

FACTUAL HISTORY

OWCP accepted that on November 12, 2009 appellant, then a 66-year-old field representative, while in the performance of duty, sustained a right ankle injury when she fell while getting out of her car. Her claim was accepted for closed fracture of the tibia and fibula. Appellant stopped work and received disability compensation. She was placed on the periodic rolls.

On November 28, 2009 appellant underwent right ankle surgery. She continued to receive medical treatment from Dr. Munir Ahmed, a Board-certified orthopedic surgeon.

Dr. Ahmed, in his June 25, 2010 report, related appellant's complaints of worsening right ankle pain at the medial and lateral joint line. He reviewed appellant's history and noted her previous right ankle fracture and degenerative joint disease. Upon examination, Dr. Ahmed observed presence of a scar on her right lower extremity and pain on palpation. Range of motion of the ankle was decreased. Dr. Ahmed diagnosed closed bimalleolar fracture, ankle and foot pain and ankle/foot arthritis. He recommended appellant use a cane and boot for support.

In a July 7, 2010 computerized tomography (CT) scan report, Dr. Akhilesh Desai, a Board-certified diagnostic radiologist, noted appellant's history of prior right ankle trauma and trimalleolar fracture involving the medial and posterior aspect of the tibia. He stated that the fracture appeared healed. The examination also revealed degenerative changes at the tibiotalar joint and irregularity of the articulating surface of the tibia. Dr. Desai reported that this was most likely secondary to the prior injury.

In a July 27, 2010 work capacity evaluation form, Dr. Ahmed noted that OWCP accepted appellant's claim for closed fracture of fibula and tibia. He indicated that appellant was able to work eight hours with restrictions of walking for four to six hours, standing for one to two hours, and no operating a motor vehicle or climbing.

In a September 27, 2010 report, Dr. Ahmed related appellant's complaints of moderately improved ankle pain. He noted that appellant was being seen for status post open reduction internal fixation for markedly displaced trimalleolar fracture dislocation of the right ankle. Dr. Ahmed related that x-rays showed that the joint and ankle motions were well maintained.

OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Kenneth Heist, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of her continuing employment-related residuals and disability. In a June 9, 2011 report, he provided an accurate history of injury of the November 12, 2009 employment injury and reviewed her history, including the statement of accepted facts. Dr. Heist noted that a July 7, 2010 magnetic resonance imaging (MRI) scan report of the right ankle revealed evidence of satisfactory healing. He related appellant's complaints of weakness and numbness in her right ankle and shooting pain in her legs. Upon examination of the lower extremities, Dr. Heist observed that her right ankle had well-healed previous surgical incision sites. Range of motion was dorsiflexion to 20 degrees, plantarflexion to 40 degrees, left inversion to 30 degrees, right inversion to 40 degrees, left eversion to 15 degrees and right eversion to 10 degrees. Dr. Heist found no evidence of peripheral neuropathy

or gross muscular weakness, atrophy, or circulatory difficulty. He diagnosed postoperative open reduction and internal fixation for trimalleolar fracture of the right ankle. Dr. Heist reported that there were no objective findings on examination to support her subjective complaints. He opined that appellant had reached maximum medical improvement and concluded that no additional orthopedic treatment was needed. Dr. Heist concluded that appellant was capable of returning to work with no restrictions. In a work capacity evaluation form, he checked a box marked "yes" that appellant was capable of performing her usual job with no restrictions.

On June 21, 2011 OWCP issued a notice of proposed termination of appellant's medical and wage-loss compensation benefits based on Dr. Heist's June 9, 2011 report. Appellant was advised that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed action.

In July 6, 2011 statements, appellant noted her disagreement with the proposed termination of benefits. She disputed Dr. Heist's findings and alleged that he merely pulled her sock half way down and placed his fingers on the right side of her ankle, which was not a valid examination. Appellant noted that he did not use any medical instruments to arrive at his findings. She also stated that she used a cane during her visit because she cannot walk without it, but Dr. Heist reported that she required no assistive devices to walk. Appellant explained that she had problems driving her car because of her right ankle injury and that there were times when she took a "bad step" and experienced intense pain for days. She alleged that her lingering right ankle injuries prevented her from resuming her work with the Census Bureau. Appellant submitted an internet article printout indicating that Dr. Heist agreed to a malpractice settlement in 2006.

In a July 6, 2011 statement Peggy Silk, appellant's sister, explained that since appellant's accident she had lost much of her ability and was not able to walk or stand for too long. She stated that she drove appellant to the second opinion examination and noted that while Dr. Heist was friendly the extent of his examination was to ask appellant to lower her sock and he felt her ankle. Ms. Silk reported that Dr. Heist did not question appellant on her limitations or address her complaints of right ankle pain, weakness and numbness.

