

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

V.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Los Angeles, CA, Employer)

**Docket No. 14-1571
Issued: November 25, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 2, 2014 appellant filed a timely appeal from a February 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 benefits effective February 24, 2014 on the grounds that she no longer had any residuals or disability causally related to her accepted employment injuries.

FACTUAL HISTORY

On June 13, 2006 appellant, then a 50-year-old mail handler, filed an occupational disease claim alleging that she developed swollen and painful feet as a result of her employment

¹ 5 U.S.C. § 8101 *et seq.*

duties. She first became aware of her condition and realized it resulted from her employment on April 28, 2006. Appellant has a previously accepted traumatic injury claim for an August 4, 2005 employment injury. OWCP accepted the claim for lower back and left buttock contusion. The claim was accepted under File No. xxxxxx130. Both claims were combined into Master File No. xxxxxx330. OWCP accepted appellant's claim for bilateral plantar fasciitis and bilateral heel spur syndrome. Appellant stopped work and returned to modified duty.

On April 1, 2009 appellant stopped work again because there was no limited-duty work available. OWCP paid appropriate wage-loss compensation benefits. On June 7, 2009 appellant was placed on the periodic rolls.

In a March 26, 2013 report, Dr. Nicole Pham-Bailey, Board-certified in physical medicine and rehabilitation, stated that she had been appellant's primary treating physician since a May 1, 2006 injury. She noted appellant's current diagnoses of posterior tibial tendon dysfunction and plantar fasciitis. Dr. Pham-Bailey related appellant's continued complaints of low back, buttock, and leg pain. She reviewed appellant's history and conducted an examination. Dr. Pham-Bailey reported that a February 15, 2013 magnetic resonance imaging (MRI) scan of the left spine demonstrated degenerative anterolisthesis with associated facet arthropathy and mild foraminal stenosis at L4-5 and left paracentral protrusion and facet arthropathy at L5-S1. Examination of the lumbar spine revealed tenderness and spasm of the left paralumbar on the low back but no longer tenderness on the right paralumbar. Motor strength was 4/5 bilateral, weaker on the left. Straight leg raise testing in the seated position was equivocal. Dr. Pham-Bailey diagnosed lumbar radiculopathy. She reported that appellant's work status was permanent work restrictions from August 15, 2007 of no casing mail, climbing, pushing, pulling, squatting, or lifting over five pounds and maximum of four hours per day.

OWCP referred appellant, together with a statement of accepted facts and the medical records, to Dr. G.B. Ha'Eri, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of her accepted employment-related injuries and any continuing disability.² OWCP questioned whether the accepted conditions of bilateral plantar fasciitis and bilateral heel spurs, as well as low back and buttock contusions had resolved.

In an October 30, 2013 report, Dr. Ha'Eri provided an accurate history of appellant's accepted bilateral feet and lower back and buttock injuries. He described the medical treatment appellant received and reviewed her various medical records. Dr. Ha'Eri noted that an August 3, 2006 MRI scan of the lumbar spine demonstrated a small disc bulge at L5-S1 level with no compression of neural elements. He related appellant's complaints of constant lower back pain with radiation to both lower extremities and right ankle and foot pain and swelling. Upon examination of the lower back, Dr. Ha'Eri observed normal lordosis and lumbosacral tenderness. Range of motion of the lumbar spine was limited and straight leg raise testing was to 90 degrees bilaterally. Examination of appellant's ankle and feet demonstrated flat feet. Dr. Ha'Eri reported swelling and limited range of motion of the right ankle. He diagnosed bilateral plantar fasciitis, resolved, bilateral flat feet, preexisting industrial, obesity, lower back and left buttock

² Appellant failed to report to the scheduled second opinion examination on July 19, 2013 and OWCP issued a September 23, 2013 letter suspending her medical benefits.

contusion, industrial resolved, and chronic lumbar strain, nonindustrial, secondary to deconditioning and obesity.

Dr. Ha'Eri opined that appellant's accepted bilateral plantar fasciitis and bilateral heel spur syndrome had resolved. He explained that appellant had not been standing or walking for many hours a day for several years. Dr. Ha'Eri stated that there were no objective findings for appellant's feet due to diagnosis of plantar fasciitis. He pointed out that her current condition of flat feet was a preexisting nonindustrial condition. Dr. Ha'Eri also opined that appellant's August 4, 2005 work-related lower back and left buttock conditions had resolved and that any residual lower back pain was due to deconditioning and obesity. He reported that the current objective findings for appellant's lower back was due to degenerative changes of L5-S1 disc level with small disc bulge as evidenced in the August 3, 2006 MRI scan. Dr. Ha'Eri stated that appellant was capable of working 8 hours a day or 40 hours per week with limitations of handling items weighing up to 20 pounds up to 2 hours per day and pushing or pulling up to 40 pounds for up to 2 hours per day. He explained that these limitations were due to the nonindustrial conditions of her flat feet, obesity, chronic lumbar strain and right ankle chronic sprain. Dr. Ha'Eri reported that appellant's present physical limitations resulted from her preexisting conditions.

On January 8, 2014 OWCP proposed to terminate appellant's compensation and medical benefits based on Dr. Ha'Eri's October 30, 2013 second opinion report. It determined that the weight of the medical evidence rested with Dr. Ha'Eri who determined that appellant's employment-related injuries had resolved and that she was capable of returning to modified duty. No response or additional evidence was received by appellant.

