

FACTUAL HISTORY

On April 9, 2009 appellant, then a 48-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 7, 2009 she sustained a right foot injury at work when she was transporting plaques and two of the smaller plaques flipped over and fell, hitting her right foot “across the top (bridge).” She stopped work on April 7, 2009 and, after a period of continuation of pay, received disability compensation on the daily rolls beginning May 25, 2009. Appellant received disability on the periodic rolls beginning November 22, 2009.²

In an April 8, 2009 report, Dr. Dominique Nickson, an attending Board-certified orthopedic surgeon, diagnosed right foot contusion. She noted that x-rays showed no fracture or dislocation of appellant’s right foot. On May 27, 2009 Dr. Nickson found that new x-rays taken on that date showed no evidence of acute fracture or dislocation of her right foot. She diagnosed “status post crush injury, right foot.”

In a June 16, 2009 decision, OWCP accepted that appellant sustained a right foot contusion.

The findings of a July 17, 2009 magnetic resonance imaging (MRI) scan of appellant’s right foot showed degenerative changes and a right ankle MRI scan revealed possible old fracture through the medial malleolus, low grade partial tear of the calcaneofibular ligament, joint effusion, soft tissue swelling, and degenerative changes.

In a July 23, 2009 report, Dr. Nickson diagnosed medial malleolus insufficiency fracture of the right ankle, chronic swelling of the dorsolateral aspect of the right foot and ankle, and rule out reflex sympathetic dystrophy secondary to hypersensitivity. She recommended that appellant undergo surgery for a right medial malleolus fracture. On August 11, 2009 Dr. Chee-Hahn Hung, an attending Board-certified orthopedic surgeon, posited that appellant’s right ankle MRI scan showed an old fracture and he diagnosed right medial malleolus insufficiency fracture.

In an August 24, 2009 decision, OWCP accepted the condition of closed medial malleolus fracture of the right ankle.

Appellant requested authorization for surgical repair of the malleolus fracture of her right ankle. In an August 26, 2009 letter, OWCP authorized surgical repair of the right malleolus fracture.

Dr. Willie E. Thompson, a Board-certified orthopedic surgeon and an OWCP medical adviser, reviewed the medical record on October 7, 2009 and concluded in a report of the same date that there was nothing in the medical record to establish that appellant sustained an acute fracture of her right ankle at work. He posited that the mechanism of injury on April 7, 2009

² In 1977, appellant fractured her right ankle in three places, including at the medial malleolus, due to a nonwork-related vehicular accident. She underwent reduction and internal fixation surgery shortly after sustaining the fractures. Under a different file than the present claim (File No. xxxxxx297), OWCP accepted that appellant sustained a right ankle sprain when she stepped of a curb and twisted her right foot at work on November 15, 2004.

was inconsistent with a fracture of the right medial malleolus in that appellant reported dropping a plaque on the dorsum of her right foot, an area that is distinct and separate from the medial malleolar area. Dr. Thompson opined that she sustained a contusion to the dorsum of her right foot on April 7, 2009 and that there was no injury to the medial malleolus. He also indicated that there was nothing in the medical evidence to support a diagnosis of reflex sympathetic dystrophy.

On December 7, 2009 Dr. Nickson performed open reduction and internal fixation of appellant's right medial malleolus fracture.³

OWCP referred appellant for a second opinion examination and evaluation of her right foot/ankle condition to Dr. Robert Smith, a Board-certified orthopedic surgeon. In an April 9, 2010 report, Dr. Smith detailed appellant's factual and medical history, noting that OWCP accepted a right foot contusion as occurring on April 7, 2009 and later upgraded the accepted conditions to include right closed medial malleolus fracture.⁴ He provided an opinion that her right ankle x-rays from May 27, 2009 showed residuals from the 1977 ankle fracture, but no acute fracture. The July 17, 2009 MRI scan showed some reaction about the right medial malleolus, but no complete fracture of this bone portion. Dr. Smith reported the findings of his examination on April 9, 2010, noting that appellant had swelling of her right ankle and that range of motion was limited due to complaints of pain and swelling. There was good vascular supply to appellant's right foot and a well-healed scar in the medial aspect of her right ankle consistent with prior surgery. Dr. Smith agreed with Dr. Thompson that the mechanism of appellant's work injury would not produce a fracture of her right medial malleolus. He believed that the December 7, 2009 surgery was performed for the residuals of a prior nonwork-related ankle fracture. Dr. Smith posited that appellant showed no clinical evidence of reflex sympathetic dystrophy and indicated that she had right foot and ankle swelling which appeared to be chronic and of an unclear etiology.⁵ He noted, "If the surgery that [appellant] had for her ankle was unrelated and unauthorized, then she would be at maximum medical improvement related to accepted condition of a right foot contusion sustained on April 7, 2009."