Appellant submitted reports and handwritten progress notes dated December 2009 regarding her treatment for a right ankle injury.

By decision dated July 20, 2011, OWCP finalized the termination of appellant's compensation benefits effective July 20, 2011. It found that Dr. Heist's June 9, 2011 report represented the weight of the medical evidence in establishing that her accepted conditions had ceased and that she no longer had any residuals or disability causally related to her accepted employment injuries.

In a July 19, 2011 statement, appellant, through counsel, requested that another notice of proposed termination be issued that clarified the termination of appellant's medical and compensation benefits. He also alleged that a conflict of medical opinion existed between Drs. Ahmed and Heist.

In a July 14, 2011 work capacity evaluation form report, Dr. Ahmed checked a box marked “no” that appellant had not reached maximum medical improvement. He noted that appellant had difficulty walking and needed to use a cane. Dr. Ahmed indicated that appellant could return to work with restrictions of walking and standing with a cane, no twisting or bending, reaching only to arm length, operating a motor vehicle for 15 minutes, pushing, pulling, and lifting up to five pounds, and no squatting, kneeling and climbing.

On July 27, 2011 appellant, through counsel, requested an oral hearing, which was held on November 17, 2011. Appellant noted that she had worked as a field representative at the employing establishment for six years and described her job duties. She described the November 12, 2009 ankle injury at work and subsequent surgery. Appellant stated that her ankle condition was a permanent part of her life and that she could not wear regular shoes because her ankle and foot swell up. She stated that she was unable to do her job because she could not climb stairs, walk, and carry a briefcase and needed a cane to get around. Appellant further noted that she disagreed with how Dr. Heist conducted his second opinion examination. Her counsel alleged that there was a conflict in medical opinion between Drs. Ahmed and Heist regarding whether she continued to suffer residuals of her November 12, 2009 ankle injury.

In a July 12, 2011 report, Dr. Ahmed related appellant’s complaints of worsening right ankle pain following a fracture and noted that she still experienced pain, discomfort, stiffness, swelling and instability in her right ankle. He noted a date of injury of November 12, 2009 and that appellant presented with a bone fracture that moderately limited her activities. Dr. Ahmed stated that appellant was recovering more slowly than anticipated. Examination of the right lower extremity revealed pain on palpation and decreased range of motion of the dorsiflexion and plantarflexion. Dr. Ahmed diagnosed worsened closed bimalleolar fracture, worsened ankle and foot pain, and worsened ankle and foot arthritis. He noted that x-rays revealed status post fracture of the ankle with hardware in place and degenerative arthritis of the right ankle. Dr. Ahmed recommended weight bearing to tolerance. Appellant also submitted additional reports from Dr. Ahmed dated December 17, 2009 to September 27, 2010.

In a December 16, 2011 statement, the employing establishment stated that it had requested a standard issue field representative laptop for appellant which would only weigh 6.6 pounds. It also alleged that it was not unreasonable to wonder how someone could fracture a bone, feel improved, and then two weeks later report that the pain had increased. The employing establishment further noted that Dr. Heist was a professional who presented examination findings and had nothing to gain by providing an opinion that was biased in any way.

In a December 29, 2011 statement, appellant responded to the employing establishment’s comments. She described the November 12, 2009 employment incident and the right ankle injury. Appellant reiterated that Dr. Heist did not perform any examination but just placed his fingers on the right side of her ankle and felt the screws.

In a decision dated January 30, 2012, an OWCP hearing representative affirmed the July 20, 2011 decision terminating appellant’s medical and wage-loss compensation benefits. It determined that Dr. Ahmed’s reports were not sufficient to create a conflict in medical opinion with Dr. Heist’s opinion regarding appellant’s ability to return to work because Dr. Ahmed failed to provide any opinion on whether appellant was disabled from work as a result of the

November 12, 2009 employment injury. The hearing representative found that the weight of the medical evidence still rested with Dr. Heist's May 25, 2011 second opinion report which established that appellant was no longer disabled as a result of her accepted right ankle condition.

On March 7, 2012 appellant, through counsel, submitted a request for reconsideration. He stated that Dr. Ahmed clearly established a causal relationship between appellant's arthritic condition and her work accident, which confirmed that appellant was unable to return to work in her regular position. Appellant's counsel alleged that there was a conflict of medical evidence between Drs. Ahmed and Heist, which required referral to a referee physician.

