

tibia and fibula shaft and trimalleolar open fracture of the right ankle and authorized surgery which was performed on December 7, 2012 and February 27, 2013. Appellant stopped work on November 24, 2012. She was a casual employee with a one-time 90-day appointment which ended on December 31, 2012.

Appellant was treated in an emergency room on November 24, 2012 for lateral pain and swelling of the right ankle after a trip and fall at work. A right ankle x-ray revealed a bimalleolar fracture with slightly displaced lateral malleolus fracture slightly above the level of the syndesmosis and the medial malleolus fracture with a tiny avulsion. Appellant was seen by Dr. Robert G. Howard, Jr., a Board-certified orthopedist, on December 3, 2012 for a right ankle fracture which occurred at work. Dr. Howard diagnosed right trimalleolar ankle fracture, an unstable injury and recommended surgery. On December 7, 2012 he performed an open reduction and internal fixation of the right ankle and diagnosed right trimalleolar ankle fracture and syndesmosis disruption. In a follow-up report of December 19, 2012, Dr. Howard noted that appellant was progressing well. He diagnosed well-healed surgical incision following a right trimalleolar ankle fracture with syndesmosis disruption, noted removing the sutures and placing her in an ankle fracture boot. Dr. Howard advised that appellant would be nonweight bearing on the right leg for 10 weeks. In reports dated January 23 and February 20, 2013, he further noted that she was postsurgery, listed x-rays findings and diagnosed healing right trimalleolar ankle fracture with syndesmosis disruption. In a February 20, 2013 report, Dr. Howard noted x-ray of the right ankle revealed a lateral plate and screw fixation, distal fibular fracture with complete consolidation at the fracture site with some bending, breakage or loosening of the syndesmosis screw. He diagnosed healed right trimalleolar ankle fracture and syndesmosis disruption and recommended removal of the right ankle screw. On February 27, 2013 Dr. Howard performed a staged removal of deep orthopedic hardware from the right ankle, syndesmosis screw.

In an e-mail dated February 21, 2013, the employing establishment indicated that the contract negotiations with the mail handler unions eliminated the position of casual mail handlers but positions for noncareer mail handlers were available for applicants.

In a March 27, 2013 report, Dr. Howard noted that appellant was four weeks status post staged removal of hardware from the right ankle. Appellant reported to be full weight bearing with a shoe and walker boot and requested to return to work. Dr. Howard diagnosed a healed right ankle fracture with syndesmosis disruption with excellent function. He opined that appellant could return to work on April 8, 2013 without restriction with no further orthopedic intervention. In an "essential job function" form dated March 27, 2013, Dr. Howard certified that appellant was able to perform all the essential functions of the position of transfer coordinator II.

On April 18, 2013 an OWCP field nurse advised that appellant was released to full duty on April 8, 2013 but her position at the employing establishment had been terminated. However,

appellant returned to work full duty at her second job at the North Carolina Women's Prison on April 8, 2013.²

In a decision dated August 14, 2013, OWCP terminated appellant's wage-loss compensation effective August 15, 2013 finding that the medical evidence established that she was no longer disabled from her November 24, 2012 work injury.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴

ANALYSIS

OWCP accepted appellant's claim for closed fracture of the right tibia and fibula shaft and trimalleolar open fracture of the right ankle and authorized an open reduction and internal fixation of the right ankle surgery which was performed on December 7, 2012 and removal of orthopedic hardware on February 27, 2013. Appellant stopped work on November 24, 2012. She was released to work regular duty without restrictions on March 27, 2009 by her treating physician, Dr. Howard.

In a March 27, 2013 report, Dr. Howard noted appellant's history and reported examination findings. He found that there were no clinical findings of any residuals or disability causally related to the accepted employment injury. Dr. Howard noted that appellant was four weeks status post staged removal of hardware from the right ankle. Appellant reported to be full weight bearing with a shoe and walker boot and requested to return to work. Dr. Howard noted an unremarkable examination of appellant's right ankle revealed a well-healed surgical incision, no swelling, no erythema or exudate, no instability, full active dorsiflexion, plantar flexion, inversion and eversion and full ankle dorsiflexion and plantar flexion. He noted x-rays of the right ankle dated March 27, 2013 revealed a healed lateral malleolar fracture, healed medial malleolar avulsion fracture, symmetric ankle mortise and well-aligned distal tibiofibular joint. Dr. Howard diagnosed a healed right ankle fracture with syndesmosis disruption with excellent function. He opined that appellant could return to work on April 8, 2013 without restriction with no further orthopedic intervention. In an "essential job function" form dated March 27, 2013,

² In an Office of the Inspector General report dated May 8, 2013, it was alleged that appellant fraudulently obtained workers' compensation benefits by failing to report employment and earned income to OWCP. The investigation revealed that appellant was a full-time employee for the North Carolina Department of Public Safety and also worked part time as a casual clerk for the employing establishment. On July 18, 2013 OWCP indicated that the evidence did not support a finding that appellant knowingly failed to report her sick leave income on the CA-7's and therefore forfeiture of compensation was not appropriate.

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

Dr. Howard certified that appellant was able to perform all the essential functions of the position of transfer coordinator II.

The Board finds that Dr. Howard's reports represent the weight of the medical evidence and establish that appellant had no further disability from work due to her accepted November 24, 2012 work injury. OWCP properly relied on his reports in terminating appellant's wage-loss benefits effective August 15, 2013. Dr. Howard's opinion is based on proper factual and medical history as he was appellant's treating physician and surgeon. He also related his examination findings in support of his opinion that disabling residuals of the accepted condition had resolved. There is no other contemporaneous medical evidence supporting that appellant remained disabled as a result of the accepted injury. Thus, OWCP met its burden of proof to terminate her wage-loss benefits.

On appeal, appellant questions whether she received appropriate wage-loss and medical reimbursement benefits in the form of continuation of pay from November 24, 2012 to January 8, 2013. The Board does not have jurisdiction over that issue as there has been no formal decision denying continuation of pay.⁵

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate wage-loss benefits effective August 15, 2013.

⁵ See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2013 is affirmed.

Issued: June 23, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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