

In an August 13, 2007 report, Dr. Alan Carr, an osteopath specializing in anesthesiology, noted a history of low back pain from the lumbar spine through the left leg and foot. He diagnosed status post slip and fall, stress fracture of the third metatarsal of the left foot and traumatic lumbar facet syndrome secondary to sustaining a slip and metastatic breast cancer.

On August 14, 2007 the Office referred the employee with a statement of accepted facts to Dr. Zohar Stark, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an August 28, 2007 report, Dr. Stark found restricted lumbosacral range of motion. He diagnosed metastatic bone disease, discogenic and degenerative joint disease of the lumbar spine and healed left foot stress fracture. Dr. Stark noted no objective findings of the accepted conditions. He also noted that the diagnoses were not caused or aggravated by the accepted work injury. Dr. Stark opined that the employee was not capable of performing her job but that this disability was related to her preexisting discogenic disc and joint disease condition of the lumbar spine and metastatic bone disease. He also opined that the employee's work restrictions were not related to the accepted injury and that she did not require further treatment for the accepted injury.

In a September 21, 2007 letter, the employee requested that the Office expand her accepted conditions to include fracture to the third metatarsal of the left foot based on Dr. Carr's August 13, 2007 report.

On October 4, 2007 the Office issued a proposed notice of termination of medical benefits finding that the weight of the medical evidence rested with Dr. Stark who found that the employee's accepted condition had ceased.

The employee continued submitting claims for compensation. In an October 16, 2007 statement, she reiterated her request to expand the accepted conditions of her claim based on Dr. Carr's report. The employee also suggested a conflict in medical opinion between Drs. Stark and Carr.

On October 18, 2007 Dr. Richard Adler, a podiatrist, noted the employee's complaint of pain in the lateral aspect of her left foot and exquisite tenderness upon palpation. X-rays taken that day showed a flake fracture at the lateral plantar aspect of the left cuboid. Dr. Adler noted that a flake fracture was present in a previous x-ray but that the radiologist did not notice it.

In a September 27, 2007 report, Dr. Carr noted that x-rays of the employee's left foot did not show complete healing of the fracture to the third metatarsal. His examination revealed pain through the left foot and mild myofascial pain through the lumbar spine. Dr. Carr advised that the employee remain off work due to her foot and back condition. He also noted that he could not perform a lumbar epidural steroid injection as the employee had metastatic cancer of the lumbar spine. On November 8, 2007 Dr. Carr noted that Dr. Stark inaccurately addressed the employee's chronic left foot condition. He indicated that Dr. Stark found no swelling of the left foot when Dr. Adler found tenderness over the lateral aspect of the ankle and foot. Dr. Carr also indicated that the flake fracture was related to the work injury. He advised that Dr. Stark was wrong about the employee's back pain being caused by metastatic bone disease as this was a preexisting condition and that the lumbar pain did not start until after the April 22, 2007 fall. The employee continued submitting claims for compensation.

In an undated attending physician's report, Dr. Adler diagnosed left foot cuboid fracture. He advised that the employee's total disability began on October 18, 2007 with no end date specified. On November 29, 2007 Dr. Adler opined that, while the employee may have had a fracture of the third metatarsal, she also had a small fracture of the cuboid related to her fall. He noted that Dr. Stark's findings contradicted themselves and that the employee requested further treatment. On February 26, 2008 Dr. Adler noted the employee's continued need for treatment as her fracture had not been noted or immobilized. He also noted this condition was related to the employee's present total disability. Dr. Adler advised that the employee could return to full duty in eight weeks.

