

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**W.Y., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brooklyn, NY, Employer**

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**Docket No. 12-852  
Issued: October 22, 2012**

*Appearances:*  
*Stephen Larkin, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 7, 2012 appellant, through her representative, filed a timely appeal from a January 31, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly terminated appellant's wage-loss and medical compensation benefits effective August 15, 2011 on the grounds that her accepted left foot fracture had ceased without residuals.

On appeal, appellant's representative contends that there is a conflict in medical opinion as a December 26, 2011 magnetic resonance imaging (MRI) scan was not reviewed by the impartial medical examiner, Dr. Stanley Soren, a Board-certified orthopedic surgeon.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 4, 2001 appellant, then a 39-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left foot injury when she fell at work that same day. A May 9, 2001 MRI scan revealed fracture of the fifth metatarsal of the left foot. OWCP accepted appellant's claim for left foot fracture of tarsal/metatarsal bones. She returned to limited-duty work and sustained a recurrence of disability on December 6, 2002 and March 1, 2003.<sup>2</sup>

In a March 14, 2007 letter, OWCP requested a medical narrative from appellant's treating physician, Dr. Tsai C. Chao, a Board-certified physical medicine and rehabilitation physician, establishing how the original employment injury was related to appellant's current condition.

On March 16, 2007 Dr. Chao diagnosed status post left sacroiliac joint sprain, status post fracture of the left fifth metatarsal bone with soft tissue injury, solar deviation of the left foot metatarsal bone with prominent left fourth metatarsal head and severe impairment in standing and walking and possible Morton's neuroma involving the left foot. He opined that appellant's physical injuries were causally related to the accidental fall at her workplace on May 4, 2001. Dr. Chao explained that the injury to the left fourth metatarsal bone was not recognized until July 2001 and opined that it was causally related to the May 4, 2001 employment injury along with the fifth metatarsal bone fracture.

By decision dated March 14, 2008, OWCP granted a schedule award for five percent permanent impairment of the left lower extremity.

In an April 4, 2008 report, Dr. Chao reiterated his diagnoses of status post fracture of the base of the left fifth metatarsal bone and plantar deviation of the left fourth metatarsal bone with impaired standing and walking. He reiterated his diagnoses in reports dated January 29 and June 19, 2010. In a September 4, 2009 report, Dr. Lijun Song, a Board-certified physical medicine and rehabilitation physician, reiterated the same diagnoses. On November 12, 2009 Dr. Zhaoming Huang, a Board-certified physical medicine and rehabilitation physician, also reiterated the same diagnoses.

Appellant filed claims for compensation (Form CA-7s) for periods beginning January 27, 2010.

In a February 17, 2010 report, Dr. Chao restated that appellant fell at work on May 4, 2001 which caused sudden onset of acute pain and swelling of the left foot with impaired ambulation. He diagnosed solar deviation of the left foot metatarsal bone with arthritis of the tarsometatarsal joint and planned to do a nerve conduction study to confirm the clinical diagnosis of left lateral plantar nerve injury.

In an April 13, 2010 letter, OWCP referred appellant for a second opinion examination. In an April 28, 2010 report, Dr. P. Leo Varriale, a Board-certified orthopedic surgeon, conducted a physical examination and reviewed appellant's medical history. He concluded that the fifth

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<sup>2</sup> On December 27, 2006 appellant, through her representative, filed a claim for a schedule award.

metatarsal fracture had healed as there were no current objective findings. Dr. Varriale opined that appellant had reached maximum medical improvement and that she was able to return to full-duty employment for eight hours a day.

By decision dated May 28, 2010, OWCP denied appellant's claims for compensation, which it accepted as a claim for a recurrence of total disability of January 27, 2010, on the basis that the evidence did not establish either a change in the nature or extent of her disability or light-duty position.<sup>3</sup>

On June 4, 2010 appellant, through her representative, requested an oral hearing before an OWCP hearing representative. She submitted reports dated May 22, June 22 and September 2, 2010 by Dr. Huang who reiterated her diagnoses and reports dated July 26 and November 1, 2010 by Dr. Yuanze Hong, a Board-certified physical medicine and rehabilitation physician, who reiterated the same diagnoses. Appellant also submitted a July 6, 2010 report indicating that she was undergoing chemotherapy until December 2010.

