United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 15-0618**
	)	**Issued: July 1, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Brookland, NY, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 26, 2015 appellant, through counsel, filed a timely appeal from a September 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective January 23, 2014 as he no longer had any residuals or disability causality related to his accepted employment-related injury; and (2) whether appellant has met his burden of proof to establish any continuing employment-related residuals or disability after January 23, 2014.

[1] 5 .U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 27, 2010 appellant, then a 33-year-old city carrier, filed a traumatic injury claim alleging that he was pulling a cart over snow and as he crossed the street his left ankle twisted underneath him. He stopped working after the injury and returned to full-duty capacity on May 18, 2010. OWCP accepted the claim for closed fracture of the left lateral malleolus and paid benefits. Appellant stopped work on May 24, 2010 and returned to full-duty capacity on September 27, 2010. He worked full-duty capacity until he filed a recurrence of disability effective September 7, 2011, when he underwent authorized left ankle surgery. Appellant has not returned to work. OWCP eventually retained him on the periodic compensation rolls.

Following appellant's surgery, OWCP received medical evidence from appellant's physician finding that appellant was totally disabled. In a January 26, 2012 report, Dr. Ludwig Licciardi, a Board-certified orthopedic surgeon, noted examination findings. He found the peroneals were not as inflamed, but the posterior tibialis tendon was inflamed. Dr. Licciardi found a positive Tinel's sign along the tarsal canal, paresthesias on the bottom of the foot and pes planus (flat feet) deformity. He determined that appellant was unable to perform letter carrier work and requested authorization for electromyogram (EMG) and nerve conduction velocity (NCV) studies of the lower extremities to rule out tarsal tunnel syndrome. In an April 17, 2012 report, he stated that appellant had experienced calf pain for the past couple of weeks, swelling in the ankle, and paresthesias on the bottom of the foot. Dr. Licciardi stated the EMG and NCV studies of the bilateral lower extremities April 10, 2012 confirmed left tarsal tunnel syndrome with increased distal latency, decreased amplitude, and slightly increased H reflex on the left side. The studies confirmed left-sided lumbar radiculopathy and tarsal tunnel syndrome in the left foot and ankle. In a September 10, 2012 report, Dr. Licciardi advised that appellant continued to have symptomatic pain with weight-bearing and he subsequently developed left tarsal tunnel syndrome. He also noted that appellant used a cane and ambulated with an antalgic gait. Dr. Licciardi found the objective examination was unchanged from the previous examination. Due to the unbalanced gait, he found that appellant had developed symptoms such as pain and stiffness in the lumbar spine which were consequentially related to the injury to his left ankle. Dr. Licciardi requested authorization for inclusion of the lumbar spine as being consequentially related to the initial injury of the left ankle and for left tarsal tunnel surgical decompression.

In order to determine appellant's current conditions and to ascertain whether he continued to suffer residuals from his accepted condition, OWCP referred him for a second opinion examination with Dr. Kenneth P. Heist, an osteopath and orthopedic surgeon. Prior to the examination, Dr. Heist was provided with a statement of accepted facts, a set of questions, and appellant's case record. In an April 15, 2013 report, he noted examination findings of the left lower extremity, including range of motion. Dr. Heist diagnosed healed fracture of the lateral malleolus left ankle and status postoperative (09/07/11) arthroscopic surgery left ankle, removal of osteochondral fragment, and lysis of adhesions of the deltoid ligament with synovectomy. He stated that there were no objective findings of the accepted condition of left ankle fracture, lateral malleolus and opined that it most likely resolved eight weeks following the injury. Dr. Heist further opined that there was no current disability and that appellant was capable of returning to work full time without restrictions. He stated that appellant had reached maximum medical improvement and no additional treatment was indicated.

OWCP provided Dr. Heist an updated statement of accepted facts dated May 22, 2013, which included a description of all claims appellant had filed with OWCP. Dr. Heist was requested to provide an addendum report which discussed whether a back condition should be accepted under this claim. He was also asked to provide additional rationale for the prior conclusions.

On May 31, 2013 OWCP received Dr. Heist's addendum report. Dr. Heist indicated that his clinical examination documented restriction of motion of the left ankle which was medically connected to the accepted work injury, but that appellant had recovered from the effects of the surgery sufficiently to return to full-duty work. He stated no surgery was indicated as there were no objective signs of a nerve condition involving the left ankle and no evidence of lumbar radiculopathy. Dr. Heist estimated that appellant reached maximum medical improvement 12 weeks following the September 17, 2011 surgery and was capable of returning to work full time without restrictions.

