

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

M.V., Appellant)	
)	
and)	Docket No. 13-410
)	Issued: April 9, 2013
)	
U.S. POSTAL SERVICE, POST OFFICE, Maplewood, NJ, Employer)	
)	
)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 11, 2012 appellant filed a timely appeal from the July 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating his compensation. Pursuant to the Federal Employees' Compensation Act¹ (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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 3, 2012 on the grounds that he had no residuals of his work injury after that date.

FACTUAL HISTORY

In May 2011, OWCP accepted that appellant, then a 42-year-old letter carrier, sustained tendinitis of his right Achilles tendon due to his work duties, including engaging in extensive

¹ 5 U.S.C. §§ 8101-8193.

walking and standing. He indicated that he first became aware of his condition in December 2008 but first realized it was related to his work in January 2011. Appellant stopped work on January 31, 2011 and did not return.²

Appellant received treatment for his foot condition from Dr. Nathan B. Jennato, an attending podiatrist. In an April 1, 2011 report, Dr. Jennato stated that appellant presented to his office on February 15, 2011 with an acutely inflamed distal right Achilles tendon and indicated that diagnostic testing showed acute tendinitis but no negative rupture or positive tear. He periodically provided disability notes for appellant. In an August 9, 2011 note, Dr. Jennato stated that appellant was still being treated for a painful, swollen right Achilles tendon and indicated that he must remain off work from August 9 to October 4, 2011. In an October 4, 2011 note, he noted that appellant had severe, chronic Achilles tendinitis of both ankles, right greater than left and recommended that he remain out of work until November 30, 2011.

In October 2011, OWCP referred appellant to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for examination and an opinion regarding whether he continued to have residuals of his work injury.

In an October 26, 2011 report, Dr. Lakin discussed appellant's work injury and detailed the treatment of his foot problems. He noted that, on physical examination, appellant had a palpable right Achilles tendon with no gap or tenderness appreciated. Appellant's gait was normal and he was able to stand on his heels and toes without difficulty. Dr. Lakin provided findings for range of motion testing of his ankles and indicated that strength on dorsiflexion, plantar flexion, inversion and eversion of the right ankle was 5/5. Examination of both ankles revealed negative anterior drawer and no tenderness medially or laterally. Dr. Lakin concluded that appellant's accepted condition of tendinitis of his right Achilles tendon was not currently present. He stated that he palpated appellant's right Achilles tendon which was found to be nontender and indicated that his right ankle had excellent range of motion and strength. Dr. Lakin indicated that appellant did not require any treatment for the accepted condition as it had resolved and stated, "The patient has no objective findings on physical examination. He has no disability and is able to return to work full-time, regular duty as a letter carrier, and the claimant has reached maximum medical improvement as of today's date of October 26, 2011."

In a November 30, 2011 letter, OWCP advised appellant of its proposal to terminate his wage-loss compensation and medical benefits. It indicated that the weight of the medical evidence regarding continuing work-related residuals rested with the comprehensive October 26, 2011 report of Dr. Lakin. OWCP stated that the recent notes of Dr. Jennato finding work-related disability did not contain objective findings supporting the existence of such disability or work-related residuals. Appellant was provided 30 days from the date of the letter to submit evidence or argument challenging the proposed termination action.

² Appellant had been on restricted duty prior to stopping work in January 2011. On August 26, 2009 Dr. Howard I. Hyman, an attending podiatrist, performed surgical debridement and repair of appellant's right Achilles tendon with graft augmentation. On February 24, 2010 he carried out surgical repair of appellant's left Achilles tendon.

Appellant submitted a November 29, 2011 report in which Dr. Jennato indicated that he was currently treating appellant for acute right ankle pain. Dr. Jennato stated that his office had been treating appellant for chronic Achilles tendinitis from July 2010 through the present. He indicated that on February 15, 2011 appellant presented to his office with severe pain and swelling at the posterior right ankle along the distal Achilles tendon. Dr. Jennato noted that appellant was currently being treated with strict rest, immobilization of his right ankle with a cam-walker boot, and a leave of absence from his job. He noted that an ultrasound study showed a possible tear of the dorsal right Achilles tendon and posited that appellant must continue to remain out of work until January 24, 2012.

In a December 20, 2011 report, Dr. Jennato indicated that he disagreed with Dr. Lakin's conclusion that appellant was currently able to perform his regular job as a letter carrier, but he agreed that appellant had adequate surgical correction to allow for his normal activities of daily living. He stated that he had clearly documented that appellant had every intention to return to work³ but was unable to continue in his letter carrier position "due to the rigorous physical demands of his job and the ongoing, detrimental effects the job duties had on the Achilles tendons."

In a January 3, 2012 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective January 3, 2012 on the grounds that he had no residuals of his work injury after that date. It based its termination on the October 26, 2011 report of Dr. Lakin and indicated that the opinion of Dr. Jennato lacked probative value.

