

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oak Ridge, TN, Employer**

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**Docket No. 13-102
Issued: March 28, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2012 appellant filed a timely appeal from a July 19, 2012 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 the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss benefits effective July 19, 2012 on the grounds that she no longer had any disability causally related to her accepted employment-related injuries.

FACTUAL HISTORY

This case has previously been before the Board. In a March 19, 2012 decision, the Board reversed OWCP's April 18, 2011 decision terminating compensation benefits. It found that

¹ 5 U.S.C. §§ 8101-8193.

OWCP improperly based its termination decision on the medical opinion of Dr. Arsen H. Manugian, an attending Board-certified orthopedic surgeon. The Board found that OWCP did not meet its burden of proof to terminate wage-loss compensation benefits.² Appellant's compensation for wage loss was reinstated effective May 8, 2011. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.

In a January 31, 2012 report, Dr. Manugian noted appellant's complaints of right wrist pain, which occurred at work, and left heel pain. He noted that she had not returned to work since her last visit. While it was previously recommended that she return to regular duty to an eight-hour shift standing and walking for four hours at a time, his recommendation was apparently unclear. Dr. Manugian noted examination findings. He released appellant to regular duty, noting that she could work an eight-hour shift but could only stand and walk for four hours a day and follow-up as needed. Dr. Manugian noted that there were no new recommendations, stating that the natural history of plantar fasciitis was discussed with appellant.

OWCP referred appellant to Dr. James T. Galyon, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of work-related disability. In a May 16, 2012 report, Dr. Galyon reviewed the statement of accepted facts and the medical record and provided findings on examination. He found that appellant no longer had disability or physical restrictions for work as a result of her employment injury. Dr. Galyon stated that she had a multiplicity of problems, with the conditions of plantar fasciitis in her left foot and de Quervain's tenosynovitis of the right wrist being accepted as work related. With regard to the de Quervain's of the right wrist, he opined that it had been satisfactorily treated and had resolved. Appellant's complaints in both hands and specifically the right hand was clearly related to carpal tunnel syndrome because it followed the enervation of the median nerve into her thumb, index and middle fingers on both hands and was essentially symmetrical on the operated and unoperated right and left hands. Dr. Galyon did not believe that the carpal tunnel syndrome was work related and it was not listed in the statement of accepted facts. He stated that the current disability due to the wrist, if any, was due to persistent carpal tunnel syndrome and peripheral neuropathy, neither of which was accepted as work related. With regard to the left foot plantar fasciitis, Dr. Galyon noted that the condition was work related and had been treated appropriately. He opined that the symptoms of appellant's plantar fasciitis were not significant enough to render her disabled and that she could work at her usual job; however, he believed that she needed continued treatment for her plantar fasciitis. Dr. Galyon advised that a course of exercises to stretch out the plantar fascia would likely resolve the situation. He stated that appellant may be restricted from her regular work due to her other medical problems, which were nonwork-related conditions.

On June 12, 2012 OWCP issued a notice of proposed termination of medical benefits for the aggravation of de Quervain's tenosynovitis, right wrist and compensation for wage loss for the accepted conditions of aggravation of de Quervain's tenosynovitis, right wrist and left foot

² Docket No. 11-1701 (issued March 19, 2012). On July 1, 2010 appellant, a sales service associate, filed an occupational disease claim for her right wrist and left foot problems. She stopped work and did not return. OWCP accepted the claim for aggravation of de Quervain's tenosynovitis, right wrist and left foot plantar fasciitis. Appropriate compensation for medical and wage loss were paid.

plantar fasciitis based on the Dr. Galyon's May 16, 2012 medical opinion. Appellant was afforded 30 days to submit additional evidence.³

In a July 11, 2012 letter, appellant requested a copy of the statement of accepted facts and an extension of time to reply to OWCP's pending review of the statement of accepted facts. In another July 11, 2012 letter, she disagreed with the proposed termination of wage-loss compensation. Appellant argued that OWCP could not terminate compensation for her accepted left foot plantar fasciitis condition as Dr. Galyon found that it had not resolved and continued to be painful and work related. She argued that Dr. Galyon's opinion was filled with inaccuracies, discussed other medical problems and diagnoses for which he did not have sufficient references or documentation and was based on an inaccurate statement of accepted facts. Appellant contended that the statement of accepted facts did not contain an accurate job description. She noted that she was a sales service and distribution associate clerk and that the distribution part of the job required strenuous challenging duties. Appellant also argued that a medical conflict existed between Dr. Manugian and Dr. Galyon regarding the accepted plantar fasciitis of the left foot.

