

On appeal appellant's counsel contends that the medical evidence establishes that appellant continues to have residuals and disability from her accepted December 5, 2009 employment injury.

FACTUAL HISTORY

On December 7, 2009 appellant, then a 49-year-old part-time flexible sales and service associate, filed a traumatic injury claim alleging that on December 5, 2009 she injured her left foot when some parcels fell on it. OWCP accepted the claim for left foot contusion which was later expanded to include a left fifth metatarsal fracture and pulmonary embolism and infarction. Appellant stopped work on December 8, 2009 and was released to return to work on January 7, 2010 by her physician. On April 1, 2010 OWCP accepted her claim for a recurrence of disability beginning January 18, 2010. It authorized left fracture foot surgery, which was performed on March 16, 2010. Appellant was released to limited-duty work on September 9, 2010.²

On August 6, 2010 OWCP referred appellant for a second opinion evaluation with Dr. Nicholas G. Sotereanos, a Board-certified orthopedic surgeon, to determine the nature and extent of her accepted employment impairment. In the accompanying statement of accepted facts, it noted that accepted conditions were left foot contusion and left fifth metatarsal fracture. On August 20, 2010 Dr. Sotereanos noted that OWCP had accepted that appellant sustained a left foot contusion and left fifth metatarsal fracture as a result of the accepted December 5, 2009 employment injury. A physical examination revealed no left ankle motion, some pain at the base of the fifth metatarsal, no evidence of effusions or erythema and normal gait. Based on the physical examination and review of the medical record, Dr. Sotereanos opined that appellant had reached maximum medical improvement and the fifth metatarsal fracture has resolved. As to her ability to perform her date-of-injury job, he concluded that she was capable of performing this position. Any restrictions were due to a preexisting condition and unrelated to the accepted employment injuries.

On October 6, 2010 OWCP issued a notice proposing to terminate appellant's compensation benefits based upon the report of Dr. Sotereanos, OWCP's second opinion physician.

On October 19, 2010 OWCP received a September 27, 2010 report from Dr. Michael R. Werner, appellant's treating Board-certified orthopedic surgeon, who concurred with Dr. Sotereanos that the accepted left fifth metatarsal fracture and left foot contusion had resolved. However, Dr. Werner disagreed with Dr. Sotereanos' conclusion that appellant was capable of working an eight-hour day. He recommended a work hardening program prior to releasing appellant to full-duty work.

By decision dated November 8, 2010, OWCP finalized the termination of appellant's benefits effective that day.

² While appellant was released to full-time duty, the employing establishment was only able to accommodate her work restrictions for four hours per day.

On November 28, 2010 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated April 4, 2011, an OWCP hearing representative affirmed the termination of appellant's compensation benefits.

Following a March 29, 2011 OWCP hearing representative's decision, appellant submitted a report from Dr. Augustus J. Papandrea, Jr., a treating Board-certified family practitioner, who diagnosed nerve and arthritis pain midfoot with prior fracture and ankle fusion. Dr. Papandrea concluded that appellant had permanent residual nerve pain and arthritis as a result of the employment-related foot fracture.

On May 2 and 23, 2011 OWCP received appellant's request for reconsideration. Appellant's counsel requested reconsideration and submitted medical evidence from Dr. Werner.

In an April 6, 2011 narrative, Dr. Werner opined that appellant's pulmonary embolism had resolved, but that the diagnoses of arthritis and nerve pain were permanent and a result of the accepted employment injury. He also concluded that as a result of the employment injury appellant had permanent work restrictions. Dr. Werner related the history of the employment injury and medical treatment noting that appellant had been released to light-duty work on September 7, 2010. At the time appellant was released to light-duty work, he prescribed a work hardening program for her.

By decision dated August 18, 2011, OWCP denied modification.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ After it has determined that an employee has disability causally related to 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 OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant's claim for left foot contusion, left fifth metatarsal fracture and pulmonary embolism and infarction and paid appropriate compensation and medical benefits. It terminated her wage-loss compensation and medical benefits effective November 8, 2010 finding that she no longer had any residuals or disability which were due to her work injury.

In terminating appellant's compensation benefits, OWCP relied on the August 20, 2010 medical opinion of Dr. Sotereanos, a second opinion Board-certified orthopedic surgeon. The Board finds, however, that Dr. Sotereanos' opinion is of diminished probative value and is insufficient to represent the weight of the medical evidence. Dr. Sotereanos concluded that appellant no longer had any residuals or disability from the accepted conditions of left foot contusion and left fifth metatarsal fracture.

Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁸ OWCP provided Dr. Sotereanos with appellant's case file and a statement of accepted facts so he could base his opinion on a proper factual and medical history, but the statement of accepted facts included in the record dated August 5, 2010 does not indicate that appellant's claim was accepted for right shoulder adhesive capsulitis. It stated in its May 8, 2009 proposed termination of monetary compensation benefits and transcript of the October 13, 2009 hearing that her claim was accepted for pulmonary embolism and infarction. OWCP procedures indicate that accepted conditions must be included in a statement of accepted facts and further provide that, when a second opinion specialist renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is diminished.⁹

Dr. Sotereanos did not have a complete statement of accepted facts for review. His opinion that appellant had no continuing employment-related disability is, therefore, not based on a proper factual history. Since Dr. Sotereanos rendered his medical opinion based on an incomplete factual statement omitting appellant's accepted condition of pulmonary embolism and infarction, the probative value of his report is reduced. The Board finds, therefore, that OWCP improperly relied on his opinion to establish that appellant had no remaining disability from the accepted employment injuries. OWCP failed to meet its burden of proof to terminate her monetary compensation benefits effective November 8, 2010.

⁸ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). See *Darletha Coleman*, 55 ECAB 143 (2003); *Richael O'Brien*, 53 ECAB 234 (2001).

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss and medical compensation benefits effective November 8, 2010.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 18, 2011 is reversed.

Issued: May 21, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

¹⁰ In light of the Board's disposition of the first issue, the second issue is moot.