

prior impartial medical specialist and Board-certified orthopedic surgeon,² and Dr. Harold H. Alexander, a prior OWCP referral physician,³ found that appellant had no continuing residuals and disability resulting from her employment injuries. He did not review the November 29, 2006 and January 18, 2007 reports of Dr. Hogan as they were not contained in the case record. Dr. Doman relied on an outdated statement of accepted facts (SOAF) that did not comply with Chapter 2.809.8 of OWCP's procedures.⁴ The July 13, 2005 SOAF did not address any factual information from 2000 to the present. It did not list the findings of Dr. Alexander and Dr. Hogan and the referral of appellant to Dr. James M. Poindexter, Jr., a Board-certified surgeon.⁵ It did not note the closure of her vocational rehabilitation file due to her poor medical prognosis. The SOAF did not note the employing establishment's investigative memorandum which indicated that appellant engaged in activities that contraindicated her work injuries and restrictions. Counsel asserts that OWCP improperly relied on the investigative videotape as the employing establishment failed to provide appellant with copies of the entire videotape and field notes from actual agents who conducted surveillance. Lastly, he asserts that the summary investigative report did not comport with the actual events shown on the videotape.

FACTUAL HISTORY

This case has previously been before the Board.⁶ In a June 2, 2000 decision, the Board reversed an OWCP decision dated August 9, 1996, terminating appellant's compensation effective June 13, 1995 on the grounds that she no longer had any residuals or disability causally related to her accepted employment injuries of laceration of the right ankle and an embolism. The Board also reversed OWCP's finding that appellant forfeited her right to \$12,785.07 in compensation which created an overpayment of compensation for the period April 20, 1994 to March 31, 1995 because she failed to report earnings from employment. The facts and the

² In a November 8, 2005 medical report, Dr. Hogan advised that appellant's right foot symptomatology which included subjective complaints of pain far exceeded the September 6, 1991 work injury. He opined that, based on his clinical findings, she was not totally disabled and could return to work in a sedentary position with restrictions due to her employment deconditioning and subjective pain.

³ In an August 22, 2005 report, Dr. Alexander advised that appellant's right ankle symptoms were markedly out of proportion to his physical findings and the type of work injury. He opined that she did not have any disability or restrictions related to her work-related injury or require any further medical treatment based on his objective findings. Dr. Alexander advised that appellant could perform light-duty work as a mail sorter with restrictions.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.8 (September 2009).

⁵ In a report dated March 8, 1995, Dr. George C. Lambros, Jr., an orthopedic surgeon, referred appellant to Dr. Poindexter for a vascular examination of the left leg to rule out complication of her right leg injury by favoring it when it was symptomatic.

⁶ Docket No. 97-922 (issued June 2, 2000).

circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.⁷

By letter dated November 2, 2009, OWCP requested that appellant submit an updated medical report from an attending physician regarding her employment-related injuries.

On December 29, 2009 Dr. Kevin F. Smith, an attending Board-certified occupational medicine physician, advised that appellant was permanently and totally disabled for work for an undetermined period of time due to her progressive condition with associated chronic pain. She had vascular bilateral leg problems that included clots and superficial chronic Achilles tendinitis. Dr. Smith opined that appellant had present and persistent residuals of her accepted conditions.

On August 3, 2010 OWCP referred appellant, together with a SOAF and the medical record, to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion. In an August 26, 2010 medical report, Dr. Doman obtained a history of the September 6, 1991 employment injuries. He reviewed the medical record stating that, Dr. Smith reported in 1995 that appellant had no disability. Dr. Doman further stated that, "Dr. Alexander found that [appellant's] symptoms were markedly out of proportion to the physical findings. Dr. Alexander again found that there is no disability orthopedically." Dr. Doman also stated that there was another examiner, "Dr. Hogan, orthopedic surgeon, who examined this claimant and found that her symptoms far exceeded the apparent injury. This examination was performed on November 8, 2005." On examination, Dr. Doman reported that appellant used a cane for ambulation. She fell to the ground during the examination. He stated that this incident was a deliberate act on her part to deceive him and his staff. Dr. Doman reported normal findings on physical examination. There was no muscular atrophy or wasting of the lower extremities. Appellant had full range of motion of her ankles and feet. There was no deformity of the ankle. There was no evidence of subtalar instability or significant residual scar from a previous history of a small laceration. Pulses and sensation were intact. Dr. Doman reported normal findings on x-ray examination of the right ankle and foot. He advised that appellant was malingering based on his normal orthopedic examination findings. Dr. Doman opined that the accepted conditions had fully resolved and there were no disabling residuals of the accepted conditions. There were no physical findings to support disabling residuals. He advised that appellant had reached maximum medical improvement. Dr. Doman concluded that she could perform her usual work duties with no restrictions and that no further medical treatment was necessary.