Dr. Smith completed a form report on April 9, 2010 in which he indicated that appellant could work eight hours per day in her usual job. He noted that she could sit for eight hours per day, walk for four hours per day, and stand for four hours per day. Appellant also could lift, push, and pull up to 10 pounds for eight hours per day. Dr. Smith noted, "Must be able to sit -- elevate foot."

³ It appears from the record that the costs of the surgery were paid by OWCP.

⁴ Dr. Smith noted that appellant reported that she was transporting plaques when two of them flipped over and fell on her right foot. He also discussed her 1977 nonwork injury, three fractures of her right ankle, and her November 15, 2004 work injury, a right ankle sprain.

⁵ Dr. Smith indicated that, given the right ankle swelling, appellant was only capable of sedentary work with the ability to elevate her ankle while being seated.

OWCP referred appellant for an examination and evaluation of her right foot/ankle condition to Dr. Mark Cohen, a Board-certified orthopedic surgeon.⁶ In his June 30, 2011 report, Dr. Cohen discussed appellant's factual and medical history and noted that on physical examination her right foot was diffusely tender to touch and she could perform heel raises. In the "impression" portion of the report, he noted, "Crush injury of the right foot with subsequent open reduction and internal fixation of the medial malleolus. The medial malleolus fracture is unrelated to the initial injury from April 7, 2009." Dr. Cohen indicated that he could not relate appellant's right medial malleolus fracture to the April 7, 2009 incident because the mechanism of the injury would not cause such a fracture. He noted that she had degenerative changes in her right foot and a deformity of the fibula suggesting an old fracture, indicating that these findings were seen in a July 17, 2009 MRI scan. Dr. Cohen indicated that there had been no confirmation of the diagnosis of reflex sympathetic dystrophy. He reported that he basically agreed with the conclusions of Dr. Smith in his April 9, 2010 report and noted, "[Appellant's] basic diagnosis related to the injury from April 7, 2009 is a crush injury to the foot and she is at maximum medical improvement for that."

In a February 15, 2012 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals of her April 7, 2009 work injury. It informed her that the proposed termination action was justified by the well-rationalized opinions of Dr. Smith, Dr. Cohen, and Dr. Thompson. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed termination action.

Appellant submitted a February 17, 2012 report in which Dr. Alan Schreiber, an attending Board-certified orthopedic surgeon, posited that she had a right ankle fracture that "was a definite worker's compensation injury." On March 22, 2012 Dr. Hung noted that she sustained an injury on April 7, 2009 and had a sudden onset of pain in the right ankle with right medial malleolus insufficiency fracture. Neither physician provided an opinion on work-related disability or need for medical care.

In a March 22, 2012 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective March 22, 2012, noting that the medical evidence showed that she ceased to have residuals of her April 7, 2009 work injury.

In a September 12, 2012 decision, an OWCP hearing representative affirmed OWCP's March 22, 2012 termination decision.⁷ He also found that OWCP had to procedurally take steps

⁶ OWCP indicated that there was a conflict in the medical opinion evidence, regarding whether appellant's right ankle fracture was work related, which required referral of appellant to Dr. Cohen for an impartial medical examination. The Board notes that there was no clear conflict in the medical opinion evidence on this matter between an attending physician and a physician for OWCP and, therefore, Dr. Cohen served as an OWCP referral physician. See *Helga Risor (Windell A. Risor)*, 41 ECAB 939 (1990). 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." 5 U.S.C. § 8123(a).

⁷ The hearing representative noted that the reports of Dr. Smith and Dr. Cohen justified the termination of appellant's wage-loss compensation and medical benefits. He indicated that Dr. Cohen served as an OWCP referral physician because there was no conflict in the medical opinion evidence at the time of the referral.

to rescind acceptance of the right ankle fracture. The hearing representative noted that the record lacked any supportive medical opinion linking the fracture to the April 7, 2009 work injury.

