

FACTUAL HISTORY

On June 24, 1993 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1). She alleged that on that day she sprained both knees and her left ankle when she stepped in a deep hole and fell while delivering mail. OWCP accepted appellant's claim for bilateral knee sprain and expanded the claim to include sprain of neck, derangement of left ankle, and left plantar fibromatosis. Appellant was paid compensation benefits and OWCP authorized a modified Elmslie reconstruction of her left ankle on August 11, 1994.

By decision dated October 20, 2000, appellant received a schedule award for seven percent impairment of the left lower extremity. She sustained two subsequent employment injuries, one occurring in 1995 and the other in 1997.² Appellant returned to work in a full-time limited-duty capacity until April 28, 2010, when her modified duty was withdrawn pursuant to the National Reassessment Process (NRP). She was then placed on the periodic compensation rolls.

Appellant was referred to Dr. Donald A. Mauldin, a Board-certified orthopedic surgeon, for a second opinion medical examination on May 19, 2011. In his July 25, 2011 report, Dr. Mauldin noted a history of the accepted 1993 injury and subsequent work injuries occurring in 1995 and 1997. He provided an impression of status post left ankle sprain. Dr. Mauldin noted a history of possible mild knee strains (resolved) with no documentation of any significant injury. He found that appellant developed chronic ankle instability, status post lateral ligament reconstruction, and chronic subjective ankle complaints with some dysesthesias in the distribution of the sural nerve. Dr. Mauldin also found appellant status post cervical strain with no objective documentation of a major structural injury and with chronic bilateral cervical radicular symptoms of a nonphysiologic nature. He opined that the accepted cervical strain had resolved. Dr. Mauldin noted a grossly stable left ankle postreconstruction surgery, but recommended a functional capacity evaluation (FCE) to assess appellant's left ankle. A June 27, 2011 FCE indicated that appellant could perform a sedentary job with no lifting or walking. In a July 5, 2011 supplemental report, Dr. Mauldin stated that there was no objective basis for continuing complaints of the cervical spine, but opined that appellant should be restricted to sedentary work due to her weight.

An August 24, 2011 magnetic resonance imaging (MRI) scan stated an impression of stenosis at C3-4, C4-5, C5-6, and C6-7. An October 10, 2011 electromyogram/nerve conduction velocity (EMG/NCV) study revealed no upper extremity neuropathy or radiculopathy.

In an October 15, 2012 report, Dr. Earl C. Smith, a Board-certified orthopedic surgeon, noted that appellant reported neck and left arm pain and numbness. He noted the results of the cervical spine MRI scan showing stenosis at multiple levels and examination findings of 4/5 brachial strength, tenderness in cervical muscles, positive Tinel's sign at the left cubital tunnel, and normal cervical range of motion. Dr. Smith diagnosed cervical radiculopathy and cubital

² OWCP file number xxxxxx235, date of injury November 3, 1995, was accepted for cervical sprain and spondylosis. In file number xxxxxx207, date of injury April 24, 1997, OWCP accepted cervical sprain, right hip enthesopathy, and right wrist sprain. The two files were merged with file number xxxxxx207 as the master file. The merged file was closed in 2008.

tunnel syndrome. He found appellant able to work eight hours a day with restrictions of no lifting, no overhead work and no repetitive work. No further action was taken in this case until March 2013.

In an effort to determine appellant's updated work capacity, OWCP prepared a statement of accepted facts (SOAF) dated March 27, 2013 and referred appellant to a second opinion examination. The SOAF included a description of the June 24, 1993 work injury and related left ankle surgery. It did not mention either the 1995 or 1997 work injuries.

Dr. Melburn Heubner, a Board-certified orthopedic surgeon and OWCP referral physician, conducted a second opinion examination. In his April 24, 2013 report, he noted a history of the 1993, 1995, and 1997 workplace injuries, reviewed medical records and presented examination findings. He diagnosed resolved cervical strain, left ankle status post successful ligamentous reconstruction without objective findings of instability with continued complaints of pain, and nonwork-related atopic dermatitis. He reviewed MRI scans and x-ray findings and determined that they reflected degenerative changes, but no acute disc disruption. Dr. Heubner opined that the accepted conditions had resolved. He found the ankle reconstruction was successful with no objective findings of instability and the MRI scan of the cervical spine showed degenerative stenosis not related to the 1997 work injury. Dr. Heubner concluded that work limitations were referable only to appellant's nonwork-related conditions, such as body habitus and dermatitis. He also opined that appellant reached maximum medical improvement.

On June 26, 2013 OWCP determined a conflict in medical opinion existed between Dr. Smith and Dr. Heubner as to whether appellant continued to suffer residuals of the June 24, 1993 work injury and whether she could return to work with or without restrictions. Appellant was referred to Dr. Bobby L. Stafford, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In his August 15, 2013 report, Dr. Stafford noted a history of the 1993, 1995, and 1997 work injuries, reviewed the medical records and noted examination findings which included good range of motion in the neck, no upper extremity weakness of any type, well-healed left ankle surgical scar, and no restriction of range of motion of the left ankle. Vague numbness over the lateral aspect of left arm and hand and the ulnar aspect of the long finger was noted. Reflexes were normal. Appellant's weight was noted at 340 pounds and she walked without the aid of a cane, crutches or walker, was in no acute distress, and was able to sit without difficulty. She also had severe dermatitis of both hands and feet, with weeping, cracked areas. Dr. Stafford opined that the accepted conditions of bilateral knee sprain/strains, cervical sprain/strain, left ankle joint derangement, and left plantar fibromatosis had all resolved. He explained that there was no laxity in the left ankle, no instability in the left knee, and difficulty in walking was due to body habitus and weight. Dr. Stafford further explained that the cervical spine condition disclosed by diagnostic testing was degenerative in nature and nonoccupational. He concluded that appellant could work eight hours a day in sedentary work only due to her weight and nonoccupational atopic dermatitis.

