United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 09-1429**
	)	**Issued: March 12, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, 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 18, 2009 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated September 30, 2008 and April 21, 2009. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's wage-loss compensation benefits; and (2) whether appellant has established continuing disability after September 30, 2008, causally related to the accepted employment injury.

FACTUAL HISTORY

Appellant, a 30-year-old letter carrier, experienced a popping sensation in his left ankle after making a delivery on August 11, 2007. He filed a claim for benefits on August 13, 2007, which the Office accepted for left Achilles tendinitis, left ankle strain and ruptured left Achilles tendon. The Office paid compensation for temporary total disability and placed him on the periodic rolls.

On March 18, 2008, Dr. Robert E. Coles, a specialist in orthopedic surgery and appellant's treating physician, performed arthroscopic surgery on appellant's left ankle. The procedure entailed a synovectomy, chondroplasty of the talus and removal of the anterior tibial spur.

In May 14, 2008 report, Dr. Coles advised that appellant had achieved a satisfactory result from his left ankle surgery. He noted that appellant's preoperative pain had resolved and that he was able to walk without pain and stand without any problems. Dr. Coles noted a 10 degree loss of dorsiflexion and 10 degree loss of plantar flexion in the left ankle and recommended that appellant continue with physical therapy. He opined that appellant could return to work in a sedentary capacity and expected a release to full duty when he reexamined him in approximately three to four weeks.

In a report dated June 4, 2008, Dr. Coles stated that appellant felt significantly better, although he noted that deep bending and squatting caused mild discomfort. He stated that appellant's left ankle examination was benign and noted full range of motion with well-healed portals and no tenderness or soreness in the posterior tibial region. Dr. Coles opined that appellant could return to work with no restrictions. He indicated in a work capacity evaluation form dated June 4, 2008 that appellant could return to his usual job as a letter carrier.

On August 14, 2008 the Office issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by the opinion of Dr. Coles, appellant's treating physician, showed that appellant's accepted, employment-related left ankle injury no longer prevented him from returning to his usual job as a letter carrier with no restrictions.

In an August 27, 2008 report, Dr. Coles stated that appellant was experiencing pain in his left ankle. He related that appellant felt like he was walking on a bruise intermittently and had experienced stiffness with prolonged standing. Dr. Coles advised that appellant occasionally felt a pop or a crack with sharp pain in the morning. He noted on examination that appellant had full range of motion in the left ankle with no swelling and no tenderness over the ankle ligaments. Dr. Coles stated that appellant had subjective left ankle discomfort and reiterated that he could return to work at his normal duties.

By decision dated September 30, 2008, the Office terminated appellant's wage-loss compensation, finding that Dr. Coles' opinion represented the weight of the medical evidence. It did not terminate appellant's medical benefits.

By letter dated October 12, 2008, appellant's attorney requested an oral hearing, which was held on February 4, 2009.

In a September 17, 2008 report, Dr. Coles related that appellant still had pain when he walked and pain when he stood after about three hours. He noted on examination, however, that appellant had no swelling or erythema and showed no difference in size between the left and the right ankle; he also stated that he was unable to elicit any signification tenderness to deep palpation of the Achilles, the retrotibial region either medially or laterally, the medial malleolus, the lateral malleolus, the anterior talofibular ligament, the calcaneofibular ligament, the medial

deltoid, the anterior joint line, the midfoot or the forefoot or the plantar aspect of the foot. Dr. Coles advised that appellant had very minor grade chondral changes in the ankle and asserted that the discomfort he was having was out of proportion from what one would expect. He stated that he was somewhat reassured that appellant's problems only occurred after he had been standing for three hours.

In a January 12, 2009 report, Dr. Thomas Hagan, a specialist in podiatry, stated the history of injury and noted that appellant had experienced a relapse of his left ankle problems after initially experiencing improvement following surgery. He advised that appellant continued to have pain, swelling and difficulty ambulating in the absence of any significant erythema, edema or ecchymosis. Dr. Hagan stated that appellant had "guarded" range of motion in the left ankle and subtalar joint; he advised that appellant complained of pain proximal and distal to the ankle mortise, which seemed disproportionate with the clinical appearance of the foot. He suspected that there were some degenerative changes in the left ankle which could be confirmed by radiograph or bone scan. Dr. Hagan advised that appellant probably would benefit from another ankle arthroscopy.

