

On appeal, counsel contends that OWCP's decision was contrary to fact and law.

FACTUAL HISTORY

On April 1, 1992 appellant, then a 31-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging a left foot injury in the performance of duty on December 20, 1991. In File No. xxxxxx698, OWCP accepted the claim for avulsion fracture of the left talonavicular joint. Appellant returned to limited-duty work and sustained a recurrence of disability on August 14, 1992.

Appellant, through her attorney, filed claims for compensation (Form CA-7s) for periods beginning August 14, 1992.

By decision dated July 5, 1994, OWCP accepted left tarsal tunnel syndrome and appellant received wage-loss compensation for the period August 14 through 29, 1992.

On August 2, 1994 appellant, through her attorney, filed a claim for a schedule award.

In File No. xxxxxx822, OWCP accepted that appellant sustained a left ankle sprain on October 28, 1994 in the performance of duty. Following an approved surgical procedure, appellant returned to restricted duty in December 1994. OWCP combined the claims under Master File No. xxxxxx698.

By decision dated July 25, 1997, OWCP granted appellant a schedule award for a 14 percent permanent impairment of the left leg.

The record reveals that the employing establishment reduced appellant's hours to four a day effective June 2010 because it could not accommodate her limitations. Effective May 9, 2011, the employing establishment could no longer accommodate her restrictions and she stopped work. OWCP placed appellant on the periodic rolls.

On February 14, 2011 Dr. Joseph Salama, an attending physician and Board-certified orthopedic surgeon, reported that appellant had undergone a tarsal tunnel release as well as surgery on her left Achilles tendon. Appellant was fitted with a brace and had been working at a sit-down job. She stated that she had to do some walking from the area where she worked and noted increasing discomfort in her left ankle. Dr. Salama advised appellant to continue to work in a sit-down position in a chair, not on a rolling stool or platform. He restricted her from excessive walking, stairs, bending, kneeling or squatting and that she had been working with these permanent restrictions.

OWCP referred appellant to Dr. Michael E. Kosinski, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of her employment-related condition. In a June 21, 2011 report, Dr. Kosinski conducted a physical examination and reviewed her medical history and a statement of accepted facts. He found no evidence of swelling or neurogenic complaints with excellent range of motion of both ankles. Dr. Kosinski found no residuals from the left ankle avulsion fracture or left tarsal tunnel syndrome from 1991 or the left ankle sprain from 1994. He opined that appellant was capable of working eight hours a day at a sit-down job only. In a July 8, 2011 addendum

report, Dr. Kosinski indicated that she had no residuals of the surgical procedures performed on August 24, 1994 for the tarsal tunnel and November 4, 1994 for the Achilles tendon. He noted that appellant did have residuals of osteoarthritis of the joints.

Appellant submitted reports dated July 12 and 21, 2011 from Dr. Salama. On July 21, 2011 Dr. Salama indicated that he had reviewed Dr. Kosinski's June 21, 2011 report. He diagnosed osteoarthritis of the tarsal joint and talonavicular and opined that appellant's employment injuries caused her to develop arthritic changes in the left foot and ankle.

OWCP referred appellant to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion between Dr. Kosinski and Dr. Salama on her disability or residuals of the accepted employment conditions. In a December 27, 2011 report, Dr. Obianwu reviewed a statement of accepted facts, the medical evidence of record and performed a physical examination. He concluded that appellant had no residuals of the left ankle avulsion fracture explaining that the diagnosis was made on the basis of x-rays, which did not reveal any avulsion fracture. Dr. Obianwu opined that she had no residuals of the left tarsal tunnel syndrome as the Tinel's test over the nerve was negative and there was no sensory discrepancy over the top or dorsal aspect of the left foot. He found no residuals of the left ankle sprain as there was no positive response of significant discomfort. Dr. Obianwu concluded that there were no residuals of the exploration of the left Achilles tendon because, although appellant could not walk on her toes, close palpation of the Achilles tendon revealed no defects and the Thompson's test was negative. He explained that the diagnosis of osteoarthritis in her left foot was age related and not related to the surgical procedures as they were all soft tissue releases and the bones and joints were not affected. Dr. Obianwu concluded that appellant had no residuals related to her employment injuries. He opined that she had reached maximum medical improvement and was able to continue working in her modified position.

On April 23, 2012 Dr. Salama diagnosed post left tarsal tunnel release and left ankle arthritis. He released appellant to her modified position with restrictions.

