

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective November 18, 2012.

FACTUAL HISTORY

On July 18, 2001 appellant, then a 46-year-old mail handler, filed a traumatic injury claim alleging a soft tissue injury to his left foot on June 14, 2001 when he crushed his foot between a chair's floor bar and foot rest. OWCP accepted his claim for aggravation of a plantar fibroma on the left foot.

Dr. Frank L. Bonello, a Board-certified family practitioner, completed a report on September 6, 2001. He stated that appellant had exhibited a lesion on the bottom of his foot since 1993. Dr. Bonello diagnosed a plantar fibroma and stated that appellant's symptoms would not cease until the tissue was removed surgically. He stated that appellant preferred to keep the painful nodule in order to maintain light duty. Dr. Bonello provided work restrictions of minimal standing and walking. On May 18, 2002 he stated that he had no knowledge of the onset of appellant's foot problem. Dr. Bonello diagnosed a fibrous nodule in the plantar fascia of the left foot and stated that it was located on the sole of the foot, and was injured every time appellant stood or walked on it. He stated that the fibroma was permanent until it was removed. Dr. Bonello noted that appellant did not want surgical removal and opined that appellant would be on light work for the rest of his employment.

Appellant underwent a magnetic resonance imaging (MRI) scan on June 30, 2006. It demonstrated a near complete interval resolution of the fibrotic-like mass. Dr. Bonello noted that appellant had thickening in the area and that the lesion appeared to be receding by itself. He supported work restrictions of minimal standing and walking.

Appellant filed a recurrence of disability claim on May 12, 2010 alleging that his light-duty position was eliminated due to the National Reassessment Process (NRP). In a letter dated June 2, 2010, OWCP requested additional medical evidence in support of his claim for continuing partial disability.

On June 16, 2010 Dr. Bonello noted appellant's history of injury. Appellant reported pain when he walked on his left foot and Dr. Bonello provided him with work restrictions for a sedentary position. Dr. Bonello opined that appellant preferred to be disabled and would not follow advice to seek the opinion of an orthopedic surgeon. He reiterated that appellant did not want surgery. Dr. Bonello retired and could no longer treat appellant.

Appellant sought treatment from Dr. John R. Raines, a Board-certified internist, on August 26, 2010. He listed a series of six foot injuries at the employing establishment beginning in 1993 and continuing through June 14, 2001. Dr. Raines noted that appellant had performed sedentary work with the restriction of one hour of walking daily. He diagnosed plantar fascial fibromatosis as well as anemia of an undetermined origin. OWCP placed appellant on the periodic rolls on November 9, 2010.

OWCP referred appellant for a second opinion evaluation with Dr. Stephen E. Barron, a Board-certified orthopedic surgeon, who examined him on September 17, 2010. Dr. Barron reviewed Dr. Bonello's records and the August 1, 2000 MRI scan diagnosing a plantar fibroma. He found that appellant walked without a limp with a full range of motion of his left ankle and foot. Appellant had normal sensory and motor strength examination in both lower extremities. He found that appellant's left foot condition had resolved without any disability related to the June 14, 2001 employment aggravation. Dr. Barron stated, "I cannot palpate a fibroma and he has no objective findings on his examination." He found that appellant had a resolved left foot fibroma. Based on the June 30, 2006 MRI scan, appellant's employment-related aggravation had ceased by that date as there was resolution of the fibrotic-like mass involving the medical aspect of the plantar aponeurosis. There were no objective findings supporting appellant's subjective complaints of left foot pain four days a week aggravated by standing in one place and more than one hour of walking. Dr. Barron concluded that appellant did not need any further medical treatment. He reviewed appellant's date-of-injury position description and opined that appellant was capable of performing those duties without limitations or restrictions.

Dr. Raines examined appellant on December 3, 2010 and found palpable thickening in the plantar fascia medially, proximal to the first metatarsal head. He continued to provide work restrictions. On March 8 and June 10, 2011 Dr. Raines noted that appellant reported foot pain with standing and that he was not interested in a podiatry consultation. He completed a work restriction evaluation on September 21, 2011 and opined that appellant could sit for eight hours a day with a quarter of an hour each standing and walking. Dr. Raines advised that the restrictions were permanent. In a narrative report of the same dated, he diagnosed plantar fascial fibromatosis based on an August 1, 2000 MRI scan. Dr. Raines correlated this finding with a palpable lump in the plantar fascia on the sole of the left foot. He noted that appellant had pain with walking or standing more than 20 minutes a day. Dr. Raines indicated that appellant had work injuries in December 1993, September 1995 and December 1997. He stated that appellant was unable to walk more than 20 minutes a day and that this was a permanent disability. On December 27, 2011 Dr. Raines examined appellant and found that the fibroma is still palpable in his foot. He stated that appellant's pain increased when he was on his feet more than 20 minutes. In a note dated June 21, 2012, Dr. Raines stated that appellant complained of pain and swelling on the soles of both feet. He did not find edema on examination but stated, "I still think I can palpate a small fibroma in the plantar fascia."

OWCP found that there was a conflict of medical opinion between Dr. Raines and Dr. Barron regarding appellant's ongoing condition and disability. On July 30, 2012 Dr. Jonathan Biebl, a Board-certified orthopedic surgeon, performed an impartial medical examination. He reviewed a history of six injuries to appellant's left foot, including the June 14, 2001 incident in which he caught his foot between a steel chair and footrest. Appellant informed Dr. Biebl that he did not feel that this injury was significant. On physical examination, Dr. Biebl found that appellant's routine walking pattern was normal. He found no real local palpatory tenderness with good pulses. Dr. Biebl noted that appellant demonstrated tenderness at the third metatarsal head and that there was a small area of fibromatous change in the medial border of his plantar fascia. He determined that appellant had no residuals of his June 14, 2001 employment injury. Dr. Biebl stated that appellant's temporary aggravation ceased on July 31, 2001. He stated, "Objectively, other than his metatarsal pain, there is very little objective evidence of

injury to his foot at any level.” Dr. Biebl found that appellant had no residuals from the June 14, 2001 employment injury.