On September 9, 2010 the employing establishment submitted an investigative memorandum dated August 23, 2010 on the grounds that she was not totally disabled and could return to work. The report noted that video surveillance obtained of appellant from March 19 to 25, 2010 showed her bending, walking, standing, negotiating steps, jumping from a deck, carrying large pieces of wood, while working in her yard and shopping. Appellant was also

⁷ OWCP accepted that on September 6, 1991 appellant, then a 29-year-old letter sorter machine operator, sustained a laceration of the right ankle and embolism when a shelf fell and struck the shin of her right ankle. OWCP accepted her claim for laceration of the right ankle and an embolism. She stopped work on September 8, 1991. Appellant returned to limited-duty work in October 1991 and worked until 1994. OWCP paid her appropriate wage-loss compensation and medical benefits.

observed driving a car. When she arrived at her appointment with Dr. Doman on August 18, 2010 she was assisted from a car by a male driver. Appellant walked very slowly using a cane.⁸

On October 6, 2010 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Doman's medical opinion. Appellant was advised that she had 30 days to submit additional evidence in response to the proposed termination.

A March 8, 1995 report from Dr. George C. Lambros, Jr., an orthopedic surgeon, advised that appellant had right chronic and acute Achilles tendinitis and that she was totally disabled for work. In a September 13, 1995 report, Dr. Lambros advised that appellant's occasional acute and chronic Achilles tendinitis was caused by the September 6, 1991 employment incident. He reiterated his prior opinion that she was totally disabled for work.

In a September 28, 1996 report, Judith M. Zink, a registered nurse, explained why a lower extremity venous duplex was a more appropriate diagnostic test than a flat plate x-ray of the lower extremity in diagnosing deep venous thrombosis.

In a December 3, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective December 4, 2010. It found that the medical evidence she submitted was insufficient to outweigh the weight accorded to Dr. Doman's opinion.

By letter dated December 28, 2010, appellant, through her attorney, requested an oral hearing before an OWCP hearing representative.

In a June 30, 2011 decision, an OWCP hearing representative affirmed the December 3, 2010 termination decision, finding that the weight of the medical opinion evidence rested with Dr. Doman's August 26, 2010 report.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁹ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for

⁸ On September 27, 2010 OWCP indicated that it would send Dr. Doman a copy of the employing establishment's surveillance videotape DVD. However, the record does not indicate that Dr. Doman actually reviewed this evidence.

⁹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹⁰ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.¹¹

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits as of December 4, 2010. OWCP accepted that she sustained a laceration of the right ankle and embolism while in the performance of duty on September 6, 1991. Appellant received appropriate disability compensation and has not returned to work. To determine the extent and degree of any employment-related condition or disability, OWCP referred her for a second opinion evaluation by Dr. Doman.

In an August 3, 2010 report, Dr. Doman provided an extensive review of appellant's medical history and reported examination findings. He found that there were no clinical findings of any residuals of the accepted work injuries. Dr. Doman opined that appellant displayed malingering on his normal physical examination. He found no muscular atrophy of the lower extremities, deformity of the ankle and subtalar instability or significant residual scar from a previous history of a small laceration. Dr. Doman found full range of motion of the ankles and feet and intact pulses and sensation. He reported normal findings on x-ray examination of the right ankle and foot. Dr. Doman opined that appellant's accepted conditions had fully resolved and she had no disabling residuals of these conditions. He further opined that she could perform her usual work duties with no restrictions.

The Board finds that Dr. Doman's report represents the weight of the medical evidence and that OWCP properly relied on his report in terminating appellant's compensation benefits on December 3, 2010. Dr. Doman's opinion is based on proper factual and medical history as he reviewed an SOAF and her prior medical treatment and test results. He also related his comprehensive examination findings in support of his opinion that the accepted work-related conditions had resolved and that she had no employment-related disability. Dr. Doman reported no basis on which to find that appellant had any continuing disabling residuals of her accepted laceration of the right ankle and embolism.

Appellant submitted a March 8, 1995 report and a duplicative report dated September 13, 1995 from Dr. Lambros. These records substantially predate the termination of benefits and do not specifically address how any continuing condition or disability was causally related to the September 6, 1991 work injuries and, therefore, are of limited probative value.¹²

The September 28, 1996 report from Ms. Zink, a registered nurse, has no probative medical value as a nurse is not defined as a physician under FECA.¹³

¹¹ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

¹² *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ *See* 5 U.S.C. § 8101(2); *G.G.*, 58 ECAB 389 (2007).

There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that she has any continuing residuals or disability from her employment-related conditions. OWCP, therefore, met its burden of proof to terminate compensation.

