

the right on November 30, 2004 and received compensation for temporary total disability on the periodic rolls.

The Office referred appellant, together with a copy of the medical record and a statement of accepted facts, to Dr. E. Robert Wells, a Board-certified orthopedic surgeon, for an opinion on continuing residuals of the accepted medical conditions and current work restrictions.

On March 6, 2008 Dr. Wells reviewed the statement of accepted facts, appellant's chief complaints and her history of present illness. He also reviewed appellant's extensive medical record. Dr. Wells described his findings on physical examination and diagnosed the following: (1) pronated pes planus bilaterally, preexisting, congenital -- temporarily aggravated by job activities, left greater than right so far as aggravation; (2) posterior tibial tendon dysfunction, bilaterally -- secondary to (1) and temporarily job aggravated; (3) status post right gastrocnemius recession, right os calcis medial displacement osteotomy, right cuneiform plantar flexion osteotomy, and right flexor tendon transfer to the tarsonavicular -- secondary to (1); (4) thoracolumbar strain/sprain syndrome, preexisting -- temporarily job aggravated; and (5) exogenous obesity and deconditioning. He addressed the Office's questions. Dr. Wells noted that the diagnoses were established, but there was no objective evidence of anything other than soft tissue injuries so far as the spine was concerned. On the issue of continuing residuals, he stated as follows:

“From a medical standpoint, strains and sprains are temporary conditions that usually resolve in a reasonable period, particularly with corrective treatment. This usually takes from weeks to months, and it should be noted that [appellant] was labeled as stationary after a consistent period of work hardening on the [April 21, 2004]. Though she continues to indicate the presence of symptoms referable to this area intermittently, these complaints are subjective and not confirmed by the presence of significant reproducible objective findings other than mild local tenderness. As a consequence, based on the [s]tatement of [a]ccepted [f]acts, these would be considered temporary aggravations.

“As noted, the foot and ankle that was initially symptomatic and most severe during the period of employment with the [employing establishment] is the left one which has not been surgically addressed. It continues to be somewhat more symptomatic than the right, but as noted above, this is a congenital condition, preexisting, and likewise is considered to be temporarily aggravated by [appellant's] employment with the [employing establishment]. Also noted is the condition in regard to the operated right foot and ankle which has been previously assessed and stated to be stable and closed effective January 30, 2006, by the operating surgeon, Dr. Richard Gellman.”

Dr. Wells completed a work capacity evaluation but noted that the restrictions were deemed secondary to preexisting conditions, as her spinal condition was declared stable and ratable as of April 21, 2004 and as the foot condition was listed as stable and ratable as of January 30, 2006.

In a decision dated May 5, 2008, the Office terminated appellant's compensation benefits. It found that Dr. Wells' opinion represented the weight of the medical evidence and

established that she no longer had disability or work restrictions as a result of her employment injury.

On March 12, 2009 an Office hearing representative affirmed the May 5, 2008 decision. She found that Dr. Wells' opinion was thorough, well reasoned and clearly supported that the accepted back strain and aggravation of appellant's foot condition had resolved.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to 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.³

ANALYSIS

Having accepted appellant's claim for compensation, the Office has the burden of proof to justify its termination of benefits. It relied on the March 6, 2008 opinion of Dr. Wells, a Board-certified orthopedic surgeon and Office referral physician. The Office provided Dr. Wells with a statement of accepted facts and a copy of appellant's medical record so he could base his opinion on a proper factual and medical background. Dr. Wells thoroughly reviewed those documents. He also examined appellant. Dr. Wells related her complaints and described his clinical findings.

Dr. Wells concluded that appellant no longer continued to suffer residuals of the accepted back sprain. He explained as a general matter that strains and sprains are temporary conditions that usually resolve in a reasonable period of time, from weeks to months and, in appellant's particular case, she was found to be stationary after a consistent period of work hardening on April 21, 2004. Further, although appellant continued to indicate symptoms referable to that area, her complaints were subjective and not confirmed by the presence of significant reproducible objective findings other than mild local tenderness.

Dr. Wells also concluded that appellant no longer continued to suffer from the accepted temporary aggravation of her bilateral posterior tibial tendon dysfunction (flat feet). He explained that this was a congenital, preexisting condition only temporarily aggravated by her employment (years earlier) as a security screener. Dr. Wells noted that the left was initially symptomatic and most severe during the period of her employment. Currently, it continued to be somewhat more symptomatic than the right, which was surgically reconstructed and assessed to be stable effective January 30, 2006. Although he imposed physical limitations, Dr. Wells made

¹ 5 U.S.C. § 8102(a).

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

clear that they were secondary to appellant's preexisting conditions, not to her accepted employment injury.

The Board finds that Dr. Wells' opinion is based on a proper factual and medical history and is sufficiently well rationalized that it justifies the Office's termination of compensation for the accepted upper back strain and aggravation of flat feet. There is no medical opinion to the contrary. For these reasons, the Board finds that the Office has met its burden of proof to justify its termination of compensation benefits. The Board will affirm the Office hearing representative's March 12, 2009 decision.

CONCLUSION

The Board finds that the Office has met its burden of proof to justify the termination of appellant's compensation benefits. The weight of the medical opinion evidence establishes that the accepted medical conditions have resolved.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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