

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

C.N., Appellant)	
)	
and)	Docket No. 13-1438
)	Issued: March 5, 2014
DEPARTMENT OF JUSTICE, FEDERAL)	
CORRECTIONAL INSTITUTION, Fort Dix, NJ,)	
Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 4, 2013 appellant, through her attorney, filed a timely appeal from the January 11, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her medical and wage-loss compensation benefits. 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 wage-loss compensation and medical benefits effective June 30, 2012.

FACTUAL HISTORY

On June 9, 2005 appellant, then a 43-year-old accounting technician, filed a traumatic injury claim alleging that on that date, while walking back from the east compound after doing

¹ 5 U.S.C. § 8101 *et seq.*

releases, she twisted her ankle because of the stones that were on the sidewalk. On July 29, 2005 OWCP accepted her claim for sprain/strain of the left ankle. It paid wage-loss compensation and medical benefits.

In a November 4, 2009 report, Dr. Joseph A. Megara, III, a podiatrist, noted that he last saw appellant on July 23, 2009. He indicated that, upon review of her record, appellant's diagnosis remained as high ankle sprain with syndesmotic tear but with additional subsequent post-traumatic chronic pain and swelling. Dr. Megara noted that appellant was to wear an elastic ankle support when doing any significant activities and take medication to alleviate her pain as needed. He opined that she had reached maximum medical improvement and that it would be unrealistic to expect her to get back to her preinjury state. Dr. Megara recommended that appellant continue in her current position because it is sedentary and does not require any heavy lifting, long distance walking, prolonged standing or kneeling. In an October 22, 2010 attending physician's report, he indicated that she was still being treated for a high grade ankle sprain characterized by pain, limitation of ambulation, swelling, ability to walk and stand. Dr. Megara noted that he was still treating appellant with anti-inflammatory medication, a walker, physical therapy, rest, ice and elevation.

On March 26, 2012 OWCP referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion. In an April 13, 2012 report, Dr. Askin opined that she was fully recovered. He noted that there was a direct cause for the original injury, but that it has long since ceased. Dr. Askin opined that the accepted condition was not active and there were no objective findings. He noted that appellant was offering complaints, but none that were supported by any documented change in her baseline condition that would have predicted complaints up to the present time or future. Dr. Askin specifically noted that there were no clinical findings not under her control that showed a continuing injury, such as any documentation of a complete tear of any important structure nor any suggestion of an osteochondral lesion and so no reason to expect that there would be any consequence, such as an instability problem or degradation of ankle function secondary to osteoarthritis. In describing the findings on his physical examination, he noted that appellant's calves and ankles did not suggest any clinically significant atrophy; that appellant did not have any rigidity of the hindfoot, midfoot or forefoot joints; that he did not detect any edema or synovitis about any of the joints of her ankles or feet; and that the skin on appellant's feet and ankles did not evince any abnormality in the skin wear pattern that might suggest that she was walking in an abnormal fashion. Dr. Askin further observed that although she walked with a slight hitch favoring her left lower extremity, this was not necessarily objective as she knew she was being observed. He saw no reason why appellant could not work in her regular job as accounting technician.

On May 21, 2012 OWCP proposed terminating appellant's compensation benefits based on Dr. Askin's report. In a decision dated June 29, 2012, it finalized the termination of medical and wage-loss benefits, effective June 30, 2012.

On July 5, 2012 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on October 23, 2012, she discussed her injury and her treatment with Dr. Megara. Appellant noted that she was out of work for approximately three and one-half months. She noted that she presently walks with a little bit of a limp, that she cannot walk as quickly as she used to, that she does not have the same range of motion in her

ankle and that she constantly feels pain in her ankle. Appellant noted that she is now working as an auditor. Her attorney contended that he was not contesting so much the termination of compensation as the termination of medical treatment in that appellant has ongoing residuals as a result of the June 9, 2005 employment injury. He argued that OWCP has not met its burden of proof to terminate medical benefits and, at the very least, an impartial medical opinion should be obtained.

