

the claim for a left foot sprain, a closed fracture of the left fourth and fifth metatarsal bones, a closed fracture of the left cuboid bone and a closed fracture of the left astragalus.² Appellant worked limited duty following her injury.

OWCP accepted that appellant sustained a recurrence of disability in October 2008 and paid her compensation for total disability.³ In a letter dated October 7, 2008, appellant described her duties as a letter carrier to Dr. Zachary Newland, an attending podiatrist.

On January 29, 2009 Dr. Newland opined that appellant's ankle injury had become chronic. He explained that she had damage to the soft tissue around her ankle and that scar tissue had "replaced the normal elastic properties of her tendinous structures and therefore have weakened the muscular strength needed for regular ankle joint motion and function. This has resulted in instability promoting frequent and recurrent ankle sprains along with pain and swelling." Dr. Newland opined that appellant was disabled from her work duties.

By letter dated April 10, 2009, OWCP advised Dr. Newland that it had accepted that appellant sustained a recurrence of disability. It noted that appellant performed limited duty after her injury but that a letter that she gave him described her regular work duties as a letter carrier. OWCP requested that Dr. Newland complete an enclosed work restriction evaluation.

Appellant retired from the employing establishment on disability effective April 27, 2009. OWCP placed her on the periodic rolls beginning April 25, 2009.⁴

On July 17, 2009 OWCP referred appellant to Dr. Jonathan Clark Race, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated August 11, 2009, Dr. Race discussed her history of injury and reviewed the medical records, including the results of diagnostic studies. On examination he measured range of motion of the left ankle and foot and found a "slight bit of tenderness over the lateral aspect of the calcaneus and over the calcaneocuboid joint" and "mild inversion laxity of the left ankle, which is symmetrical with her right ankle." Dr. Race determined that the "ankle joint itself has no effusion, crepitus or obvious intraarticular abnormalities. The midfoot and forefoot are normal. [Appellant] has no pain or deformity over the tarsometatarsal joints." Dr. Race diagnosed chronic left hindfoot pain of uncertain etiology. He stated, "[Appellant's] trabecular fractures should certainly have healed by now. There is no objective evidence of any significant orthopedic anomaly of her left ankle and foot. [Appellant's] symptoms primarily consist of subjective complaints of pain." Dr. Race found that appellant had no objective findings due to her accepted employment injury and that she could return to her regular employment. He asserted that her symptoms were not explained by physical examination findings or a review of the medical records. Dr. Race found that appellant had no need for additional medical treatment.

² By decision dated August 20, 2007, OWCP granted appellant a schedule award for a 10 percent permanent impairment of the left lower extremity.

³ The employing establishment indicated on a June 23, 2008 notice of recurrence of disability that appellant worked limited duty in connection with another claim number.

⁴ Appellant relocated in June 2009.

On April 14, 2010 OWCP advised appellant that it proposed to terminate her compensation benefits based on the opinion of Dr. Race that she had no further injury-related disability.

A July 12, 2010 magnetic resonance imaging (MRI) scan study of the left ankle revealed an old anterior talofibular ligament injury with no acute injury or chronic impingement.

On July 28, 2010 appellant underwent a functional capacity evaluation. The evaluating chiropractor recommended physical therapy. In a report dated August 25, 2010, Dr. Les Benson, who specializes in emergency medicine, related that he referred appellant to physical therapy with the goal of increasing her range of motion and ability to walk.

By decision dated October 7, 2010, OWCP terminated appellant's compensation effective October 24, 2010 based on its finding that she had no further disability due to her September 23, 2004 left foot injury. It determined that Dr. Race's opinion represented the weight of the evidence and established that she had no residuals of her accepted employment injury.

On October 13, 2010 appellant, through her attorney, requested a telephone hearing. At the telephone hearing, held on February 7, 2011, she related that she continued to experience left foot problems.

In a decision dated April 25, 2011, the hearing representative affirmed the October 7, 2010 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

OWCP accepted that appellant sustained left foot sprain, a closed fracture of the fourth and fifth metatarsal bones and a closed fracture of the cuboid bone and the astragalus of the left foot. Appellant worked limited-duty employment. She sustained a recurrence of disability in October 2008. Appellant retired from the employing establishment on April 27, 2009 and OWCP placed her on the periodic rolls.

In a report dated January 29, 2009, Dr. Newland advised that appellant's ankle injury was chronic and that she was disabled from her work duties as a letter carrier. He found that she sustained soft tissue injuries to her ankle. Dr. Newland further opined that scar tissue had

⁵ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

weakened muscles supporting ankle motion and function and resulted in instability and repeated ankle sprains. On April 10, 2009 OWCP noted that it appeared that appellant worked limited duty following her injury. It requested that Dr. Newland address her limitations in a work restriction evaluation. Dr. Newland did not, however, respond to the request for further information. His report is thus insufficient to establish the extent of appellant's injury-related impairment. Further, Dr. Newland did not explain how her work injury resulted in damage to the soft issue and formed scar tissue. Medical conclusions unsupported by rationale are of diminished probative value.⁷

As Dr. Newland failed to respond to its request for additional information, OWCP referred appellant to Dr. Race for a second opinion evaluation. OWCP terminated her compensation benefits based on its finding that his report constituted the weight of the medical evidence and established that she had no further employment-related disability. The Board has reviewed the opinion of Dr. Race and finds that it has reliability, probative value and convincing quality with respect to the conclusions reached. On August 11, 2009 Dr. Race reviewed the history of injury and the medical reports of record. On examination he found no effusion, crepitus or intraarticular abnormalities of the left ankle and mild left ankle inversion laxity symmetrical with the right ankle. Dr. Race diagnosed chronic left hindfoot pain of unclear origin and without objective findings showing "any significant orthopedic anomaly of her left ankle and foot." He found the employment injury had resolved and that appellant could return to work. Dr. Race provided rationale for his opinion by explaining that there were no objective findings supporting continued residuals of the accepted condition. The Board finds Dr. Race's second opinion report is sufficiently rationalized to establish that appellant's employment-related back strain and aggravation of degenerative back arthritis have resolved.⁸ Dr. Race's reasoned opinion is based on a proper factual and medical history and statement of accepted facts and thus represents the weight of the evidence.

The remaining evidence of record submitted prior to OWCP's termination of compensation, is insufficient to show that appellant remained disabled due to the employment injury. On August 25, 2010 Dr. Benson referred her to physical therapy to attempt to improve her range of motion and walking. He did not, however, provide a diagnosis, an opinion on causation or discuss the relevant issue of whether appellant had continuing employment-related disability.⁹

⁷ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁸ *See Michael S. Mina*, 57 ECAB 379 (2006) (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

⁹ *See Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence); *see also Conard Hightower*, 54 ECAB 796 (2003) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective October 24, 2010 on the grounds that she had no further disability due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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