In an April 25, 2013 report, Dr. Licciardi noted appellant's complaints of pain, difficulty ambulating, and his inability to work. He also noted appellant complained of paresthesias on the dorsum of the foot, as well as the medial and lateral malleoli. Dr. Licciardi noted appellant ambulated with an antalgic gait. On examination, appellant had positive Tinel's sign along the tarsal canal and muscle spasms, paresthesias going down the foot. Limitations to flexion/extension were noted as well as atrophy in the foot muscles. Dr. Licciardi advised appellant to refrain from work. He also requested authorization for tarsal tunnel decompression of the left foot and reinstatement of physical therapy.

OWCP found that there was a conflict in the medical opinion of Dr. Heist who concluded that there were no objective signs of a work-related disability, that appellant did not have a work-related condition, did not require surgery, and was able to return to full-time full-duty work with Dr. Licciardi's findings that there was an objectively diagnosed work-related condition which required surgery and that appellant was totally disabled for work. Accordingly, it referred appellant to Dr. Robert Dennis, a Board-certified orthopedic surgeon, for a referee examination. Dr. Dennis was provided with an updated statement of accepted facts dated October 16, 2013 a list of questions, and appellant's entire case record.

In a November 26, 2013 report, Dr. Dennis provided findings on examination and reviewed the medical history, statement of accepted facts, and position description for city carrier. He diagnosed left ankle sprain, severe pes planus with appellant walking on the inside of both feet in a symmetric fashion, a congenital pathology impacting ambulation whether he is a mail carrier or just walking in the mall, and status post arthroscopy left ankle, completely resolved. Dr. Dennis stated that careful consideration was given to the various opinions and to appellant's stated complaints. He stated that the examination, was extraordinarily normal. Dr. Dennis indicated that the ligament injury may have produced a minor avulsion of the medial and lateral malleoli and some mild thickening of the ligament with possible old base of the fifth metatarsal fracture and severe pes planus. He found these sufficient issues to cause appellant some difficulty and fatigue in walking long distances. However, the orthopedic conditions that arose from this injury had completely resolved and the thickening of any ligaments represent a healing process that was now complete. Dr. Dennis opined that appellant no longer suffered from any of the accepted conditions as they had resolved and he could return to work. He stated

that the objective findings support preexisting flat feet which were unaltered by the work injury. Dr. Dennis stated that the additional conditions of severe pes planus (severe flat feet) and calcaneal valgus positioning caused by the flat feet were congenital and unrelated to and undisturbed by the work injury. He concluded that there was no residual pathology or disability from the work injury as the muscle strength and motion of both ankles were identical.

Dr. Dennis indicated that left ankle surgery September 17, 2011 was primarily diagnostic and resolved the issue of any substantial intra-articular pathology. He stated that, a micro fragment of the tibia was not a disability, it was not uncommon, and it did not produce a dysfunction in this case. Dr. Dennis further indicated that the sprain or minor avulsion fracture and the preexisting cyst in the bone were not altered or aggravated as the condition of both feet were identical and only one had been injured. He stated a tarsal tunnel decompression of the left foot was not indicated and carried far more risks than benefits. Dr. Dennis noted the clinical examination did not fully support appellant's complaints or the need for a cane. He opined that appellant could resume his mail carrier duties and there was no residual alteration of the left ankle related to this injury.

On December 19, 2013 OWCP issued a notice of proposed termination of compensation. It found that Dr. Dennis' November 26, 2013 impartial opinion established that appellant's accepted condition of closed fracture of the lateral malleolus of the left ankle had resolved and that he had no work-related residuals or disability stemming from that condition.

In a January 6, 2014 report, Dr. Licciardi stated that appellant remained persistently symptomatic with his left ankle despite conservative and arthroscopic intervention and showed residual avulsion fracture over the medial malleolus and post-traumatic joint space narrowing of the tibiotalar joint. He noted that appellant had persistent pain, intolerance to attempts at prolonged periods of standing or ambulation which affected activities of daily life and quality of life, and complaints of paresthesias and dysesthesia radiating into the medial plantar aspect of his left foot. Examination of the left ankle demonstrated decreased range of motion in plantar flexion and dorsi flexion with plantar flexion more effected, pain with varus stress placed on the ankle and tenderness at the insertional site of the anterior talofibular ligament, and a mildly positive anterior drawer test of the ankle with some tenderness over the lateral aspect of the ankle when maneuver was performed. Appellant was not able to single leg toe raise on the affected extremity, which was found to be neurovascularly intact. An assessment of status post arthroscopy of the left ankle was provided. Dr. Licciardi opined that appellant remained disabled. Authorization for tarsal tunnel decompression of the left foot was requested.