On appeal, appellant's counsel contended that the termination of appellant's compensation was improper and should not have been based on Dr. Doman's opinion. He argued that Dr. Doman inaccurately stated that Dr. Hogan and Dr. Alexander found that appellant had no continuing employment-related residuals or disability. However, contrary to counsel's contention, both physicians found that she had no employment-related residuals or disability and that she could return to sedentary, light-duty work with nonemployment-related restrictions. Dr. Hogan and Dr. Alexander both stated that there were no objective findings to support appellant's subjective symptomatology.

Counsel also contended that Dr. Doman was not provided all the medical evidence of record. OWCP's procedures state that copies of pertinent medical reports in the case file should be sent to the examining physician for review.¹⁴ There is no requirement that an examining physician must list every medical report reviewed. Medical reports should contain dates of examination or treatment, clinical history, detailed description of physical findings, results of x-ray or laboratory tests, diagnosis, prognosis, description of impairment if any, specific limitations for work, clinical course of treatment, a reasoned opinion on causal relationship and a detailed description of the employee's work tolerance limitations in any case where the issue is the claimant's ability to return to work.¹⁵ The record reveals that OWCP sent appellant's medical records to Dr. Doman at the time of the referral. In his August 26, 2010 report, he noted that he reviewed the medical record and stated that, Dr. Alexander found that appellant's symptoms were markedly out of proportion to the physical findings. Dr. Alexander again found that "there is no disability orthopedically." Dr. Doman also stated that there was another examiner, "Dr. Hogan, orthopedic surgeon, who examined this claimant and found that her symptoms far exceeded the apparent injury. This examination was performed on November 8, 2005." Thus, based on the above, the Board finds that the evidence of record bears out that OWCP sent all of appellant's medical records to Dr. Doman in accordance with its procedures,¹⁶ and that the physician reviewed all of appellant's medical records.

Counsel further contended that the July 13, 2005 SOAF relied upon by Dr. Doman was deficient as it did not comply with Chapter 2.809.8 of OWCP's procedures. It was outdated and did not address the findings of Dr. Alexander and Dr. Hogan, the referral to Dr. Poindexter, factual information from 2000 to the present, the closing of appellant's vocational rehabilitation file due to her poor medical prognosis and the findings of the employing establishment's investigative memorandum regarding appellant's physical capabilities. In securing the opinion of a medical specialist, OWCP's procedures note that an SOAF and questions are to be prepared

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.3(c)(3) (July 2011).

¹⁵ *Id.* at Chapter 3.600.6 (October 1990).

¹⁶ *See supra* note 14.

by the claims examiner for use by the physician.¹⁷ Specifically, the claims examiner is required to correctly set forth the relevant facts of the case, including the employee's date-of-injury, age, job held when injured, name of employing establishment, the mechanism of injury and any conditions claimed or accepted by OWCP.¹⁸ The procedure manual notes that not all information contained in a case record may bear on the issues to be resolved and cautions the claims examiner from including material which is inappropriate or prejudicial to the claim.¹⁹ The SOAF provided to Dr. Doman is consistent with OWCP procedures and included necessary information, including a chronological account of the incident alleged by appellant and specifically identifying the September 6, 1991 employment incident and conditions found to have arisen out of the performance of duty. Further, OWCP forwarded the medical evidence to Dr. Doman. In his August 26, 2010 report, Dr. Doman stated that he reviewed the medical record and specifically noted reports of Dr. Alexander and Dr. Hogan. Although the referral of appellant to Dr. Poindexter was not listed in the SOAF, there is no requirement that all physicians must be listed. The closure of appellant's vocational rehabilitation file and the employing establishment's investigative findings do not constitute medical evidence and are not relevant to the issue in this case of whether OWCP properly terminated appellant's compensation and medical benefits on the grounds that she no longer had any residuals or total disability causally related to the September 6, 1991 employment injuries.²⁰ For the stated reasons, the Board finds that the evidence of record does not support appellant's contentions.

Counsel's contention that OWCP improperly relied on the investigative memorandum because the employing establishment failed to provide appellant with copies of the memorandum and surveillance agents' field notes and the memorandum did not comport with actual events shown on the videotape is not relevant to the medical issue in this case, whether OWCP properly terminated her compensation and medical benefits on the grounds that she no longer had any employment-related residuals and total disability.²¹ The Board finds, therefore, that counsel's argument does not establish that OWCP did not meet its burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.5 (October 2005).

¹⁸ *Id.*

¹⁹ *Id.* at Chapter 2.809.6(a) (September 2009). Other information pertaining to prior medical history, medical treatment received, the employee's personal habits and off-duty or family activities and description of the employee's work may be included as the case warrants.

²⁰ 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).

²¹ *Id.*

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective December 4, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related laceration of the right ankle sprain and embolism.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2012
Washington, DC

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

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

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