In a January 22, 2013 letter, OWCP advised appellant that it proposed to rescind its acceptance of her claim for closed medial malleolus fracture of her right ankle because the medical evidence, including the reports of Dr. Thompson, Dr. Smith, and Dr. Cohen, demonstrated that the fracture was not related to her April 7, 2009 work injury. It provided her 30 days to submit evidence and argument challenging the proposed rescission action. Appellant did not submit any additional evidence within the allotted period.

In a February 28, 2013 decision, OWCP rescinded its acceptance of the closed medial malleolus fracture of appellant's right ankle. It found that the weight of the medical evidence established that the condition was not related to her April 7, 2009 work injury.

Appellant submitted a February 22, 2013 report in which Dr. Schreiber provided a history of her medical treatment since April 2009. Dr. Schreiber noted that she underwent surgery in December 2009 for a fracture of her right medial malleolus.

Appellant, through counsel, requested reconsideration of her claim. In a May 29, 2013 statement, counsel asserted that appellant's April 7, 2009 work injury aggravated her 1977 right ankle fracture and claimed that she continued to have disabling residuals of this aggravation.

In a report dated June 10, 2013, Dr. Schreiber reported that he saw the claimant four times from November 2011 to May 2013. He noted that appellant was complaining of dorsal foot pain following her April 7, 2009 injury. Dr. Schreiber indicated that Dr. Nickson had treated appellant several times prior to the April 7, 2009 injury and that an October 2008 MRI scan did not show a fracture. The findings of x-rays taken after the April 7, 2009 work injury did not show a fracture, but a July 2009 MRI scan did show a fracture. Dr. Schreiber noted, "I do not know the precise mechanism of this injury as I did not examine [appellant] back in 2009. I assume [that she] must have had some type of twisting component to the injury as the plaques fell on the foot." He also commented that the injury "sustained in July could certainly have altered [appellant's] gait pattern that could have affected her medial malleolus."

In an August 13, 2013 decision, an OWCP hearing representative affirmed the rescission of OWCP's acceptance of the right ankle fracture, noting that OWCP presented medical evidence justifying the rescission and that Dr. Schreiber had not provided a rationalized medical opinion relating the fracture to the April 7, 2009 work injury. He directed OWCP to determine whether appellant had residuals of the approved December 7, 2009 surgery.

OWCP again referred appellant to Dr. Smith for an examination and evaluation of her medical condition, including an evaluation of whether she had residuals of the approved December 7, 2009 surgery. In a report dated October 17, 2013, Dr. Smith discussed appellant's factual and medical history and reported findings of his physical examination on October 17, 2013. He noted that her clinical situation significantly improved since he saw her last in 2010. Appellant had reduced swelling about her limb and a relatively normal examination given that she had a prior serious ankle fracture that required open reduction and internal fixation in 1977 and additional surgery on December 7, 2009. Dr. Smith posited that the clinical

improvement in her right leg represented a resolution of whatever residuals she might have had from the April 7, 2009 work injury. Appellant was left with the baseline medical condition from her 1977 nonwork-related incident which necessitated significant right ankle surgery and did not have residuals of the December 7, 2009 surgery. Dr. Smith concluded, “Therefore, based on the current information and clinical findings, [appellant] does not continue to suffer medical residuals or disability with regard to the December 7, 2009 incident.” In a form report completed on October 17, 2013, he indicated that appellant could perform her regular job for eight hours per day.⁸

In a November 21, 2013 decision, OWCP affirmed its prior decision terminating appellant’s wage-loss compensation and medical benefits. It noted that its March 22, 2012 termination date for her wage-loss compensation and medical benefits remained in effect. OWCP also found that the rescission of its acceptance of appellant’s claim for closed medial malleolus fracture of her right ankle was proper.

Appellant submitted a November 15, 2013 report in which Dr. Schreiber posited that she sustained a right medial malleolus fracture due to the April 7, 2009 work incident. Dr. Schreiber reported that appellant had an old fracture of her right medial malleolus in the 1970s and that a 2008 MRI scan showed that the fracture was healed, thereby showing that she did not have a right ankle fracture prior to the occurrence of the April 7, 2009 work incident.⁹ He indicated that appellant injured her right ankle and foot in April 2009 and had persistent pain in the right malleolus area thereafter.

Counsel, on behalf of appellant, requested an oral telephonic hearing with an OWCP hearing representative. During the hearing held on June 9, 2014, appellant testified that she continued to have problems with her right ankle.

