

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Brush Prairie, WA, Employer**

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**Docket No. 13-716
Issued: June 4, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 31, 2013 appellant filed a timely appeal from a January 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 compensation benefits as of June 20, 2012.

FACTUAL HISTORY

Appellant, a 50-year-old rural mail carrier, experienced throbbing in her right ankle and right heel while driving her mail vehicle on June 25, 2011. She filed a claim on June 27, 2011,

¹ 5 U.S.C. § 8101 *et seq.*

which OWCP accepted for right ankle tendinitis. Appellant stopped work and received temporary total disability compensation.

In an October 10, 2011 report, Dr. Steven T. Lu, a treating physician, Board-certified in internal medicine, advised that appellant had acute left and right-sided Achilles tendinitis and right plantar fasciitis and was undergoing physical therapy. He prescribed medication and recommended treatment with an orthopedic specialist.

In a January 19, 2012 report, Dr. Lu noted that appellant had been seen by a neurosurgeon to rule out potential lumbar disc disease, as causing pain to her left leg. He reiterated that she was experiencing left and right Achilles tendinitis and right-sided plantar fasciitis. Dr. Lu placed appellant on restrictions and opined that she was able to do light, sedentary duty which required limited walking.

In order to determine appellant's current condition and ascertain whether she still had residuals from her accepted right ankle tendinitis, OWCP referred her for a second opinion examination with Dr. Aleksandar Curcin, Board-certified in orthopedic surgery. In a February 25, 2012 report, Dr. Curcin reviewed the medical history and the statement of accepted facts and listed findings on examination. He found that appellant's accepted right ankle tendinitis condition had resolved and that she had no residuals from her June 25, 2011 accepted injury.² Dr. Curcin noted her description of her current pain complaints and that she presented for examination with bilateral auxiliary crutches. He noted that appellant was able to bear weight on both lower extremities and did not use the crutches in a typical swing-through fashion. Appellant walked across the examining room without her crutches, walking on the tiptoes of the right side, stating that if she placed the heel on the floor it caused pain. Dr. Curcin related that she had no evidence of swelling, deformity, skin discoloration, or differences in temperature of the left and right lower extremities, but reported that light touch palpation was exquisitely tender. He explained that tenosynovitis and tendinitis were two separate conditions, but often occurred simultaneously. Appellant's accepted right ankle tendinitis, as well as the tenosynovitis had resolved. He concluded, based on examination findings, including negative diagnostic imaging studies and on the medical records documenting appropriate treatment that the tenosynovitis condition resolved within 10 to 12 weeks. Appellant was no longer temporarily totally disabled and could perform the full scope of her date-of-injury job.

In a February 17, 2012 report, Dr. Matthew J. Gambee, Board-certified in orthopedic surgery, stated that appellant was capable of returning to work in her normal capacity as a mail carrier.

In reports dated February 17, March 19, April 6 and 16, 2012, Dr. Lu reiterated his previous findings and conclusions.

On May 17, 2012 OWCP issued a notice of proposed termination of compensation. It found that the weight of the medical opinion was represented by Dr. Curcin who found that her accepted right ankle tendinitis condition had resolved and that she had no work-related residuals.

² Dr. Curcin also found that appellant had sustained a tenosynovitis condition which had resolved; this condition, however, was not accepted by OWCP.

In an April 23, 2012 report, received by OWCP on May 25, 2012, Dr. Lu reiterated that appellant had right and left Achilles tendinitis and right plantar fasciitis. He advised that she was ambulating with a cane and was awaiting authorization for an ankle immobilizer medication. Dr. Lu asserted that her tendinitis remained unchanged.

By decision dated June 20, 2012, OWCP terminated appellant's compensation benefits, finding that Dr. Curcin's referral opinion represented the weight of the medical evidence.

On July 18, 2012 appellant requested an oral hearing, which was held on November 5, 2012. In a May 30, 2012 report, Dr. Lu stated that she continued to experience right heel and right calf pain related to the Achilles tendon. He noted that appellant had an independent medical evaluation which found that her current tendinitis was not a work-related condition. Dr. Lu advised that she had responded poorly to treatment with physical therapy and medication, which he considered "puzzling."

By decision dated January 18, 2013, an OWCP hearing representative affirmed the June 20, 2012 termination decision.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ This burden of proof includes the necessity of furnishing rationalized medical opinion evidence which is based on a proper factual and medical history.⁴

ANALYSIS

Appellant's claim was accepted by OWCP for tendinitis of the right ankle. In a February 25, 2012 report, Dr. Curcin found that she had no residuals of her accepted right ankle tendinitis and that her accepted condition had resolved. He based his opinion on examination findings, a review of the medical records, which substantiated that appellant had received appropriate treatment and negative diagnostic testing. Dr. Curcin found that she was no longer disabled and that she was capable of performing her usual job as a mail carrier. OWCP relied on Dr. Curcin's opinion in its June 20, 2012 decision, finding that appellant had no residuals or disability causally related to her right ankle tendinitis condition.

The Board finds that Dr. Curcin's opinion is well rationalized and based on an accurate history, a review of the medical records and findings from physical examination. The medical evidence establishes that appellant no longer has any residuals of her accepted right ankle tendinitis. Dr. Curcin's opinion is sufficiently probative, rationalized and based upon a proper factual background. The Board therefore finds that his opinion constitutes the weight of medical opinion and supports OWCP's June 20, 2012 decision to terminate benefits.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *J.M.*, 58 ECAB 478 (2007).

Appellant subsequently requested an oral hearing and submitted the May 30, 2012 report from Dr. Lu who related that she continued to experience right heel and right calf pain related to the Achilles tendon and noted that an independent medical evaluation had determined that her current tendinitis was not a work-related condition. Dr. Lu stated that he was puzzled as to why appellant had responded poorly to physical therapy. He did not specifically address the report of Dr. Curcin or provide a rationalized opinion, with objective findings, as to whether she continued to be disabled or had residuals of her June 25, 2011 injury. Dr. Lu did not provide a well-reasoned explanation addressing how appellant's accepted right ankle tendinitis caused her ongoing symptoms or disability. OWCP's determination that she did not have any employment-related disability or residuals stemming from her accepted right ankle condition will be affirmed.⁵

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁵ The Board notes that appellant submitted additional evidence to the record following the June 23, 2009 OWCP decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501.2(c).