

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated April 8, 2011, the Board found that OWCP failed to meet its burden of proof when it terminated appellant's compensation benefits effective November 3, 2009.² The Board found that there was an unresolved conflict in the medical opinion evidence between Dr. William A. Seeds, appellant's treating Board-certified orthopedic surgeon, and Dr. Michael J. Jurenovich, a second opinion Board-certified osteopathic orthopedic surgeon, with regard to whether she had any disability or continuing residuals of her accepted right ankle and knee tendinitis. Thus, the Board reversed the November 3, 2009 OWCP decision terminating appellant's compensation benefits and the March 19, 2010 OWCP hearing representative's decision affirming the termination. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³

On January 18, 2012 OWCP referred appellant to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Drs. Jurenovich and Seeds on the issue of whether she had any continuing residuals or disability due to her accepted right ankle and knee tendinitis.

In a February 1, 2012 report, Dr. Ghanma, based upon a review of the medical evidence, statement of accepted facts and physical examination, concluded that the accepted right ankle and knee tendinitis had resolved with no residuals or disability. He stated that there was no evidence of tendinitis on physical examination. Dr. Ghanma reported no right ankle instability and provided range of motion findings. He stated that appellant's current diagnoses were right knee arthritis, medial and lateral mensci degeneration and status post right ankle fracture with post-traumatic right ankle arthritis, which were not employment related. Dr. Ghanma indicated that she had work restrictions due to her right ankle arthritis and right knee arthritis, but there were no restrictions due to her accepted employment right ankle and knee tendinitis.

On July 20, 2012 OWCP issued a notice proposing to terminate appellant's compensation benefits based on Dr. Ghanma's opinion.

By decision dated September 13, 2012, OWCP finalized the termination of appellant's compensation benefits effective September 22, 2012.

On September 19, 2012 appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on January 15, 2013.

By decision dated April 15, 2013, OWCP's hearing representative affirmed the September 13, 2012 termination decision.

² Docket No. 10-1327 (issued April 8, 2011).

³ On May 6, 2008 appellant, then a 55-year-old rural carrier, filed an occupational disease claim alleging that on May 4, 2008 she first realized that her right knee and swollen feet were employment related. OWCP accepted the claim for right ankle and knee tendinitis and placed her on the periodic rolls for temporary total disability.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ 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.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

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."⁹ 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.¹⁰

ANALYSIS

OWCP accepted appellant's claim for right ankle and knee tendinitis and paid appropriate compensation and medical benefits. It placed her on the periodic rolls for temporary total disability by letter dated September 4, 2008. By decision dated September 13, 2012, OWCP terminated appellant's compensation benefits effective September 22, 2012 on the basis that the weight of the medical opinion evidence rested with Dr. Ghanma, an impartial medical examiner. This decision was affirmed by an OWCP hearing representative in an April 15, 2013 decision.

In a February 1, 2012 report, Dr. Ghanma reviewed the medical record along with a statement of accepted facts and presented examination findings. Based on his review of the

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See I.R.*, Docket No. 09-1229 (issued February 24, 2010); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *B.K.*, Docket No. 08-2002 (issued June 16, 2009); *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

⁹ 5 U.S.C. § 8123(a); *see also R.H.*, 59 ECAB 382 (2008); *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

¹⁰ *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

medical evidence, statement of accepted facts and physical examination, he concluded that accepted right ankle and knee tendinitis had resolved with no residuals or disability. Dr. Ghanma related that there was no evidence of tendinitis and no right ankle instability. He stated that appellant's current diagnoses were right knee arthritis, medial and lateral mensci degeneration and status post right ankle fracture with post-traumatic right ankle arthritis, which were not employment related. Dr. Ghanma indicated that she had work restrictions due to nonwork-related right ankle arthritis and right knee arthritis.

The Board finds that Dr. Ghanma's impartial opinion negates a causal relationship between appellant's continuing conditions and disability related to her employment. The medical evidence establishes that appellant no longer has any residuals from her accepted right ankle and knee tendinitis conditions. Dr. Ghanma's opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, OWCP properly accorded Dr. Ghanma's opinion the special weight of an impartial medical examiner. The Board therefore finds that Dr. Ghanma's opinion constituted the weight of medical opinion and supports OWCP's September 13, 2012 decision to deny any entitlement to continuing compensation based on her accepted conditions.¹¹

Appellant's counsel contends on appeal that the termination is contrary to the factual and medical evidence. As noted above, the Board found that OWCP properly relied upon Dr. Ghanma's opinion as the impartial medical specialist in finding that appellant no longer had any residuals or disability due to her accepted employment 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 compensation benefits effective September 22, 2012.

¹¹ See *Sharyn D. Bannick, id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2013 is affirmed.

Issued: May 7, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board