

xxxxxx919. Appellant was off work from November 20, 2006 to January 16, 2007 due to a nonwork-related abdominal condition; she underwent abdominal surgery on December 2, 2006. On January 17, 2007 she was released to light duty.²

In January 2007 the employing establishment asked appellant's treating physician, Dr. Steven Baker, a podiatrist, to conduct an examination and complete a Form CA-17, fitness-for-duty form, indicating whether she still had work restrictions stemming from her accepted right foot condition. The employing establishment inquired as to whether appellant was able to drive and the length of time required for a foot injury to heal. Dr. Baker examined appellant and completed the form on January 22, 2007. He stated that a foot injury as appellant had sustained, could take months to heal and checked a box indicating that appellant was not able to perform her regular duties. Dr. Baker subsequently faxed a copy of an amended Form CA-17 dated January 27, 2007, which contained a handwritten annotation stating, "OK to resume all duties." He checked a box indicating that appellant was able to resume work on January 24, 2007. Based on this amended Form CA-17, the employer determined that appellant could work her regular route as a driver on January 25, 2007. Appellant, however, claimed that she reinjured her foot on January 25, 2007. On February 15, 2007 she subsequently filed a Form CA-7 claim for wage-loss compensation from January 26 to February 20, 2007.

On February 20, 2007 the employing establishment controverted appellant's claim, noting that Dr. Baker's January 22, 2007 report released her to resume all work duties as of January 24, 2007. It noted that appellant did not submit any additional medical evidence to substantiate that she had sustained a new work-related injury on January 25, 2007.

In a report dated March 20, 2007, Dr. G.E. Vega, a Board-certified orthopedic surgeon, noted that appellant had sustained a right foot injury on August 31, 2006. He advised that she continued working after reporting the accident to her supervisor and did not consult a physician until the middle of September 2006, when she sought treatment at the employing establishment clinic. Dr. Vega stated that appellant was placed on temporary partial disability and eventually released to return to full duty on January 25, 2007. Appellant stated that day that she experienced recurrent pain of the right foot, without any recurrent trauma. Dr. Vega advised that she had not returned to work since January 25, 2007.

Dr. Vega stated that appellant had complaints of pain even while lying in bed. On examination, appellant had an active, full range of motion in her right foot with no swelling, no edema and no localized tenderness; the subtalar joint and mid-tarsal joints were quite supple. Dr. Vega noted that appellant had a mild hallux valgus which was not painful. Appellant underwent a magnetic resonance imaging (MRI) scan on February 9, 2007 which showed mild degenerative changes with no significant ankle or foot pathology. Dr. Vega administered x-ray studies which were essentially normal, aside from showing a mild hallux valgus. He diagnosed a right foot plantar fascia sprain, fully resolved. Dr. Vega found that appellant was able to return to work on full duty with a zero disability rating.

² The facts pertaining to appellant's right foot injury, her physical restrictions and her work schedule from October 2006 through February 2007 were set forth in a separate Board decision, Docket No. 09-1844 (June 17, 2010), OWCP file number xxxxxx438. This decision adjudicated appellant's claim for an emotional condition.

By letter dated January 23, 2009, OWCP asked Dr. Baker to submit a detailed, updated report indicating any current diagnosed conditions, whether her accepted foot sprain was still medically present and disabling, or whether it had totally resolved. It also asked him to indicate the specific work restrictions due to the accepted right foot injury, if any, during the period of January 17 to 24, 2007, and whether she able to perform all work duties effective January 25, 2007 or whether work restrictions continued.

In a February 6, 2009 report, Dr. Baker stated that, as of his most recent examination of appellant on February 2, 2009, she continued to complain of right foot pain. He advised that she was unable to work or walk or stand for long periods. On examination, appellant's neurovascular status was intact although she had pain throughout the right mid-foot area. Dr. Baker noted that previously obtained imaging films showed mild degenerative changes throughout the mid foot which could also account for her symptoms. Appellant related that, although orthotics helped her somewhat, she was still unable to do any long periods of walking or standing without pain. Dr. Baker advised her to work and find a job where she could be seated part of the day and stand only part of the day given the findings of mid-foot degenerative changes or arthritis.

Dr. Baker noted that there was some confusion regarding the period following January 25, 2007. He stated that appellant was not able to perform her regular work schedule at that time but he inadvertently failed to complete the remainder of the form. Dr. Baker advised that appellant was not able to work at that time and apologized for any confusion.

In a July 15, 2010 decision, OWCP terminated appellant's compensation benefits. It found that Dr. Vega's March 20, 2007 opinion that appellant's accepted right foot sprain had resolved represented the weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

ANALYSIS

OWCP based its decision to terminate appellant's compensation on the opinion of Dr. Vega. In a March 20, 2007 report, Dr. Vega noted that, although appellant had experienced recurrent pain from her accepted right foot condition, after returning to work on January 25, 2007, her pain apparently resolved without any recurrent trauma. Based on his examination, an MRI scan and x-ray studies, her right foot was essentially normal and the accepted right foot

³ *John D. Jackson*, 55 ECAB 465 (2004); *James B. Christenson*, 47 ECAB 775, 778 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

sprain had fully resolved. Dr. Vega released her to return to full duty with a zero percent disability rating. His opinion that appellant's accepted condition had resolved was based upon an accurate medical history and objective medical findings.

Dr. Baker noted ongoing complaints of right foot pain on examination in February 6, 2009 report. He opined that appellant was unable to work or walk or stand for long periods. The Board finds Dr. Baker's opinion is of limited probative value as he did not provide adequate medical rationale in support of his conclusions.⁵ He noted that appellant was not able to work as of January 25, 2007 and apologized for any "confusion" caused by the contradictory findings he presented in the reports he submitted at that time. This statement, however, does not adequately clarify the January 27, 2007 form report on which Dr. Baker wrote "OK to resume all duties," and checked a box indicating that appellant was able to resume work on January 24, 2007. Dr. Baker's 2009 opinion, offered two years after the contemporaneous report of limited probative value. The opinion he provided regarding appellant's disability are generalized in nature and equivocal.⁶ The Board also notes that while in a February 6, 2009 report Dr. Baker diagnosed mild degenerative changes in appellant's right foot, he offered no medical explanation of how this diagnosis related to the accepted condition of right foot strain, which appellant sustained on August 31, 2006.

The Board finds that Dr. Vega's opinion represents the weight of the medical evidence. It negates a causal relationship between appellant's current condition and her accepted right foot strain. Dr. Vega's report is sufficiently probative, rationalized and based upon a proper factual background and is based upon the x-ray and MRI scan findings of record. OWCP therefore properly relied on his opinion in its July 15, 2010 termination decision.

CONCLUSION

Under the circumstances described above, the Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits.

⁵ *William C. Thomas*, 45 ECAB 591 (1994).

⁶ As indicated above, the evidence regarding appellant's right foot injury, her work schedule and physical restrictions stemming from the injury, including Dr. Baker's reports, was discussed at greater length in the Board's June 17, 2010 decision. The Board found in that decision that Dr. Baker released appellant to full duty on January 24, 2007 and that she was not required to work beyond her physical limitations at that time.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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