A hearing was held before an OWCP hearing representative on October 21, 2010. Appellant's representative indicated that appellant stopped work as of January 27, 2010 due to the National Reassessment Program (NRP).

By decision dated December 7, 2010, the hearing representative reversed the May 18, 2010 decision on the basis that appellant's light-duty position had changed under NRP and returned the case for payment of appropriate compensation. By decision dated December 13, 2010, OWCP issued payment for total wage loss from January 27 to June 29, 2010 and payment for partial wage loss from June 30 to August 27, 2010.

OWCP referred appellant to Dr. Soren to resolve the conflict in the medical opinion evidence between Drs. Chao and Varriale on the issues of: (1) her diagnosis; and (2) whether appellant continued to have any disability or residuals as a result of the accepted employment injury. In a July 21, 2010 report, Dr. Soren reviewed a statement of accepted facts, the medical evidence of record and performed a physical examination. He reported normal gait without evidence of any list, limp, tilt or antalgia. Appellant was able to painlessly stand on her toes and heels. Dr. Soren noted calluses under the metatarsal heads of the left foot with moderate tenderness under the fourth and fifth metatarsal head on the plantar surface. There was no tenderness anywhere in the metatarsal shaft and no erythema, inflammation or swelling. Dr. Soren found no indication of plantar fasciitis. There was no intermetatarsal tenderness, compression of the metatarsals produced no pain and there was no indication of a Morton's neuroma. Dr. Soren diagnosed metatarsalgia of the left foot involving the metatarsal heads four and five and concluded that the fracture of the fifth metatarsal shaft of the left foot had healed. He found no indication of any causally related disability or any disability related to the May 4, 2001 employment injury. Dr. Soren explained that the metatarsalgia was not related to the employment injury and did not rise to the level of a disability. He opined that appellant had reached maximum medical improvement and was capable of performing her usual job with restrictions on lifting more than 20 pounds on an occasional basis.

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<sup>3</sup> OWCP issued the initial decision on May 18, 2010. However, it reissued it on May 28, 2010 OWCP after it was returned to sender on May 21, 2010.

On February 1, 2011 Dr. Huang reiterated her diagnoses and indicated that appellant's left foot pain was aggravated with prolonged walking and recent cold weather and that her gait was slow.

By letter dated June 6, 2011, the employing establishment advised that appellant returned to work on June 30, 2010 and worked a four-hour job assignment but had to stop working due to a nonemployment-related condition on July 7, 2010.

By letter dated July 14, 2011, OWCP notified appellant that it proposed to terminate her compensation benefits based on the weight of the medical evidence, as represented by Dr. Soren.

In a letter dated August 2, 2011, appellant disagreed with OWCP's proposal to terminate her compensation benefits. She contended that Dr. Soren's report was not sufficient to carry the weight of the medical evidence as his examination was performed one year ago.

By decision dated August 15, 2011, OWCP terminated appellant's wage-loss and medical compensation benefits effective that day. It found the weight of the evidence was represented by Dr. Soren.

On September 7, 2011 appellant, through her representative, requested an oral hearing before an OWCP hearing representative. She submitted reports dated July 22 and September 9, 2011 by Dr. Chao who diagnosed left forefoot metatarsalgia and indicated that appellant had residual left forefoot pain with difficulties in walking especially on the heel-up phase of the gait cycle. Upon examination, Dr. Chao found mild residual tenderness to the lateral aspect of the left mid-foot and mild plantar deviation of the left fourth metatarsal bone with tenderness to the tarsometatarsal joint. He noted left foot muscle atrophy and pronation deformity. Appellant also submitted an electrodiagnostic report dated September 24, 2011 by Dr. Raphael Osheroff, a Board-certified internist and nephrologist, who provided a presumptive diagnosis of lumbosacral plexopathy without motor deficit.

A hearing was held before an OWCP hearing representative on December 12, 2011. At the hearing, appellant had representation and provided testimony. The hearing representative held the record open for 30 days for the submission of additional evidence.

Subsequently, appellant submitted a December 9, 2011 report by Dr. Chao who diagnosed left plantar fasciitis and a December 28, 2011 report by Dr. Chao who indicated that a December 26, 2011 MRI scan of the left foot showed plantar fasciitis of the left foot.