On February 15, 2008 the Office requested a supplemental report from Dr. Stark. In a March 13, 2008 supplemental report, Dr. Stark indicated that his opinion remained unchanged. He noted that his review of a June 27, 2007 magnetic resonance imaging (MRI) scan of the left foot showed bone edema in the third metatarsal shaft but no fracture was visible. He also noted that an August 23, 2007 x-ray of the left foot suggested mild sclerosis in the proximal metaphyseal region of the third metatarsal base in the area which does not correspond to the area of increased marrow edema on the June 27, 2007 MRI scan. Dr. Stark further noted that the x-ray also showed that the remainder of the osseous structures of the left foot was intact. He indicated that, as the statement of accepted facts indicated that only lumbar sprain and left foot sprain were accepted conditions, his diagnosis of metastatic bone disease, discogenic and degenerative joint disease of the lumbar spine and healed stress fracture of the left foot were not work-related conditions.

On March 19, 2008 the Office requested a supplemental report from Dr. Stark regarding whether the employee's fractures of the third metatarsal and the cuboid were caused or aggravated by the accepted injury. In a March 20, 2008 supplemental report, Dr. Stark opined that the employee's fractures of the third metatarsal and cuboid were not caused or aggravated by the April 22, 2007 injury. He opined that the accepted conditions of lumbar and left foot sprain had resolved. Dr. Stark also opined that the employee could return to work without restrictions.

In a May 30, 2008 report, Dr. Steven Kahn, an osteopath specializing in orthopedic surgery, noted the history of the April 22, 2007 work injury and set forth findings on examination. He diagnosed post-traumatic thoracolumbar lumbar strain/sprain with associated myofasciitis, lumbar spondylosis, L4-5 spondylitic disc bulge and bony medications to the thoracolumbar spine bilateral iliac bones. Dr. Kahn deferred to Dr. Adler regarding the employee's left foot and her work status. For the employee's mid low back pain, he recommended physical therapy and anti-inflammatory medication.

On June 4, 2008 the Office referred the employee with a statement of accepted facts to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, for a referee evaluation to resolve difference in medical opinion.¹ In a June 19, 2008 report, Dr. Zeidman summarized the employee's history of injury and noted her complaints of low back and left foot pain. Upon examination, he found some mild tenderness in the low back but no spasm. Dr. Zeidman also

¹ The Board notes the Office's typographical error as it inadvertently referenced a conflict between Drs. Carr and Adler. However, the conflict in medical opinion existed between Dr. Stark, the second opinion physician, and Drs. Carr and Adler, the treating physicians.

found that the employee's left foot had some tenderness in the lateral foot across the dorsum with good motion through the foot, ankle and toes with no edema. X-rays of the low back were unremarkable but showed mild evidence of minimal degenerative changes but no narrowing, fractures or lytic lesions. Left foot x-rays were unremarkable but found calcification in the lateral cuboid region. Dr. Zeidman noted that the employee had a preexisting carcinoma condition of the breast. He also noted that an MRI scan report of record showed diffuse lytic lesions consistent with metastatic disease but that current x-rays show no evidence of this problem. Dr. Zeidman indicated there was no evidence of any fracture or similar problem that could be related to the April 22, 2007 injury. Regarding the employee's left foot, the physician noted that the flake fracture described in prior medical reports appeared similar to the present left foot x-ray. Dr. Zeidman opined that, although an MRI scan of the left foot showed evidence of a possible stress fracture or similar problem in the metatarsal, it did not describe any changes in the cuboid bone which might be associated with a recent fracture related to April 22, 2007. He also opined that the presence of calcification did not appear work related. Dr. Zeidman advised that the employee had recovered from sprains and strain in her back and left foot related to her work injury. He also advised that she was able to return to work in any position not physically arduous. Dr. Zeidman noted that the employee had other medical conditions, such as metastatic breast carcinoma, that may affect her work status but that these were not work-related conditions.

On July 24, 2008 the Office issued a notice of proposed termination of compensation benefits finding that the weight of the medical evidence rested with Dr. Zeidman who found that the employee no longer had any disability or residuals due to the accepted work-related conditions.