OWCP asked Dr. Biebl to provide additional reasoning for his determination that appellant’s temporary aggravation of his left foot plantar fibroma ceased on July 31, 2001. Dr. Biebl responded on September 21, 2012 and stated that he based his conclusion on Dr. Bonello’s notes which found that appellant’s left foot condition improved spontaneously.

In a letter dated October 10, 2012, OWCP proposed to termination appellant’s compensation and medical benefits. It allowed him 30 days for a response. On October 15, 2012 Dr. Raines stated that appellant currently had a palpable swelling in the plantar fascia of his left foot. He diagnosed plantar fascia fibromatosis due to repeated work injuries. Dr. Raines stated that the condition had not resolved. In a note dated November 2, 2012, he repeated his findings and conclusions. Appellant underwent an MRI scan on October 29, 2012 which demonstrated a focal area of fusiform thickening of the plantar aponeurosis in keeping with a plantar fibroma.

By decision dated November 20, 2012, OWCP terminated appellant’s wage-loss compensation and medical benefits effective November 18, 2012. It found that the weight of the medical evidence was represented by Dr. Biebl, the impartial medical referee.

Appellant requested an oral hearing before an OWCP hearing representative on December 17, 2012. He submitted a statement alleging that between 1993 and 1999 he had four injuries to his left foot. Appellant sustained an injury on April 21, 2000 which resulted in limited standing restrictions. He testified at the oral hearing on April 18, 2013, noting that his current condition began after his ankle sprain in 2000. Appellant alleged that the plantar fibroma appeared after his ankle sprain. He alleged that his plantar fibroma was not a preexisting condition, but an employment-related condition caused by his prior employment injuries to his left heel and ankle. Appellant noted that the April 21, 2000 claim was accepted by OWCP as an employment-related ankle sprain.

By decision dated July 2, 2013, the hearing representative affirmed the termination of appellant’s compensation and medical benefits. She found that Dr. Biebl’s reports were entitled to the special weight of medical opinion and established that appellant had no continuing residuals or restrictions as a result of his June 14, 2001 employment injury.

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.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 Furthermore, the right to medical benefits for an

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, 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 and resolve the conflict of medical evidence.⁷ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸ In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹

ANALYSIS

Appellant filed a traumatic injury claim alleging that on June 14, 2001 he crushed his foot between a chair's floor bar and footrest. OWCP accepted his claim for aggravation of plantar fibroma on the left foot. The medical evidence establishes that appellant had complaints of plantar fibroma prior to this claim and it was accepted for an aggravation of the underlying condition.

Dr. Raines, appellant's physician, supported ongoing medical residuals and disability for work, specifically limiting appellant's standing due to the accepted condition. OWCP referred appellant for a second opinion examination to Dr. Barron, who found that appellant had no medical residuals and no disability due to the aggravation of plantar fibroma. Due to the disagreement between appellant's physician and OWCP's referral physician, it properly found a conflict of medical opinion evidence and referred appellant to Dr. Biebl for an impartial medical examination pursuant to 5 U.S.C. § 8123(a).

Dr. Biebl provided a detailed history of injury and reviewed the medical records. He performed a physical examination and found that appellant's routine walking pattern was normal. Dr. Biebl noted that appellant demonstrated tenderness at the third metatarsal head and that there was a small area of fibromatous change in the medial border of his plantar fascia. He opined that appellant had no residuals of his June 14, 2001 employment injury. Dr. Biebl stated that he believed that appellant's temporary aggravation ceased on July 31, 2001. He stated, "Objectively, other than his metatarsal pain, there is very little objective evidence of injury to his

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

⁷ 5 U.S.C. §§ 8101-8193, 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

⁸ *R.C.*, 58 ECAB 238 (2006).

⁹ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

foot at any level.” Dr. Biebl found that appellant had no residuals from the June 14, 2001 employment injury. In his supplemental report, he stated that he relied on Dr. Bonello’s notes in reaching the conclusions that the aggravation of appellant’s plantar fibroma was temporary and ceased by July 31, 2001.

Dr. Biebl based his report on a proper history of injury and provided physical findings in support of his conclusion that the aggravation of appellant’s plantar fibroma was temporary and had ceased by July 31, 2001. He agreed that the plantar fibroma had not completely disappeared, but asserted that the employment-related aggravation had ceased as appellant had returned to his baseline status by July 31, 2001 which was aggravated on other occasions by appellant’s additional activities. The Board finds that Dr. Biebl’s report is entitled to the special weight of the medical evidence accorded an impartial medical specialist and established that appellant’s aggravation of his underlying condition had ceased with no residuals or disability due to the June 14, 2001 employment injury.

Following Dr. Biebl’s reports, Dr. Raines continued to support the existence of a plantar fibroma and continued to support appellant’s disability and residuals as a result of this condition. He did not address the specific factual situation in this case, whether the aggravation of appellant’s plantar fibroma by his 2001 employment injury continued or whether as found by Dr. Biebl this was a temporary aggravation which ended resulting in any ongoing disability or residuals as a result of the underlying condition rather than the aggravation. Furthermore, as Dr. Raines was on one side of the conflict that Dr. Biebl resolved, the additional report from Dr. Raines is insufficient to overcome the special weight accorded Dr. Biebl’s report as the impartial medical specialist or to create a new conflict.¹⁰

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 and medical benefits effective November 18, 2012.

¹⁰ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2014
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