In an August 21, 2014 decision, the hearing representative affirmed OWCP’s November 21, 2013 decision regarding the rescission of the right ankle malleolus fracture condition and the termination of wage-loss compensation and medical benefits effective March 22, 2012. He also found that, after the proper termination of appellant’s wage-loss compensation and medical benefits, she did not submit medical evidence to establish additional wage-loss compensation and medical benefits after March 22, 2012.

LEGAL PRECEDENT -- ISSUE 1

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.¹⁰ The Board has upheld OWCP’s authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. The power to annul an award, however, is not an arbitrary one and an award for

⁸ Dr. Smith indicated that the work restrictions form was completed only with respect to the April 7, 2009 work injury.

⁹ Dr. Schreiber did not provide any further description of the 2008 MRI scan.

¹⁰ 5 U.S.C. § 8128.

compensation can only be set aside in the manner provided by the compensation statute. OWCP's burden of justifying termination or modification of compensation holds true where OWCP later decides that it has erroneously accepted a claim for compensation. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission.¹¹

ANALYSIS -- ISSUE 1

OWCP accepted that on April 7, 2009 appellant sustained a right foot contusion when two plaques fell and hit her right foot while at work. Appellant had indicated that the plaques hit the top bridge of her right foot. OWCP later upgraded the accepted conditions due to the April 7, 2009 work injury to include closed medial malleolus fracture of her right ankle. It also authorized appellant to undergo right ankle surgery to repair the condition. On December 7, 2009 appellant underwent open reduction and internal fixation of her right medial malleolus fracture and it appears that the costs of the surgery were paid by OWCP.

In a February 28, 2013 decision, OWCP rescinded its acceptance of appellant's claim for a closed medial malleolus fracture of her right ankle. The Board finds that it presented a clear explanation of its rationale for rescinding its acceptance of right closed medial malleolus fracture.¹² OWCP explained that the medical evidence of record contained rationalized medical opinion evidence showing that appellant did not have a right closed medial malleolus fracture due to the April 7, 2009 work injury.

In an April 9, 2010 report, Dr. Smith, a Board-certified orthopedic surgeon and OWCP referral physician, detailed appellant's factual and medical history and described the April 7, 2009 work incident.¹³ He reported the findings of his examination on April 9, 2010 and concluded that appellant did not sustain a medial malleolus fracture of her right ankle on April 7, 2009. Dr. Smith indicated that the mechanism of appellant's work injury would not produce a fracture of her right medial malleolus. He reported that the December 7, 2009 surgery was performed for the residuals of a prior nonwork-related ankle fracture from 1977.

In a June 30, 2011 report, Dr. Cohen, a Board-certified orthopedic surgeon and OWCP referral physician,¹⁴ discussed appellant's factual and medical history and findings on physical examination. In the "impression" portion of the report, he noted, "Crush injury of the right foot with subsequent open reduction and internal fixation of the medial malleolus. The medial malleolus fracture is unrelated to the initial injury from April 7, 2009." Dr. Cohen indicated that

¹¹ *K.H.*, Docket No. 13-1723 (issued June 17, 2014).

¹² *See supra* note 10.

¹³ Dr. Smith noted that appellant reported that she was transporting plaques when two of them flipped over and fell on her right foot.

¹⁴ OWCP initially indicated that there was a conflict in the medical opinion evidence regarding appellant's right foot/ankle condition requiring referral of her to Dr. Cohen for an impartial medical examination. However, as later acknowledged by OWCP, no conflict in the medical opinion evidence existed between an attending physician and a physician for OWCP at the time of the referral and Dr. Cohen served as an OWCP referral physician. *See supra* note 6.

he could not relate appellant's right medial malleolus fracture to the April 7, 2009 incident because the mechanism of the injury would not cause such a fracture.¹⁵

The Board finds that these reports contain clear explanation with supporting medical rationale that appellant did not sustain a medial malleolus fracture of her right ankle on April 7, 2009. In particular, the physicians pointed out that the mechanism of injury on April 7, 2009 was insufficient to cause such an injury.¹⁶ These reports justify OWCP's rescission of its acceptance of appellant's claim for closed medial malleolus fracture of her right ankle.

LEGAL PRECEDENT -- ISSUE 2

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.¹⁷ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁸ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁹

ANALYSIS -- ISSUE 2

OWCP terminated appellant's wage-loss compensation and medical benefits effective March 22, 2012. The Board will first consider whether it properly terminated appellant's wage-loss compensation effective March 22, 2012.

