due to appellant's accepted employment-related injury.

The Board finds that appellant did not submit sufficient rationalized medical evidence to substantiate that the claimed continuing right ankle residuals and disability on or after February 19, 2006 were causally related to her accepted employment-related injury.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation for wage-loss and medical benefits effective February 19, 2006 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury. The Board further finds that appellant has failed to establish that she had any continuing employment-related residuals or disability after February 19, 2006.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[12] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).