At the hearing, appellant reiterated that he experienced a popping sensation while walking, which felt like a bruise and became excruciatingly painful if he walked for long distances. He stated that he was unable to walk for more than two hours and also experienced problems squatting and standing for long periods. Appellant indicated that Dr. Coles continued to opine that he could return to work despite his continuing left ankle problems. The hearing representative noted Dr. Hagan's opinion that appellant would benefit from further testing, such as a bone scan and held the record open for 30 days so that he could consult a specialist and undergo further tests.

In a report dated March 4, 2009, Dr. Daniel Latt, a specialist in surgery, stated the history of injury and indicated that appellant's left ankle had not improved since his March 2008 arthroscopy. He advised that appellant still had pain with weight bearing and experienced swelling with all activity. Dr. Latt related that appellant had difficulty going up and down stairs and was unable to walk as much as a mile. He stated that physical therapy did not improve appellant's condition. Dr. Latt stated on examination that appellant had an antalgic gait and experienced difficulty with both heel and toe walk; he noted tenderness to palpation at the anterior joint line and stated that his range of motion at his ankle was from 15 degrees of dorsiflexion to 30 degrees of plantar flexion with pain at either extreme of motion. He advised that appellant's left ankle was stable with anterior drawer, with a positive Tinel's sign along the superficial peroneal nerve; he stated that appellant was tender to palpation along the peroneal tendons along the posterior tibial tendon.

Dr. Latt reviewed radiographic studies of appellant's left ankle and opined that three weight-bearing views of his ankle demonstrated no obvious abnormalities. He stated that appellant had posterior tibial and peroneal tendon irritation, anterior ankle pain, suspected osteochondral lesion of the talus and suspected neural foraminal impingement. Dr. Latt referred appellant for a magnetic resonance imaging (MRI) scan of his left ankle to evaluate suspected osteochondral lesion.

Appellant underwent an MRI scan on March 16, 2009, the results of which were normal. The test indicated that a normal marrow signal was demonstrated throughout the bones of the ankle and proximal foot; no fractures or dislocations were identified, there was no significant ankle effusion, osteochondral lesion and or focal cartilage defect. The MRI scan revealed that the posterior tibial, flexor hallucis longus, flexor digitorum, peroneal longus, peroneal brevis, Achilles tendons, plantar fascia and sinus tarsi were normal. In addition, the anterior talofibular ligament, anterior and posterior tibiouibular ligaments, deltoid ligament and spring ligaments were intact.

In a March 17, 2009 report, Dr. Latt stated his concern that appellant might still be having sequelae from an osteochondral lesion of the talus. He administered an injection into appellant's ankle joint which provided 90 to 95 percent improvement of his left ankle pain for four to five days. Dr. Latt stated that the injection gradually reduced about half of appellant's posterior ankle pain but noted that he still had some anterior pain with dorsiflexion.

On examination, Dr. Latt noted no swelling and stated that the results of the March 16, 2009 MRI ankle scan were entirely normal. He diagnosed residual anterior impingement from synovitis of the anterior ankle joint, which was resolving with injection. Dr. Latt referred appellant for physical therapy to strengthen the ankle and improve range of motion, which he believed would resolve his problem. He stated that he told appellant to be as aggressive as possible and advised him not to baby his ankle.