The Board finds that OWCP presented rationalized medical evidence based on a complete and accurate factual and medical history showing that, by March 22, 2012, appellant ceased to have disability due to her April 7, 2009 work injury. The termination of appellant's disability compensation effective March 22, 2012 is justified by the April 9, 2010 opinion of Dr. Smith.

¹⁵ Moreover, in an October 7, 2009 report, Dr. Thompson, a Board-certified orthopedic surgeon and OWCP medical adviser, indicated that he had reviewed the medical record and concluded that there was nothing in the medical record to establish that appellant sustained an acute fracture of her right ankle on April 7, 2009. He posited that the mechanism of injury on April 7, 2009 was inconsistent with a fracture of the right medial malleolus in that appellant reported dropping a plaque on the dorsum of her right foot, an area that is distinct and separate from the medial malleolar area.

¹⁶ In a February 17, 2012 report, Dr. Schreiber, an attending Board-certified orthopedic surgeon, posited that appellant had a right ankle fracture that "was a definite [w]orker's [c]ompensation injury." However, this report is of limited probative value because it does not contain a rationalized medical explanation for this conclusion. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale. *C.M.*, Docket No. 14-88 (issued April 18, 2014).

¹⁷ *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

¹⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

¹⁹ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In his April 9, 2010 narrative report, Dr. Smith detailed appellant's factual and medical history and reported findings upon physical examination on that date. He noted that there was good vascular supply to her right foot and a well-healed scar in the medial aspect of her right ankle consistent with prior surgery. Dr. Smith indicated that he believed that the December 7, 2009 surgery was performed for the residuals of a prior nonwork-related ankle fracture.²⁰ He posited that appellant showed no clinical evidence of reflex sympathetic dystrophy.²¹ In a form report also completed on April 9, 2010, Dr. Smith provided an opinion that she could work eight hours per day in her usual job. Although he provided limited work restrictions,²² he did not provide any indication that the restrictions would prevent appellant from performing her regular work as a program support assistant.

The Board further finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits effective March 22, 2012, but that it did present medical evidence justifying termination of her medical benefits effective October 17, 2013, the date of a supplemental examination conducted by Dr. Smith and the date of the report he produced regarding that examination.

The Board notes that the April 9, 2010 report of Dr. Smith did not justify the termination of appellant's medical benefits effective March 22, 2012, because the report left two relevant questions unresolved.²³ First, Dr. Smith did not provide a clear opinion that appellant's accepted right foot contusion had fully resolved in that he merely indicated, without elaboration, that the condition had reached maximum medical improvement. Second, he did not provide a clear opinion regarding whether appellant had residuals of the approved April 7, 2009 right ankle surgery. Although OWCP properly rescinded the condition of right closed medial malleolus fracture, *i.e.*, the ostensible reason for the April 7, 2009 surgery, appellant would still be entitled to receive medical treatment of lingering effects of this surgery.²⁴ This is because authorization by OWCP for medical examination and/or treatment constitutes a contractual agreement to pay for the services if the services are rendered, regardless of whether a compensable injury or condition exists. Moreover, any medical condition resulting from authorized examination or

²⁰ For the reasons previously explained, OWCP properly rescinded its acceptance of appellant's claim for closed medial malleolus fracture of her right ankle.

²¹ Dr. Smith reported that appellant had right ankle swelling, but noted that it appeared to be chronic and of an unclear etiology.

²² Dr. Smith noted that appellant could sit for eight hours per day, walk for four hours per day, and stand for four hours per day. Appellant needed to elevate her foot while sitting. Dr. Smith indicated that she could lift, push, and pull up to 10 pounds for eight hours per day.

²³ The Board has reviewed the reports of Dr. Cohen and Dr. Thompson with respect to the question of appellant's continuing need for medical treatment due to the April 7, 2009 work injury, but these reports do not provide a clear opinion on this matter.

²⁴ The Board notes that OWCP did not rescind authorization for the December 7, 2009 surgery.

treatment (such as residuals from surgery) may form the basis of a compensation claim for impairment or disability, regardless of the compensability of the original injury.²⁵

In his report dated October 17, 2013, Dr. Smith provided a clear, rationalized medical opinion that appellant ceased to have any residuals of her April 9, 2010 work injury. He indicated that her right ankle contusion had resolved and that she had no residuals of the approved December 7, 2009 right ankle surgery. The October 17, 2013 report established that appellant did not have a need for medical care after October 17, 2013 due to her April 9, 2010 work injury or approved surgery.

