United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 09-1468**
	)	**Issued: February 25, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Jackson, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 26, 2009 appellant filed a timely appeal from an April 28, 2009 decision of the Office of Workers' Compensation Programs affirming a September 8, 2008 decision terminating his compensation and medical benefits for his accepted work injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office met its burden of proof to justify termination of appellant's compensation benefits for his accepted injury effective September 8, 2008.

FACTUAL HISTORY

On September 3, 2005 appellant, then a 42-year-old part-time flexible letter carrier, filed a traumatic injury claim alleging that, on the same day, while delivering mail, he was chased by a dog down a flight of stairs and experienced burning and stiffness of his left heal. The Office accepted left Achilles tendon strain and later expanded his claim to include aggravation of left

Achilles tendinitis. Appellant returned to limited-duty work on September 7, 2005 and full duty on October 4, 2005.

Appellant was treated by Dr. Gregory Naylor, a Board-certified orthopedist, on September 3, 2005, for left foot pain, which occurred after he was chased by a dog while delivering mail. In an attending physician's report, Dr. Naylor diagnosed calcified tendinitis of the left Achilles and opined that the condition was caused or aggravated by appellant's work duties. He returned appellant to work on September 6, 2005. A September 3, 2005 x-ray of the left ankle revealed Achilles tendon bursitis.

Appellant came under the treatment of Dr. William Lee, a Board-certified orthopedist, from January 10 to February 8, 2006, for left ankle pain, which occurred after being chased by a dog while delivering mail. Dr. Lee noted findings upon examination of tenderness of the left Achilles tendon, intact sensation, bony prominence in the retrocalcaneal area and cavovarus foot postural deformity. He diagnosed left ankle calcific Achilles' tendinitis, Achilles tendon strain, Haglund's deformity of the left foot and retrocalcaneal bursitis. Dr. Lee opined that appellant's calcific Achilles tendinitis was aggravated by his work injury. On January 11, 2006 he placed appellant in a short leg cast and advised that he was totally disabled from work for approximately four weeks. Appellant received compensation for time missed from work.

Appellant continued to submit reports from Dr. Lee dated February 8 to June 2, 2006 who continued to treat appellant for a left ankle injury. Dr. Lee noted that appellant was treated conservatively by a number of physicians; however, he continued to experience persistent Achilles' pain. He placed appellant in a cast and took him off work in an effort to control the Achilles inflammation. Dr. Lee opined that appellant's preexisting foot problems were aggravated by his work injury. On February 13, 2006 he reported a total resolution of inflammation with findings of mild tenderness on the medial and lateral sides of the Achilles tendon. Dr. Lee diagnosed Achilles tendinitis and opined that appellant's underlying Achilles tendinitis and retrocalcaneal bursitis worsened when he was chased by a dog in 2005. Reports dated April 3 to June 2, 2006 noted that appellant returned to work in a sedentary position and was progressing well. On June 2, 2006 Dr. Lee opined that appellant had reached maximum medical improvement and was partially disabled and could work only a sedentary position. An x-ray of the left foot dated March 3, 2006 revealed calcification of the Achilles tendinitis and an anterior lip osteophyte on the distal tibia and dorsum of the talar neck.

On June 27, 2006 the Office referred appellant to Dr. Bruce D. Abrams, a Board-certified orthopedist, for a second opinion. In a July 25, 2006 report, Dr. Abrams indicated that he reviewed the records provided and examined appellant. He diagnosed Haglund's deformity/exostosis calcaneus left heel, history of Achilles tendinitis of the left ankle and left ankle sprain by history, resolved. Dr. Abrams noted examination of the left ankle revealed no tenderness or thickening about the Achilles tendon, no retro Achilles tendinitis or soft tissue swelling, normal range of motion, intact neurovascular status, normal gait, normal sensation, symmetrical and equal reflexes with Haglund's exostosis of the posterior aspect of the calcaneus. He opined that the Haglund's deformity/exostosis calcaneus of the left heel and Achilles tendinitis were preexisting conditions and any work-related conditions of sprain of the left ankle and aggravation of the left Achilles tendinitis has resolved with no residuals due to the work injury. Dr. Abrams further opined that appellant was able to return to his previous full-time job

as a letter carrier and would require no further treatment or restricted-duty related to his work injury. He recommended that appellant continue to use the ankle brace for his preexisting conditions.

On August 17, 2006 the Office requested Dr. Lee's comment's on the report of Dr. Abrams. On August 21, 2006 Dr. Lee opined that appellant's underlying structural foot problem became symptomatic following the work incident of September 3, 2005. He advised that, unless appellant had surgery, he could not return to work as a letter carrier. Dr. Lee indicated that appellant could work with restrictions of sedentary work only.

The Office found that a conflict of medical opinion existed between Dr. Lee, appellant's treating physician, who indicated that appellant sustained residuals of his work-related injuries and was partially disable and could not return to his preinjury position but could only work in sedentary position and Dr. Abrams, an Office referral physician, who determined that appellant's work-related conditions of sprain of the left ankle and aggravation of the left Achilles tendinitis had resolved and he had no residuals due to the work injury and could return to his preinjury position as a letter carrier without restrictions related to his work injury.