By decision dated January 31, 2012, an OWCP hearing representative affirmed the August 15, 2011 termination decision, finding that Dr. Soren represented the special weight of the medical evidence.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>4</sup> After it has determined that an

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<sup>4</sup> See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

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.<sup>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> 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.<sup>8</sup>

Section 8123(a) of FECA provides in pertinent part: if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>9</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>10</sup>

### ANALYSIS

OWCP accepted appellant's claim for left foot fracture of tarsal/metatarsal bones. It terminated her compensation benefits effective August 15, 2011 on the grounds that the accepted employment-related condition had resolved without residuals based on the opinion of the impartial medical examiner, Dr. Soren. The issue to be determined is whether OWCP met its burden to terminate appellant's compensation benefits.

OWCP referred appellant to Dr. Soren to resolve the conflict in the medical opinion evidence between Drs. Chao and Varriale. Dr. Chao, appellant's treating physician, opined that appellant continued to suffer from residuals from her accepted employment injury. Dr. Varriale, an OWCP referral physician, disagreed with Dr. Chao and opined that appellant no longer had any residuals or disability due to the accepted employment injury, concluding that appellant's left foot fracture had resolved. The Board notes that there was a conflict of medical opinion evidence between appellant's physician and OWCP's referral physician on the issues of medical residuals and disability. The Board finds that OWCP properly referred appellant to Dr. Soren to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

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<sup>5</sup> See *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> See *James F. Weikel*, 54 ECAB 660 (2003).

<sup>9</sup> 5 U.S.C. § 8123(a). See *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

<sup>10</sup> See *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the July 21, 2010 report of Dr. Soren who reviewed appellant's medical history, examined her and found no objective evidence of ongoing residuals or disability due to the accepted left foot fracture. Dr. Soren reviewed the statement of accepted facts and the medical record. He found no objective evidence of symptoms related to the left foot fracture. Dr. Soren found no evidence of other conditions or residuals related to appellant's employment. He found no indication of plantar fasciitis. Dr. Soren diagnosed metatarsalgia of the left foot involving the metatarsal heads four and five, but explained that the metatarsalgia was not related to the employment injury and did not rise to the level of a disability. He concluded that appellant had recovered from her left foot fracture and advised that appellant was capable of performing her usual job with restrictions on lifting more than 20 pounds on an occasional basis.

The Board finds that Dr. Soren's report represents the special weight of the medical evidence at the time OWCP terminated benefits and that OWCP properly relied on his report in terminating appellant's benefits. The Board finds that Dr. Soren had full knowledge of the relevant facts and evaluated the course of appellant's condition. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Soren addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.<sup>11</sup> At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to appellant's accepted condition. Dr. Soren's opinion as set forth in his July 21, 2010 report is found to be probative evidence and reliable. The Board finds that his opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted condition of left foot fracture has ceased.

On appeal appellant's representative contends that there is a conflict in medical opinion as a December 26, 2011 MRI scan was not reviewed by Dr. Soren. Although Dr. Chao submitted reports concluding that appellant continued to suffer from left forefoot metatarsalgia and left plantar fasciitis, which was revealed on a December 26, 2011 MRI scan, he did not provide a rationalized medical explanation either as to whether the conditions were employment related or why the conditions were so debilitating as to preclude appellant from working. As Dr. Chao was on one side of the conflict his reports, without more by way of medical rationale, are insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Soren.<sup>12</sup> Thus, the Board finds that OWCP properly terminated appellant's compensation benefits effective August 15, 2011 relating to the accepted left foot fracture.

The reports by Drs. Song, Huang, Hong and Osheroff and the July 6, 2010 report indicating that she was undergoing chemotherapy until December 2010, contain no opinion as to

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<sup>11</sup> See *Michael S. Mina*, 57 ECAB 379 (2006) (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).

<sup>12</sup> See *Dorothy Sidwell*, 41 ECAB 857 (1990); *J.M.*, Docket No. 11-1257 (issued January 18, 2012).

whether appellant continues to have residuals from the accepted left foot fracture. Thus, these reports are insufficient to show that the termination was improper. Accordingly, the Board finds that Dr. Soren's opinion continues to constitute the weight of the medical evidence and supports OWCP's August 15, 2011 decision terminating appellant's compensation for wage-loss and medical benefits.

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's wage-loss and medical compensation benefits effective August 15, 2011 on the grounds that her accepted left foot fracture had ceased without residuals.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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