On September 25, 2013 OWCP advised appellant of its proposed termination of her compensation and medical benefits as the weight of the medical evidence showed that she had no further residuals of her accepted 1993 work injury. It accorded the weight of the medical evidence to Dr. Stafford's impartial opinion.

In an October 24, 2013 letter, appellant disagreed with the proposed termination. She indicated that she had worked limited duty up to the time her work was withdrawn under NRP.

By decision dated October 30, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits effective November 17, 2013.

On November 27, 2013 appellant requested a hearing before an OWCP hearing representative. She subsequently changed her request to a review of the written record.

In an April 23, 2014 letter, appellant's counsel argued that the March 27, 2013 SOAF did not include a description of the 1995 or 1997 work injuries. He argued that, since Dr. Stafford was not provided with an accurate history, his opinion could not be accorded special weight.

In an October 22, 2013 report, Dr. Smith provided an impression of cervical radiculopathy and cubital tunnel syndrome. He opined that appellant had activity restrictions of no lifting, overhead work or repetitive activity. An October 22, 2013 duty status report was also provided.

By decision dated June 6, 2014, an OWCP hearing representative affirmed the October 30, 2013 OWCP decision. The hearing representative additionally found that Dr. Smith's subsequent report did not overcome the weight accorded to Dr. Stafford's opinion.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁵

Section 8123(a) of FECA 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.⁶ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁶ 5 U.S.C. § 8123(a).

OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁷ In situations where there exist 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 upon a proper factual background, must be given special weight.⁸

OWCP's procedure manual provides as follows:

"The [claims examiner] is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific. When the [district medical adviser], second opinion specialist, or referee physician renders a medical opinion based on an SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."⁹

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral knee sprain, neck sprain, derangement of left ankle, and left plantar fibromatosis due to the June 24, 1993 employment injury. It determined that a conflict arose between Dr. Smith, an attending physician, and Dr. Heubner, an OWCP referral physician, regarding whether she had any further residuals of her work injury and whether she was capable of working. Dr. Smith opined that appellant had cervical radiculopathy and cubital tunnel syndrome and was able to work with activity restriction. Dr. Heubner opined that the accepted conditions had resolved because there were no objective findings of ankle instability and the MRI scan of the cervical spine showed degenerative stenosis not related to the accepted injury. He opined that appellant could work with limitations related to appellant's nonwork conditions. Accordingly, OWCP referred appellant to Dr. Stafford for an impartial medical examination. It terminated appellant's wage-loss compensation and medical benefits finding that Dr. Stafford's report constituted the weight of the evidence that she had no further employment-related disability.

Before OWCP and on appeal, appellant contends that Dr. Stafford's report should not be accorded special weight because the March 27, 2013 SOAF did not include a description of the 1995 or 1997 accepted work injuries. Because of this omission, appellant argues that Dr. Stafford's opinion was not based on an accurate factual and medical history.

In requesting an opinion on whether work-related residuals remained and whether appellant was capable of working, OWCP provided a March 27, 2013 SOAF to both its second opinion examiners and Dr. Stafford. The March 27, 2013 SOAF failed to include appellant's subsequent accepted work-related injuries in 1995 and 1997. The 1995 injury was accepted for cervical sprain and spondylosis. The 1997 injury was accepted for cervical sprain, right hip

⁷ 20 C.F.R. § 10.321.

⁸ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

enthesopathy, and right wrist sprain.¹⁰ The subsequent work-related injuries are relevant to appellant's current claim because they involve the body parts for which benefits were being terminated.

OWCP provides a physician with a SOAF to assure that the medical specialist's report is based upon a proper factual background.¹¹ The SOAF must include the date of injury, claimant's age, the job held on the date of injury, the employer, the mechanism of injury, and the claimed or accepted conditions.¹² While the inclusion of other workers' compensation injuries is optional, the claims examiner must decide all issues requiring a medical opinion for resolution and determine all facts relevant to the issues to be resolved in the current claim.¹³

OWCP procedures further indicate that, when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹⁴

Dr. Stafford demonstrated some knowledge of the 1995 or 1997 work injuries based on appellant's own description, but it is not clear whether he was aware that these conditions had been accepted by OWCP. Further, the Board notes that in his August 2013 report he concluded that appellant's cervical spine condition was degenerative in nature and not occupational. Dr. Stafford rendered his opinion based on incomplete factual information. The opinion is therefore of limited probative value. OWCP has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in this case.¹⁵ Accordingly, the Board finds that the case must be remanded for further medical development.

On remand OWCP should prepare a complete, accurate, and updated SOAF and refer appellant to an appropriate medical specialist for examination and a reasoned opinion of whether appellant has any residuals from her accepted work-related injuries. Following such further development as deemed necessary, it shall issue a *de novo* decision.¹⁶

¹⁰ Those two files were merged with file number xxxxxx207 as the master file and closed in 2008.

¹¹ *Helen Casillas*, 46 ECAB 1044 (1995).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.5 (September 2009); *see also Darletha Coleman*, 55 ECAB 143 (2003).

¹³ Federal (FECA) Procedure Manual, *id.* at Chapter 2.809.6(a).

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

¹⁵ *Richard F. Williams*, 55 ECAB 343 (2004).

¹⁶ In light of the disposition of this case, the second issue regarding whether appellant had any continuing employment-related residuals or disability after November 17, 2013 and the remaining issues raised on appeal are moot.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2014 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision by the Board.¹⁷

Issued: December 11, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁷ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2014.