To resolve the conflict the Office, on September 6, 2007, referred appellant to a referee physician, Dr. Emmanuel N. Obianwu, a Board-certified orthopedist, who indicated, in a report dated September 18, 2007, that he reviewed the records provided to him and performed a physical examination of appellant on September 13, 2007. Dr. Obianwu reviewed appellant's job requirements, noted a history of his work-related injury and reviewed treatment following the injury. He noted findings upon physical examination. Thompson test was negative in the prone position. Excursion of the left ankle with the Thompson test was slightly less than that on the right side but there was obvious continuity of the Achilles tendon. There were no defects along the Achilles tendon that would suggest a tear, no evidence of nodules along the Achilles tendon to suggest chronically inflamed tissue and no warmth or swelling in the retrocalcaneal area. Range of motion was normal, there was good distal pulses in both feet with no swelling around the left foot and ankle. Appellant could toe and heel walk without difficulty. Dr. Obianwu diagnosed resolved Achilles tendon inflammation of the left ankle. He advised that the examination failed to reveal any continued disability that would impede appellant's ability to return to work as a letter carrier without restrictions related to the work injury. Dr. Obianwu found no degree of disability associated with the work injury and no basis to attribute any restrictions to the work injury. He suggested that magnetic resonance imaging (MRI) scan of the left ankle would show if appellant had partial tears or other damage to the Achilles tendon. However, Dr. Obianwu noted that any restrictions would be the result of chronically inflamed tendons and not due his work injury.

Appellant submitted a February 5, 2008 report, from Dr. Lee who diagnosed left ankle tendinitis, calcific insertional Achilles tendinitis and opined that he was restricted to sedentary work only.

On August 1, 2008 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Obianwu's report dated September 18, 2007 established no residuals of the work-related left Achilles tendon strain and aggravation of left Achilles tendinitis.

By compensation order dated September 8, 2008, the Office terminated appellant's compensation and medical benefits effective September 8, 2008 for the accepted conditions of left Achilles tendon strain and aggravation of left Achilles tendinitis on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from his accepted employment injuries.

On September 17, 2008 appellant requested a telephonic oral hearing which was held on January 16, 2009. He submitted a report from Dr. Lee dated February 5, 2008 previously of record.

In a decision dated April 28, 2009, the hearing representative affirmed the September 8, 2008 Office decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation 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] 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, which requires further medical treatment.[3]

ANALYSIS

The Office accepted appellant's claim for left Achilles tendon strain and later expanded his claim to include aggravation of left Achilles tendinitis. It reviewed the medical evidence and determined that, a conflict in medical opinion existed between appellant's attending physician, Dr. Lee, a Board certified orthopedist, who indicated that appellant sustained residuals of his work-related left Achilles tendon strain and aggravation of left Achilles tendinitis and was partially disabled and restricted to a sedentary job and Dr. Abrams, an Office referral physician, who determined that appellant's left Achilles tendon strain and aggravation of left Achilles tendinitis injury of September 3, 2005 was resolved and opined that appellant could return to work full time in his preinjury position. Consequently, the Office referred appellant to Dr. Obianwu to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Obianwu is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related left Achilles tendon strain and aggravation of left Achilles tendinitis has ceased. Where there exists a conflict of medical

[1] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

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

[3] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[4]

In his report of September 18, 2007, Dr. Obianwu reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or definite work-related abnormality in his condition. He noted of no evidence of a tear or chronically inflamed tissue along the Achilles tendon, no warmth or swelling in the retrocalcaneal area, range of motion was normal with good distal pulses in both feet. Dr. Obianwu diagnosed resolved Achilles tendon inflammation of the left ankle. He advised that the examination failed to reveal any continued disability that would impede appellant's ability to return to work as a letter carrier without restrictions related to the work injury. Dr. Obianwu opined that appellant's accepted conditions of left Achilles tendon strain and aggravation of left Achilles tendinitis had resolved. He noted that an MRI scan might further indicate if there were partial tears of the Achilles tendon but indicated that any work restrictions would not be due to the work injury. Dr. Obianwu found no basis on which to attribute any continuing residuals or disability to the accepted September 3, 2005 work injury.

Thereafter, appellant submitted a February 5, 2008 report from Dr. Lee who diagnosed left ankle tendinitis, calcific insertional Achilles tendinitis and opined that he was restricted to sedentary work only. However, Dr. Lee did not specifically address how any continuing condition or medical restrictions and disability were causally related to the accepted employment injuries. Additionally, he was on one side of the conflict that Dr. Obianwu resolved and this report is insufficient to overcome that of Dr. Obianwu or to create a new medical conflict.[5]

The Board finds Dr. Obianwu had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Obianwu is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had absolutely no work-related reason for disability. His opinion as set forth in his report of September 18, 2007 is found to be probative evidence and reliable. The Board finds that Dr. Obianwu's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits for the accepted conditions of left Achilles tendon strain and aggravation of left Achilles tendinitis has ceased.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective September 8, 2008.

[4] *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

[5] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Lee's report did not contain new findings or rationale on causal relationship upon which a new conflict might be based.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 28, 2009 and September 8, 2008 are affirmed.

Issued: February 25, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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