In a November 11, 2012 report, Dr. Megara listed his impression as left ankle joint pain and stiffness status post high ankle sprain with syndesmotic tear. He believed that there were still long-term sequelae of the original ankle injury that have moved from acute to chronic and therefore are limiting her range of motion and abilities. Dr. Megara noted spurring on the x-ray within the area of the ankle joint that is evidence of post-traumatic arthritis starting to develop. He noted that appellant should continue to take over-the-counter medication for pain and that, if she continues to feel unstable in her ankle, she should consider external ankle bracing.

By decision dated January 11, 2013, the hearing representative affirmed the termination of benefits. However, he determined that Dr. Megara's July 19, 2012 report showed that residuals of her work injury had become chronic, whereas Dr. Askin concluded that there were no objective findings on clinical examination. The hearing representative also noted further discrepancies between the reports and indicated that the case must be remanded for an impartial medical examination to determine if there are any remaining residuals of appellant's injury after the termination of benefits.

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.² Following a proper termination of compensation benefits, the burden of proof shifts back to claimant to establish continuing employment-related disability.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁵

ANALYSIS

The Board finds that OWCP did not meet its burden to justify termination of benefits.

² See also *J.P.*, Docket No. 13-1049 (issued August 16, 2013); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *John F. Glynn*, 53 ECAB 155 (2001).

⁴ See *T.P.*, 58 ECAB 524 (2007).

⁵ See *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

OWCP based its decision to terminate appellant's benefits effective June 30, 2012 on a March 26, 2012 report by Dr. Askin, the second opinion physician, who opined that her original injury had long since ceased. Dr. Askin noted that there were no clinical findings not under appellant's control evidencing a continuing injury. He noted that there was no documentation of a complete tear of any important structure nor any suggestion of an osteochondral lesion and so no reason to expect that there would be any consequence, such as an instability problem or degradation of ankle function secondary to osteoarthritis. In describing the findings on Dr. Askin's physical examination, he noted that her calves and ankles did not suggest any clinically significant atrophy. He noted that appellant did not have any rigidity of the hindfoot, midfoot or forefoot joints. Dr. Askin also noted that he did not detect any edema or synovitis about any of the joints of her ankles or feet. He further observed that, although appellant walked with a slight hitch favoring her left lower extremity, this was not necessarily objective as she knew she was being observed. Dr. Askin observed that the skin on her feet and ankles did not evince any abnormality in the skin wear pattern that might suggest that she was walking in an abnormal fashion.

Dr. Askin's opinion that appellant fully recovered from the sprain/strain of the left ankle is in conflict with the opinion of Dr. Megara, her treating physician, who opined in his November 4, 2009 report that she had residuals from her high grade ankle sprain with syndesmotic tear. Contrary to his observation that appellant did not have any objective evidence of residuals from the accepted injury, Dr. Megara opined that she had subsequent post-traumatic chronic pain and swelling. In Dr. Askin's October 22, 2010 attending physician's report, he indicated that he was still treating her for a high grade ankle sprain characterized by pain, limitation of ambulation, swelling and decreased ability to walk and stand. Dr. Megara noted that he was treating appellant with anti-inflammatory medication, a walker, physical therapy, rest, ice and elevation.

Accordingly, at the time OWCP terminated appellant's compensation on June 30, 2012 there remained an unresolved conflict in the medical opinion evidence as to whether she had residuals from the accepted employment injury. Both Dr. Megara and Dr. Askin had the opportunity to examine her and the medical record, but each reached differing conclusions with regard to whether appellant had residuals from this accepted injury. The Board finds that the relevant and probative medical evidence is in equipoise. It is well established that where there exists opposing medical reports of virtually equal weight and rationale, the case should be referred to an impartial medical specialist for the purpose of resolving the conflict.⁶ As OWCP failed to resolve the conflicting medical opinion evidence, the Board finds that it did not meet its burden of proof to terminate benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits effective June 30, 2012 due to an unresolved conflict in medical opinion.

⁶ See *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2013 decision by the Office of Workers' Compensation Programs is reversed.

Issued: March 5, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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