

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

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**M.N., Appellant**

**and**

**DEPARTMENT OF LABOR, JOB CORPS  
CENTER, Morganfield, KY, Employer**

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**Docket No. 09-339  
Issued: August 6, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 10, 2008 appellant filed a timely appeal from September 2 and November 3, 2008 decisions of the Office of Workers' Compensation Programs, terminating her wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective September 28, 2008; and (2) whether appellant met her burden of proof to establish that she had any employment-related disability or medical condition after September 28, 2008 causally related to her employment injury.

## **FACTUAL HISTORY**

This is the second appeal in this case.<sup>1</sup> By decision dated October 22, 1999, the Board reversed a May 2, 1997 Office decision that terminated appellant's compensation benefits on the grounds that her May 12, 1996 employment injury had resolved. The facts and the law of the previous Board decision are incorporated herein by reference.

On July 12, September 28 and October 18, 2007 the Office asked Dr. Michael C. McGlamry, a podiatrist and appellant's last attending physician of record, to provide an opinion as to whether appellant continued to be totally disabled due to her accepted left ankle sprain. Dr. McGlamry's office responded that appellant had not been treated since March 2007.

In an April 22, 2008 report, Dr. Alexander N. Doman, a Board-certified orthopedic surgeon and a referral physician, reviewed appellant's medical history and provided findings on physical examination. He noted that appellant had a significant limp on ambulation. Range of motion of the left ankle was limited to 0 degrees of dorsiflexion and 20 degrees of plantar flexion. X-rays of the left ankle revealed severe end-stage osteoarthritis with widening of the distal tibia/fibula joint and the medial mortis of the ankle. Dr. Doman diagnosed end-stage osteoarthritis of the left ankle. He stated that this condition was caused by appellant's preexisting ankle instability that predated her job at the employing establishment. Appellant's osteoarthritis was caused by her nonwork-related left ankle fracture in March 1995 when she fell off a ladder. Due to difficulty with the initial surgery performed on March 22, 1995, additional reconstructive surgery was recommended but appellant declined. Appellant regained ambulation until she sprained her left ankle on May 12, 1996 while roller skating. Dr. Doman opined that her accepted May 12, 1996 left ankle sprain had fully and completely resolved. Appellant's current condition represented the natural progression of her 1995 fracture dislocation of her left ankle with progressive osteoarthritis. Her employment-related left ankle sprain in 1996 was a temporary aggravation of her underlying disorder and would have resolved no later than May 1997.

By letter dated July 24, 2008, the Office advised appellant of its proposed termination of her wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no remaining disability or medical condition causally related to her May 12, 1996 employment-related left ankle sprain.

By decision dated September 2, 2008, the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no continuing disability or medical condition causally related to her May 12, 1996 employment-related left ankle sprain.

Appellant requested reconsideration and submitted additional medical evidence. In reports dated August 6 and 29, 2008, Dr. Ralph D'Auria, a Board-certified physiatrist, reviewed

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<sup>1</sup> Docket No. 98-102 (issued October 22, 1999). On May 12, 1996 appellant, then an 18-year-old job corps enrollee, sustained a left ankle sprain in the performance of duty while roller skating during an employing establishment outing. On October 3, 1996 the Office placed her on the periodic rolls. Appellant had a prior nonwork-related left ankle fracture for which she underwent surgery on March 22, 1995.

appellant's medical history and provided findings on physical examination. Appellant had very limited range of motion of the subtalar joint and ankle. There was swelling. Appellant walked with difficulty, using short steps and holding her left foot in external rotation. Left ankle x-rays taken August 8, 2008 revealed an old fracture of the distal third of the tibia with collapse of the talus, widening of the syndesmosis and calcifications over the lateral tibia. The subtalar space was extremely narrow and the tibial/talar relationship was totally distorted. There was a significant degree of subchondral sclerosis and diastasis of the medial malleolus. Dr. D'Auria diagnosed advanced post-traumatic degenerative changes secondary to an old left ankle fracture. Appellant could perform only sedentary work. Dr. D'Auria noted that the cause of appellant's current condition was under question. He explained that the issue of causal relationship was not addressed in his report because the purpose of his evaluation was only to determine her functional status.