By decision dated July 19, 2012, OWCP terminated appellant's wage-loss and medical benefits for the aggravation of de Quervain's tenosynovitis, right wrist and wage-loss benefits for left foot plantar fasciitis.⁴

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment,

³ OWCP noted that appellant would continue to receive medical benefits for the left foot plantar fasciitis condition due to the March 31, 2010 employment injury.

⁴ Appellant's request for a copy of the statement of accepted facts and an extension of time to review the accuracy of the statement of accepted facts was denied as a copy of the case file, which included the statement of accepted facts, was provided to her on May 24, 2012.

⁵ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁶ *Id.*

⁷ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁸ *Roger G. Payne*, 55 ECAB 535 (2004).

OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁹

ANALYSIS

OWCP accepted that appellant sustained aggravation of de Quervain's tenosynovitis, right wrist and left foot plantar fasciitis. It terminated her compensation benefits for the wrist condition and wage-loss benefits for the left foot condition effective July 19, 2012 on the grounds that the conditions had resolved or there was no disability from work due to the March 31, 2010 work injury. OWCP accorded determinative weight to the opinion of Dr. Galyon, the second opinion specialist.

The Board finds Dr. Galyon's opinion sufficiently rationalized to establish that appellant's employment-related aggravation of de Quervain's tenosynovitis of the right wrist had resolved and that the residuals from the accepted left plantar fasciitis do not disable her from performing her date-of-injury job. In a comprehensive report dated May 16, 2012, Dr. Galyon reviewed the statement of accepted facts and the medical record and reported findings on physical examination. He opined that the employment-related aggravation of de Quervain's tenosynovitis of the right wrist had been satisfactorily treated and had resolved. Dr. Galyon opined that appellant's current complaints in both hands, specifically the right hand, were attributable to carpal tunnel syndrome and/or peripheral neuropathy and that neither condition was work related or listed as an accepted condition in the statement of accepted facts.¹⁰ He further opined that the employment-related left plantar fasciitis, while symptomatic, was not significant enough to be disabling. Dr. Galyon explained that any job restrictions were attributable to nonwork-related conditions.

Dr. Manugian, appellant's attending physician, released appellant to regular duty for her plantar fasciitis condition, noting that she may work an eight-hour shift but could only stand and walk for four hours of an eight-hour day. These restrictions, however, are prophylactic in nature as he stated such recommendations of standing and walking for half of an eight-hour shift might be helpful. Dr. Manugian did not explain the reasons why any continuing restrictions would be due to appellant's accepted conditions. The medical evidence of record did not provide reasoned support to establish that appellant had any ongoing disabling residuals due to the March 31, 2010 work injury. As noted, OWCP did not terminate medical benefits for the left plantar fasciitis.

Before OWCP and on appeal, appellant contended that Dr. Galyon's report was not based on an accurate factual and medical background. While she contends that the statement of accepted facts contains inaccuracies, she has failed to elaborate on any activities she performs which were not described as part of the physical requirements of her job. An inaccurate job title would not render a statement of accepted facts inaccurate.

⁹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹⁰ *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (for conditions not accepted or approved by OWCP as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

The Board finds that Dr. Galyon's report is based on an accurate factual background and provides sufficient medical rationale for his conclusions.¹¹ OWCP, therefore, met its burden of proof to terminate appellant's medical benefits for the employment-related aggravation of de Quervain's tenosynovitis of the right wrist and wage-loss compensation for both the employment-related aggravation of de Quervain's tenosynovitis of the right wrist and the left plantar fasciitis as the weight of the medical evidence indicates that she no longer had any disability causally related to her accepted employment-related injuries.

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 benefits effective July 19, 2012 on the grounds that she no longer had any disability causally related to her accepted employment-related injuries. Appellant remains entitled to medical benefits for her left plantar fasciitis.

¹¹ *Michael S. Mina*, 57 ECAB 379 (2006) (in accessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; 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).

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2013
Washington, DC

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

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

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