In a July 18, 2008 report, Dr. Kahn noted that the employee presented for treatment of her work-related injury of April 22, 2007. The employee complained of low back pain predominantly on the left side. Dr. Kahn's examination revealed palpatory tenderness over the paravertebral region more pronounced on the left. He diagnosed post-traumatic thoracolumbar strain/sprain with associated myofasciitis, lumbar spondylosis, L4-5 spondylitic disc bulge, bony metastasis thoracolumbar spine and bilateral iliac bones. Dr. Kahn recommended physical therapy.

In an August 4, 2008 statement, the employee questioned if Dr. Zeidman was properly selected as an impartial specialist. She also asserted that Dr. Zeidman incorrectly indicated that the employee sustained left foot sprain when diagnostic tests showed flake fracture of the left cuboid. The employee noted this was a necessary distinction as the physician must determine whether the employee recovered from residuals of her work injury. She noted that Dr. Zeidman's findings were speculative and that he should have to submit work restrictions for recommending that the employee return to work.

In an August 22, 2008 report, Dr. Kahn reevaluated the employee for her work injury. His examination of the thoracolumbar spine revealed palpatory tenderness over the paravertebral region but not over the spinous process. Dr. Kahn reiterated his diagnoses of post-traumatic thoracolumbar strain/sprain with associated myofasciitis, lumbar spondylosis, L4-5 spondylitic disc bulge, bony metastasis thoracolumbar spine and bilateral iliac bones. He noted that the employee could return to limited duty on August 25, 2008 with restrictions on sitting, walking and lifting.

In a September 4, 2008 decision, the Office terminated the employee's compensation benefits effective that day finding that she did not submit sufficient evidence to alter the recommendation to terminate her compensation benefits.

On September 9, 2008 the employee requested an oral hearing that was held on January 12, 2009. In an April 6, 2009 statement, her representative indicated that the employee died on March 19, 2009 and that her estate would pursue her claim.

In an April 17, 2009 decision, an Office hearing representative affirmed the September 4, 2008 decision finding that the Office had met its burden of proof to support that the employee had no remaining work-related disability or residuals as a result of the accepted injury.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his 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 The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ 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 the claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁵

ANALYSIS

The Office accepted that the employee's April 22, 2007 work injury caused a left foot and lumbar sprain. The Board finds that the Office has met its burden to establish that all residuals of the employee's accepted employment conditions had resolved effective September 4, 2008.

The Office properly found a conflict in the medical evidence regarding whether the employee had any disability or residuals due to her accepted lumbar and left foot condition. The employee's treating physician, Dr. Adler, submitted reports indicating that the employee had been totally disabled since October 18, 2007 and that continued treatment was necessary. He diagnosed left foot cuboid fracture and opined that this condition was related to the employee's disability. Likewise, Dr. Carr disagreed with Dr. Stark's opinion and indicated that the employee remained disabled due to her work-related foot and back conditions. On the other hand, the second opinion physician, Dr. Stark, submitted reports diagnosing metastatic bone disease,

² *Id.*; *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

³ *Vivien L. Minor*, 37 ECAB 541 (1986).

⁴ *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁵ *E.J.*, 59 ECAB ____ (Docket No. 08-1350, issued September 8, 2008).

discogenic and degenerative joint disease of the lumbar spine and healed left foot stress fracture. However, he opined that none of these diagnoses were work related and that the employee's disability and work restrictions related to her preexisting conditions. Dr. Stark advised that the employee's accepted conditions had resolved enabling her to return to work without restrictions.