By letter dated June 7, 2012, OWCP notified appellant that it proposed to terminate her compensation benefits based on the weight of the medical evidence, as represented by Dr. Obianwu.

Appellant submitted a June 20, 2012 report from Dr. Salama, who reiterated his diagnosis of osteoarthritis and his opinion that it was employment related.³

By decision dated July 19, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective that day.⁴ It found that the weight of the evidence was represented by Dr. Obianwu.

³ On June 18, 2012 appellant, through her attorney, filed a notice of recurrence.

⁴ OWCP noted that, since the periodic rolls cycle did not end until July 28, 2012, appellant would be paid wage-loss compensation through that date and the termination on wage-loss compensation would be effective July 29, 2012.

On August 1, 2012 appellant, through her attorney, requested a telephone hearing before an OWCP hearing representative. She submitted reports dated February 29 and November 5, 2012 from Dr. Salama, who reiterated his diagnoses and medical opinions.

A hearing was held before an OWCP hearing representative on December 17, 2012. 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.

By decision dated February 26, 2013, the hearing representative affirmed the July 19, 2012 termination decision, finding that Dr. Obianwu represented the 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.⁵ After it has determined that an 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.⁶ OWCP's burden of proof 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.⁸ 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.⁹

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.¹⁰ 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.¹¹

⁵See *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶See *I.J.*, 59 ECAB 408, 412 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷See *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁸See *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹See *James F. Weikel*, 54 ECAB 660 (2003).

¹⁰5 U.S.C. § 8123(a). See *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

¹¹See *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

ANALYSIS

OWCP accepted appellant's claim for left talonavicular joint avulsion fracture, left tarsal tunnel syndrome and left ankle sprain. It terminated her compensation benefits effective July 19, 2012 on the grounds that the accepted employment-related conditions had resolved without residuals based on the opinion of the impartial medical examiner, Dr. Obianwu. The issue to be determined is whether OWCP met its burden to terminate appellant's compensation benefits.

Dr. Salama, appellant's treating physician, opined that she continued to have residuals of her accepted left foot and ankle injuries. Dr. Kosinski, an OWCP referral physician, opined that she no longer had any residuals or disability due to the accepted employment injuries, concluding that her left foot conditions had resolved. The Board finds 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. Obianwu to resolve the conflict in the medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the December 27, 2011 report of Dr. Obianwu who reviewed her medical history, examined her and found no objective evidence of ongoing residuals or disability due to her left foot conditions. Dr. Obianwu reviewed the statement of accepted facts and the medical record. He found no objective evidence of symptoms related to the left talonavicular joint avulsion fracture, left tarsal tunnel syndrome and left ankle strain. Dr. Obianwu found no evidence of other conditions or residuals related to appellant's employment. He explained that the diagnosis of osteoarthritis in her left foot was age-related and not related to the surgical procedures as they were all soft tissue releases and the bones and joints were not affected. Dr. Obianwu concluded that appellant had recovered from her left foot conditions and advised that she was able to continue working in her modified position.

The Board finds that Dr. Obianwu's report represents the special weight of the medical evidence. OWCP properly relied on his report in terminating appellant's benefits. The Board finds that he had full knowledge of the relevant facts and evaluated the course of her condition. Dr. Obianwu is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Obianwu addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.¹² At the time benefits were terminated, he found no basis on which to attribute any residuals or continued disability to appellant's accepted conditions. Dr. Obianwu's opinion as set forth in his December 27, 2011 report is found to be probative evidence and reliable. The Board finds that this opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted left foot conditions had ceased.

¹²See *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).

Dr. Salama submitted reports diagnosing osteoarthritis and opining that it was employment related. Ashe 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. Obianwu.¹³ Thus, the Board finds that OWCP properly terminated appellant's compensation benefits effective July 19, 2012 relating to the accepted left talonavicular joint avulsion fracture and left tarsal tunnel syndrome.

On appeal, appellant's attorney contends that OWCP's decision was contrary to fact and law. However, as explained, Dr. Obianwu's report represents the special weight of the medical evidence and establishes that appellant's accepted conditions resolved.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss and medical compensation benefits effective July 19, 2012 on the grounds that her accepted left foot conditions had ceased without residuals.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2013
Washington, DC

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

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

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

¹³See *J.M.*, Docket No. 11-1257 (issued January 18, 2012); *Dorothy Sidwell*, 41 ECAB 857 (1990).