By decision dated November 3, 2008, the Office denied modification of the September 2, 2008 decision.<sup>2</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.<sup>4</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> Furthermore, 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 that require further medical treatment.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant's claim for an injury on May 12, 1996 was accepted for a left ankle sprain. Dr. Doman provided a comprehensive report dated April 22, 2008. He was provided with appellant's case file and a statement of accepted facts. In his April 22, 2008 report, Dr. Doman reviewed appellant's medical history and provided findings on physical examination. He noted that appellant had a significant limp on ambulation. Range of motion of the left ankle was limited to 0 degrees of dorsiflexion and 20 degrees of plantar flexion. X-rays of the left ankle

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<sup>2</sup> Subsequent to the November 3, 2008 decision, additional evidence was associated with the case. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal. The Board notes that there is a November 16, 2007 overpayment decision which appellant is not appealing.

<sup>3</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

<sup>4</sup> *J.M.*, 58 ECAB \_\_\_ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>5</sup> *T.P.*, 58 ECAB \_\_\_ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>6</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

revealed severe end-stage osteoarthritis with widening of the distal tibia/fibula joint and the medial mortis of the ankle. Dr. Doman diagnosed end-stage osteoarthritis of the left ankle. He stated that this condition was caused by appellant's preexisting ankle instability that predated her job at the employing establishment. Appellant's osteoarthritis was caused by her nonwork-related left ankle fracture in March 1995 when she fell off a ladder. Due to difficulty with the initial surgery performed on March 22, 1995, additional reconstructive surgery was recommended but appellant declined. Dr. Doman opined that appellant's accepted May 12, 1996 left ankle sprain had fully and completely resolved. Appellant's current condition represented the natural progression of her 1995 fracture dislocation of her left ankle with progressive osteoarthritis. Her employment-related left ankle sprain in 1996 was a temporary aggravation of her underlying disorder and would have resolved no later than May 1997. The report of Dr. Doman is based upon a complete and accurate factual and medical background and findings on physical examination. The Board finds that Dr. Doman's thorough and well-rationalized report establishes that appellant had no continuing disability or medical condition after September 28, 2008 causally related to her May 12, 1996 accepted left ankle sprain. Accordingly, the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective September 28, 2008 based on the medical opinion of Dr. Doman that her accepted left ankle sprain had resolved.

### **LEGAL PRECEDENT -- ISSUE 2**

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.<sup>7</sup> In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that, following the proper termination of her compensation and medical benefits on September 28, 2008, appellant failed to establish that she had any continuing disability or medical condition causally related to her May 12, 1996 employment-related left ankle sprain.

Dr. D'Auria reviewed appellant's medical history and provided findings on physical examination. She had very limited range of motion of the subtalar joint and ankle. Appellant walked with difficulty, using short steps and holding her left foot in external rotation. Left ankle x-rays taken August 8, 2008 revealed an old fracture of the distal third of the tibia with collapse of the talus. Dr. D'Auria diagnosed advanced post-traumatic degenerative changes secondary to an old left ankle fracture. He noted that the cause of appellant's current condition was under question but this issue was not addressed in his report because the purpose of his evaluation was to determine her functional status. As Dr. D'Auria did not provide an opinion as to causal

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<sup>7</sup> *I.J., supra* note 3; *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975); see *Fred Foster*, 1 ECAB 127, 132-33 (1948).

<sup>8</sup> *I.J., supra* note 3; *Gary R. Sieber*, 46 ECAB 215, 222 (1994); see *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

relationship, his reports are not sufficient to establish that appellant had any disability or medical condition after September 28, 2008 causally related to her May 12, 1996 accepted left ankle sprain. Accordingly, the Office properly denied modification of the September 2, 2008 termination decision.

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective September 28, 2008. The Board further finds that appellant did not meet her burden of proof to establish that she had any work-related disability or medical condition after September 28, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 3 and September 2, 2008 are affirmed.

Issued: August 6, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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