The Office properly referred the employee to Dr. Zeidman for a referee medical evaluation to resolve the conflict in medical opinion as to whether the employee had any disability or residuals due to the accepted lumbar and left foot condition.⁶ In a June 19, 2008 report, Dr. Zeidman noted examining the employee and determined that she ceased to have any residuals from her April 22, 2007 injury. He reviewed the medical record, reported findings on examination and reviewed diagnostic testing and x-rays of the left foot and low back. On examination, the employee had some mild tenderness in the low back but no spasm. Straight leg raising was unremarkable. Sensory and motor functions were intact. Deep tendon reflexes were equal and active. In the left foot, there was some tenderness in the lateral foot and across the dorsum. There was good motion through the foot, ankle, and toes and no edema noted. Dr. Zeidman explained that, although an MRI scan of the left foot showed evidence of a possible stress fracture or similar problem in the metatarsal, it did not describe any changes in the cuboid bone that could be associated with the work injury. He also noted that the calcification in the left foot was not related to the work injury. Moreover, Dr. Zeidman also found that the employee's work-related low back sprain had resolved. Furthermore, he noted that, other medical conditions, such as calcification of the left lateral cuboid region, stress fractures and metastatic breast carcinoma, were not accepted conditions, and therefore, any existing disability or residuals were not related to the accepted work injury. Based on these findings, Dr. Zeidman concluded that the employee's lumbar and left foot condition had fully resolved with no disability or residuals, which allowed the employee to return to her nonarduous preinjury work. His opinion was based on proper factual and medical history as he had a statement of accepted facts and his report accurately summarized the relevant medical evidence. Dr. Zeidman found no basis on which to attribute any continuing condition or disability to the April 22, 2007 work injury.

The Board finds that Dr. Zeidman's opinion is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight⁷ and establishes that residuals of the employee's accepted conditions had resolved.

The Board also finds that medical evidence submitted by the employee is not sufficient to overcome the weight of Dr. Zeidman's opinion or to create another conflict. The employee submitted reports from Dr. Kahn contemporaneous with and subsequent to Dr. Zeidman's report. However, Dr. Kahn, while noting that he was treating the employee for a work injury, did not provide a reasoned or rationalized medical opinion supporting that the employee had any

⁶ See 5 U.S.C. § 8123(a) (section 8123(a) provides that, 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).

⁷ See *Y.A.*, 59 ECAB ____ (Docket No. 08-254, issued September 9, 2008) (when a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based on a proper background, must be given special weight).

continuing condition or disability causally related to the accepted work injury.⁸ He noted the employee's diagnoses but did not attempt to explain the reasons why any continuing condition or disability would be causally related to the April 22, 2007 work injury that was accepted for a left foot and a lumbar sprain.

On appeal, appellant asserts that Dr. Zeidman was insufficient and that the medical evidence establishes that the employee had residuals from her work injury as both Drs. Kahn and Stark indicated that she could return to sedentary work with restrictions. However, as noted, Dr. Stark was on one side of a conflict that was resolved by Dr. Zeidman who, in resolving the conflict, considered the entire medical record and current findings and determined that no disability or residuals were due to the April 22, 2007 work injury. Also, Dr. Kahn's reports as noted provided insufficient medical rationale with regard to any work-related condition. Appellant also asserts that Dr. Zeidman was not properly selected as an independent medical examiner. However, in a June 12, 2008 letter, the employee's representative confirmed receipt of a June 4, 2008 letter scheduling a referee evaluation with Dr. Zeidman and requested that the physician provide him with a copy of his report. The employee's representative did not object to Dr. Zeidman's selection until August 4, 2008, two months after he had performed his evaluation.⁹ Appellant further asserts that Dr. Zeidman opined that the employee could return to work but that he did not provide any specific work restrictions. However, Dr. Zeidman was evaluating the employee with regard to whether she had any continuing work-related condition or disability. As he indicated that she had no work-related disability or residuals, there was no reason for him to set forth any work restrictions.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate the employee's compensation benefits for her lumbar and left foot condition effective September 4, 2008.

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ See *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008) (the Board found that appellant did not establish any error with respect to the selection of the impartial medical specialist where appellant object to the selection until several months after the notification of the selection and the examination by the physician and made a general allegation of error that the Office bypassed qualified physicians without providing probative evidence).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated April 17, 2009 and September 4, 2008 are affirmed.

Issued: June 14, 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