By decision dated February 24, 2014, OWCP finalized the termination of appellant's compensation and medical benefits effective February 24, 2014. It determined that the weight of the medical evidence rested with Dr. Ha'Eri's October 30, 2013 report which determined that appellant's employment-related injuries had resolved and that she was capable of returning to modified duty. The decision however only specifically referred to appellant's June 13, 2006 claim, which was accepted for bilateral plantar fasciitis and bilateral heel spurs. There was no acknowledgement of the master file including the low back and left buttock contusion. The decision also fails to acknowledge the medical opinions of appellant's treating physician, Dr. Pham-Bailey.

LEGAL PRECEDENT

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.³ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

ANALYSIS

OWCP referred appellant's claim to Dr. Ha'Eri for a second opinion examination to determine the extent of her accepted employment-related bilateral feet, lower back, and buttock injuries. In an October 30, 2013 report, Dr. Ha'Eri determined that there was no objective medical evidence to establish that appellant continued to suffer residuals of her accepted conditions. By decision dated February 24, 2014, OWCP determined that his opinion constituted the weight of the evidence to establish that appellant's bilateral plantar fasciitis had resolved and thereafter terminated appellant's entitlement to all medical benefits and disability compensation. As previously found, the February 24, 2014 decision does not acknowledge appellant's low back and buttock contusion.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's disability compensation and medical benefits because the medical evidence does not conclusively establish that her work-related injuries had resolved and that she was no longer disabled from work.

OWCP terminated appellant's compensation benefits based on Dr. Ha'Eri's October 30, 2013 report. Dr. Ha'Eri provided an accurate history of appellant's accepted bilateral feet, lower back, and buttock injuries and conducted an examination. He reported lumbosacral tenderness and normal lordosis of the lower back. Range of motion of the lumbar spine was limited and straight leg raise testing was to 90 degrees bilaterally. Upon examination of appellant's right ankle, Dr. Ha'Eri observed flat feet, swelling, and limited range of motion. He concluded that appellant was capable of returning to work full time with restrictions of handling items weighing up to 20 pounds and pulling or pushing up to 40 pounds for 2 hours per day. Dr. Ha'Eri opined that such restrictions were personal to appellant and not occupationally related.

The Board finds that as appellant was employed as a mail handler, a medical opinion that she could return to modified duty does not establish that disability has ceased.⁸

The Board also finds that Dr. Ha'Eri's opinion lacks probative value to establish that appellant no longer suffers residuals of her accepted conditions. Dr. Ha'Eri opined that appellant's accepted bilateral plantar fasciitis and bilateral heel spur syndrome had resolved and

⁵ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁷ *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, *id.*

⁸ See *T.C.*, Docket No. 13-441 (issued June 4, 2013).

that her current condition of flat feet was a preexisting condition. He also pointed out that appellant had not been standing or walking for many hours a day or several years. Dr. Ha'Eri, however, did not provide any medical rationale for his conclusion. He also failed to explain, based on medical rationale, how his objective findings of pain and swelling in appellant's right ankle demonstrated that her accepted bilateral feet condition had resolved. The Board has found that medical conclusions unsupported by medical rationale are of little probative value.⁹ Because Dr. Ha'Eri did not provide a well-rationalized medical opinion that appellant's bilateral feet conditions had resolved, his report is insufficient to justify termination of her medical benefits.¹⁰

The Board notes that Dr. Pham-Bailey has not opined that appellant's disability had ceased such that she was capable of returning to work. In a March 26, 2013 report, she opined that appellant was capable of working limited duty with restrictions of no casing mail, climbing, pushing, pulling, squatting, or lifting over five pounds and maximum of four hours per day. Dr. Pham-Bailey expressly relates such ongoing restrictions to appellant's accepted work-related conditions. Accordingly, the Board finds that the medical evidence is insufficient to justify the termination of appellant's wage-loss compensation benefits.

In assessing medical evidence, the weight of medical evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy or 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.¹¹ In this case, the Board finds that the medical evidence and rationale supporting Dr. Ha'Eri's opinion is lacking. Accordingly, Dr. Ha'Eri's opinion has diminished probative value and does not constitute the weight of medical opinion in determining the extent of appellant's employment-related injuries and any continuing disability. Moreover, Dr. Pham-Bailey has been appellant's treating physician and has presented medical opinions of equal weight than those of Dr. Ha'Eri.

Finally the Board notes that while the February 24, 2014 decision referenced termination of all medical and wage-loss benefits, the text of the decision only noted termination of benefits arising from appellant's April 28, 2006 injury, which was accepted for bilateral plantar fasciitis and bilateral heel spurs. The decision did not properly state that benefits were also terminated for the August 4, 2005 injury, which was accepted for low back and left buttock contusion. The February 24, 2014 decision provided no basis for termination of benefits for the master file which includes the accepted August 4, 2005 injury to appellant's low back and buttock.

The Board will reverse OWCP's February 24, 2014 decision and will remand the case for a proper reinstatement of compensation benefits.

⁹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁰ *See A.P.*, Docket No. 14-1237 (issued September 18, 2014).

¹¹ *Nicolette R. Kelstrom*, 54 ECAB 570 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to justify termination of appellant's disability compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2014 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 25, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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