By decision dated April 21, 2009, an Office hearing representative affirmed the September 30, 2008 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify 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]

ANALYSIS -- ISSUE 1

In this case, the Office based its decision to terminate appellant's compensation on the opinion of Dr. Coles, appellant's treating physician. In his May 14, 2007 report, Dr. Coles stated that appellant had achieved a satisfactory result from his March 2007 left ankle surgery; his preoperative pain had resolved and he was able to walk and stand without any problems. He advised that appellant could return to work in a sedentary capacity and anticipated that he could return to full duty when he reevaluated him in three to four weeks. On June 4, 2008 Dr. Coles opined that appellant could return to his usual job as a letter carrier with no restrictions. He stated that appellant felt significantly better despite some mild discomfort with deep bending and

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id.*

squatting. Dr. Coles stated that appellant's left ankle examination was benign and he noted full range of motion with well-healed portals and no tenderness or soreness in the posterior tibial region. In his August 27, 2008 report, he stated that appellant had subjective left ankle pain and discomfort but reiterated that he could return to work at his normal duties. Dr. Coles noted on examination that appellant had full range of motion in the left ankle with no swelling and no tenderness over the ankle ligaments. The Office relied on the opinion of Dr. Coles, finding that appellant had no residual disability for work resulting from the accepted employment injury.

The Board finds that the Office properly found that Dr. Coles' opinion represented the weight of the medical evidence and negated a causal relationship between appellant's current condition and his accepted August 11, 2007 injury. Dr. Coles was appellant's treating physician and his opinion that he could return to work without restrictions is unrefuted. His report is sufficiently probative, rationalized and based upon a proper factual background. The Office therefore properly relied on Dr. Coles' opinion in its September 30, 2008 termination decision.

LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminated appellant's compensation in its September 30, 2008 decision, the burden of proof shifted to appellant to establish continuing disability.[3]

ANALYSIS -- ISSUE 2

Appellant submitted opinions from Drs. Coles, Hagan and Latt. Dr. Coles stated in a September 17, 2008 report that appellant had complaints of left ankle pain with walking and prolonged standing. He indicated, however, that the discomfort appellant related was not consistent with the objective findings. Dr. Coles noted no signification tenderness in any areas of the left ankle on examination. He stated that appellant demonstrated very minor grade chondral changes, no swelling or erythema and no difference in size between the left and the right ankle. Dr. Hagan opined that appellant had a relapse of left ankle problems after initially experiencing improvement following his March 2007 surgery, with pain, swelling and difficulty walking. However, he stated that appellant's complaints of pain seemed disproportionate with the clinical appearance of the foot. Dr. Hagan advised that there was no significant erythema, edema or ecchymosis and stated that appellant had "guarded" range of motion in the left ankle and subtalar joint. He recommended that appellant undergo diagnostic testing to determine whether there were some degenerative changes in the left ankle and asserted that he would probably benefit from additional surgery. Appellant was subsequently referred to Dr. Latt, who opined that his left ankle had not improved since his March 2008 arthroscopy. Dr. Latt related that appellant still had pain with weight bearing and experienced swelling with all activity, including walking, prolonged standing and ascending and descending stairs. He advised that appellant had posterior tibial and peroneal tendon irritation, anterior ankle pain, suspected osteochondral lesion of the talus and suspected neural foraminal impingement; he stated, however, that radiographic tests showed no obvious abnormalities. Dr. Latt referred appellant for an MRI scan on March 16, 2009, the results of which were normal. In his March 17, 2009 report, he noted no swelling on examination and stated that appellant's residual anterior

[3] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

impingement from synovitis of the anterior ankle joint was resolving with injection. Dr. Latt advised appellant to be as aggressive as possible and opined that he should not baby his ankle.

The Office hearing representative properly found in his April 21, 2009 decision that appellant had submitted no evidence sufficient to undermine the Office's finding, in its September 30, 2008 termination decision, that the opinion of Dr. Coles represented the weight of the medical evidence. None of the medical opinions appellant submitted indicated that he had residuals from his March 2007 work injury, which would prevent him from returning to work without restrictions. The physicians of record who examined appellant opined that his subjective complaints of pain and discomfort were disproportionate to the objective findings. The diagnostic tests appellant underwent on his left ankle all showed normal results. The Board therefore affirms the September 30, 2008 and April 21, 2009 Office decisions.[4]

CONCLUSION

Under the circumstances described above, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits and appellant has not established an employment-related continuing disability following the termination of his benefits.

[4] On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 501(c).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2009 and September 30, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 12, 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