In a February 23, 2012 report, Dr. Ahmed noted appellant's November 12, 2009 employment injury when she sustained a left ankle fracture and subsequent operation. He related that her ankle condition gradually improved but she continued to complain of pain and discomfort in the ankle. Dr. Ahmed reported that x-rays showed gradual incidents of osteoarthritis. He opined that the subsequent development of arthritic changes was definitely related to the November 12, 2009 accident.

By decision dated August 2, 2012, OWCP denied modification of the January 30, 2012 hearing representative decision affirming the termination of appellant's benefits.

LEGAL PRECEDENT

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.² OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁶

ANALYSIS

OWCP accepted that on November 12, 2009 appellant sustained a right ankle fracture in the performance of duty. She stopped work and received disability compensation. OWCP

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

terminated appellant's compensation and medical benefits effective July 20, 2011 based on the second opinion report of Dr. Heist who found that appellant did not need additional medical treatment and was capable of returning to work with no restrictions. The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits as the medical evidence establishes that appellant's accepted right ankle condition had resolved and that she no longer suffered residuals of her November 12, 2009 employment injury.

OWCP terminated appellant's compensation and medical benefits based on Dr. Heist's June 9, 2011 second opinion report. Dr. Heist provided an accurate history of the November 12, 2009 employment injury and reviewed her history. Examination of the lower extremities revealed well-healed previous surgical incision sites of the right ankle. Range of motion was dorsiflexion to 20 degrees, plantarflexion to 40 degrees, left inversion to 30 degrees, right inversion to 40 degrees, left eversion to 15 degrees and right eversion to 10 degrees. Dr. Heist found no evidence of peripheral neuropathy or gross muscular weakness, atrophy or circulatory difficulty. He diagnosed postoperative open reduction and internal fixation for trimalleolar fracture of the right ankle. Dr. Heist reported that there were no objective findings on examination to support her subjective complaints. He opined that appellant had reached maximum medical improvement and concluded that no additional orthopedic treatment was needed. Dr. Heist concluded that appellant was capable of returning to work with no restrictions.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the case of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ Dr. Heist provided an accurate history of the November 12, 2009 employment injury and findings on examination. He explained that there were no objective findings to support appellant's complaints of continued right ankle pain. The Board finds that Dr. Heist's opinion is detailed, well rationalized and based upon a complete and accurate history. His opinion represents the weight of the medical evidence. The Board also notes that Dr. Heist's opinion is supported by Dr. Desai's July 7, 2010 diagnostic report which indicated that appellant's fracture appeared healed. The Board finds, therefore, that OWCP met its burden of proof to terminate appellant's medical and compensation benefits as the medical evidence established that her accepted November 12, 2009 ankle condition had resolved and that she was capable of returning to work.

Appellant also submitted various reports from Dr. Ahmed who diagnosed postclosed bimalleolar fracture, ankle and foot pain, and ankle and foot arthritis. While Dr. Ahmed notes appellant's complaints of right ankle pain and limited activities, his reports fail to provide support that appellant continued to suffer residuals of her accepted right ankle condition and continued to be disabled from work as a result of the November 12, 2009 employment injury.⁸ Instead, the Board notes that Dr. Ahmed's reports support appellant's ability to return to work. In a July 27, 2010 work capacity evaluation form, Dr. Ahmed noted that appellant was able to work eight hours with restrictions. A year later, in another July 14, 2011 work capacity evaluation form, Dr. Ahmed noted that appellant needed to use a cane and indicated that

⁷ *K.W.*, 59 ECAB 271 (2007); *Ann C. Leanza*, 48 ECAB 115 (1996).

⁸ *See D.R.*, Docket No. 12-1441 (issued February 13, 2013).

appellant could return to work with restrictions. The Board further notes that in his February 23, 2012 report, Dr. Ahmed attributed appellant's current right ankle conditions to osteoarthritis, which is not an accepted condition. The Board finds, therefore, that Dr. Ahmed's reports are insufficient to establish that appellant's right ankle fracture had not resolved and that she continued to be disabled from work as a result of the November 12, 2009 employment injury.

Appellant's counsel argues that there is a conflict of medical opinion between Dr. Ahmed and Dr. Heist. As stated above, however, Dr. Ahmed does not provide any opinion on whether appellant's right ankle fracture had resolved and whether she remained disabled from work as a result of the November 12, 2009 employment injury. Accordingly, there is no conflict in medical evidence regarding appellant's ability to return to work.

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 properly terminated appellant's wage-loss compensation and medical benefits effective July 20, 2011 on the grounds that she no longer had any residuals or disability causally related to her accepted right ankle injury.

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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