Appellant requested a hearing that was held on May 30, 2012. He submitted an October 25, 2011 report in which Dr. Jennato provided a discussion of his work injury, his work history and the medical treatment he received for his foot condition. Dr. Jennato indicated that in January 2011 appellant became disabled from work due to his work-related foot problem and discussed examination findings from February 2011. He noted that he was seeking disability retirement for appellant due to the underlying tendinopathy of his Achilles tendon and the nature and requirements of a letter carrier job. Appellant had a chronic, congenital Equinus deformity of both legs which imposed increased strain and stress on the Achilles tendon close to the insertion. Dr. Jennato discussed appellant's work duties and stated:

"The patient is currently on temporary disability from his job, because the unique job duties cause a constant, repetitive Achilles tendinosis. This tendinosis then develops into acute inflammation, severe pain, with the risk of further tendon tear and rupture. [Appellant] will not be medically cleared to return to work in an environment that will cause constant tendon trauma and possible rupture of the largest tendon in the body, the tendon most responsible for ambulation."

In a March 20, 2012 letter, Dr. Jennato indicated his office was still treating appellant for chronic right Achilles tendinosis and stated that, since appellant's work duties would not allow for proper healing, he had to remain off work until April 19, 2012. On April 26, 2012 Dr. Hyman stated that he concurred with the content of Dr. Jennato's October 25, 2011 report.

³ Dr. Jennato indicated that appellant did, in fact, return to restricted-duty work from July 2010 to January 2011 after a period of work stoppage.

In a July 26, 2012 decision, an OWCP hearing representative affirmed the January 3, 2012 termination decision noting that the reports of Dr. Jennato did not contain objective medical findings from around the time of the termination.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

It is well established that the possibility of future injury constitutes no basis for the payment of compensation.⁷

ANALYSIS

OWCP accepted that appellant sustained tendinitis of his right Achilles tendon due to his work duties, including engaging in extensive walking and standing. Appellant stopped work on January 31, 2011 and did not return to work.⁸ OWCP terminated appellant's wage-loss compensation and medical benefits effective January 3, 2012 on the grounds that he had no residuals of his work injury after that date. It based its termination on the October 26, 2011 report of Dr. Lakin, a Board-certified orthopedic surgeon who served as a second opinion physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Lakin. The October 26, 2011 report of Dr. Lakin establishes that appellant had no disability due to his work injury after January 3, 2012.

In his October 26, 2011 report, Dr. Lakin concluded that appellant's accepted condition of tendinitis of his right Achilles tendon had resolved. He noted that, on physical examination, appellant had a palpable right Achilles tendon with no gap or tenderness appreciated. Appellant's gait was normal and he was able to stand on his heels and toes without difficulty. Dr. Lakin indicated that strength on dorsiflexion, plantar flexion, inversion and eversion of the right ankle was 5/5 and that examination of both ankles revealed negative anterior drawer and no tenderness medially or laterally. He noted that appellant did not require any treatment for the

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

⁸ On August 26, 2009 Dr. Hyman, an attending podiatrist, performed surgical debridement and repair of appellant's right Achilles tendon with graft augmentation.

accepted condition as it had resolved and stated that he could return to his regular duty as a letter carrier on a full-time basis.

The Board has carefully reviewed the opinion of Dr. Lakin and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Lakin provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁹ He provided medical rationale for his opinion by explaining that appellant did not exhibit any objective findings of the accepted tendinitis of his right Achilles tendon. Dr. Lakin indicated that he palpated appellant's right Achilles tendon which was found to be nontender and stated that his right ankle had excellent range of motion and strength.

Appellant submitted several reports, dated between October 2011 and March 2012, of Dr. Jennato, an attending podiatrist who indicated that he continued to be treated for disabling residuals of his work injury, tendinitis of his right Achilles tendon.¹⁰ However, the opinions in these reports are of limited probative value on the issue of whether appellant had work-related residuals after January 3, 2012 because they are not based on a complete medical history.¹¹ Although Dr. Jennato briefly mentioned some physical examination findings from February 2011, he did not describe physical examination findings from any later period. He asserted that appellant continued to have work-related residuals and disability after the termination of his wage-loss compensation and medical benefits effective January 3, 2012, but he did not present any objective findings to support this position. Dr. Jennato's opinion that appellant should stay off work appeared to be based on his fear that appellant might reinjure himself if he returned to work, but it is well established that the possibility of future injury constitutes no basis for the payment of compensation.¹²

For these reasons, OWCP justified its termination of appellant's wage-loss compensation and medical benefits.

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.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 3, 2012 on the grounds that he had no residuals of his work injury after that date.

⁹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹⁰ Dr. Jennato indicated that appellant could not work in his regular position as a letter carrier.

¹¹ See *supra* note 6.

¹² See *supra* note 7. On April 26, 2012 Dr. Hyman stated that he concurred with Dr. Jennato that appellant continued to have work-related residuals. However, he also failed to provide a rationalized medical report supporting this opinion.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 26, 2012 is affirmed.

Issued: April 9, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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