Dr. Smith discussed appellant's medical history and reported findings of his physical examination on October 17, 2013. He noted that her clinical situation significantly improved since he saw her last in 2010. Appellant had reduced swelling about her limb and a relatively normal examination given the fact that she had a prior serious ankle fracture that required open reduction and internal fixation in 1977 and additional surgery on December 7, 2009. Dr. Smith posited that the clinical improvement noted clinically in her right lower extremity represented a resolution of whatever residuals she might have had from the April 7, 2009 work injury. Appellant was left with the baseline medical condition from her 1977 nonwork-related incident and did not have residuals of the December 7, 2009 surgery. Dr. Smith concluded that she did not "continue to suffer medical residuals or disability with regard to the December 7, 2009 incident."²⁶

Given the Board's determination regarding the termination of medical benefits, appellant would be entitled to receive payment for any unreimbursed medical treatment, related to the April 7, 2009 work injury, which she received prior to October 17, 2013.

LEGAL PRECEDENT -- ISSUE 3

As noted above, once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.²⁷ However, after termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.²⁸

²⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.2b (February 2012). See also *Frederick J. Williams*, 35 ECAB 805 (1984); *K.H.*, Docket No. 13-1723 (issued June 17, 2014).

²⁶ In a form report completed on October 17, 2013, Dr. Smith indicated that appellant could perform her regular job for eight hours per day.

²⁷ See *supra* notes 17 and 18.

²⁸ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

ANALYSIS -- ISSUE 3

For the reasons explained above, the medical evidence of record justifies termination of appellant's wage-loss compensation effective March 22, 2012 and medical benefits effective October 17, 2013. Appellant submitted additional medical evidence concerning her medical condition which she felt showed that she was entitled to continuing wage-loss compensation and medical benefits due to residuals of her April 7, 2009 work injury. The Board has found that the opinion of Dr. Smith justifies the termination of appellant's wage-loss compensation effective March 22, 2012 and medical benefits effective October 17, 2013, the burden shifts to her to establish that she is entitled to additional wage-loss compensation and medical benefits.²⁹ The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish her claim for additional wage-loss compensation and medical benefits.

Appellant submitted a November 15, 2013 report in which Dr. Schreiber provided an opinion that her right ankle fracture was related to the April 7, 2009 work injury and continued to cause disability and a need for medical care. For the reasons explained above, OWCP properly rescinded its acceptance of her claim for a right closed medial malleolus fracture. Dr. Schreiber's report is of limited probative value because he did not provide adequate medical rationale in support of his opinion that appellant sustained a right medial malleolus fracture on April 7, 2009. He posited that she sustained such a fracture on April 7, 2009 because she reported pain in her right ankle after April 7, 2009, but the Board has held that the mere fact that a condition manifests after an employment incident does not raise an inference of causal relationship between a claimed condition and employment factors.³⁰ Dr. Schreiber did not explain how the mechanism of the April 7, 2009 work incident could have caused a right ankle fracture.³¹ Therefore, his opinion does not show that appellant had disability after March 22, 2012 or need for medical care after October 17, 2013 due to her April 7, 2009 work injury.

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 rescind its acceptance of appellant's claim for closed medial malleolus fracture of her right ankle. The Board further finds that it met its burden of proof to terminate appellant's wage-loss compensation effective March 22, 2012 and her medical benefits effective October 17, 2013. Appellant did not meet her burden of proof to establish work-related disability after March 22, 2012 or need for medical treatment after October 17, 2013 due to her April 7, 2009 work injury.

²⁹ See *supra* note 28.

³⁰ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

³¹ In a June 10, 2013 report, Dr. Schreiber suggested that appellant sustained a disabling right ankle fracture on April 7, 2009, but he did not provide a clear, unequivocal opinion that she sustained such an injury on that date.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed with respect to the rescission of appellant's right malleolus fracture, the termination of her wage-loss compensation effective March 22, 2012, and her failure to establish entitlement to wage-loss compensation after March 22, 2012. The August 21, 2014 decision is modified to reflect that the termination of medical benefits effective October 17, 2013 is justified by the medical evidence and that appellant failed to establish entitlement to medical benefits after October 17, 2013.³²

Issued: December 2, 2015
Washington, DC

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

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

³² James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.