By decision dated January 23, 2014, OWCP terminated appellant's compensation for wage-loss and medical benefits effective that date, finding that Dr. Dennis' impartial opinion represented the weight of the medical evidence.

On July 1, 2014 OWCP received counsel's June 25, 2014 request for reconsideration. Counsel argued that Dr. Licciardi's reports of November 11, 2013 and March 6, 2014 support residual disability and a need for ongoing treatment, including left tarsal tunnel decompression.

Medical reports from Dr. Licciardi dated March 6, April 17, June 5, July 21, and September 3, 2014 were received. In his reports, Dr. Licciardi noted appellant's subjective

complaints and advised the objective examination was unchanged from previous examination. An assessment of status post arthroscopy of the left ankle was provided. Dr. Licciardi continued to opine that appellant was totally disabled.

By decision dated September 24, 2014, OWCP denied modification of the January 23, 2014 termination decision.

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.[2] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3] 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.[4]

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.[5] 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 OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[6] 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.[7]

ANALYSIS -- ISSUE 1

OWCP accepted that on February 27, 2010 appellant sustained closed fracture of the left lateral malleolus and paid benefits, including a left ankle arthroscopy on September 7, 2010. It determined that a conflict existed between Dr. Licciardi, his treating physician, and Dr. Heist, OWCP's second opinion physician, as to whether appellant continued to be disabled due to

[2] *Jason C. Armstrong*, 40 ECAB 907 (1989).

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

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

[5] 5 U.S.C. § 8123(a).

[6] 20 C.F.R. § 10.321.

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

residuals of his accepted orthopedic condition and whether tarsal tunnel decompression surgery was indicated. In this regard, Dr. Licciardi found that there was an objectively diagnosed work-related condition which required surgery and that appellant was totally disabled for work. Dr. Heist found that there were no objective signs of a work-related disability and was able to return to full-time full-duty work. Accordingly, OWCP referred appellant to Dr. Dennis for an impartial medical examination to resolve the conflict in medical opinion evidence, pursuant to 5 U.S.C. § 8123(a). It terminated appellant's wage-loss compensation and medical benefits effective January 24, 2014 finding that Dr. Dennis' report that he had no further employment-related disability constituted the weight of the evidence.

The Board finds that OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits based on the November 26, 2013 report of the impartial medical specialist, Dr. Dennis.

As the impartial medical specialist Dr. Dennis' report is entitled to special weight. It properly reviewed appellant's medical history, the statement of accepted facts, and stated comprehensive examination findings. Dr. Dennis found no objective evidence to support ongoing employment-related residuals or disability due to the accepted condition of closed fracture of the left lateral malleolus. He related that appellant's physical examination was extraordinarily normal and showed that appellant had bilaterally consistent findings.

Dr. Dennis provided a diagnostic impression of left ankle sprain, severe pes planus which was congenital impacting ambulation, and status post arthroscopy left ankle, completely resolved. He stated that the ligament injury may have produced a minor avulsion of the medial and lateral malleoli and some mild thickening of the ligament with possible old base of the fifth metatarsal fracture, however, the orthopedic conditions that arose from this injury have completely resolved and the thickening of any ligaments represented a healing process that was now complete.

Dr. Dennis explained that appellant had preexisting flat feet which were unaltered by the work injury. He stated that the additional conditions of severe pes planus and calcaneal valgus positioning caused by the flat feet were congenital and unrelated to or undisturbed by the work injury. Dr. Dennis concluded that there was no residual pathology or disability from the work injury as the muscle strength and motion of both ankles were identical and it was only the left ankle that had been injured. He opined that appellant returned to his preinjury state and was capable of carrying out the requirements of a letter carrier.

Dr. Dennis indicated that the left ankle surgery of September 17, 2011 was primarily diagnostic and had resolved the issue of any substantial intra-articular pathology. He stated that a micro fragment of the tibia was not a disability, was not uncommon, and did not produce a dysfunction in this case. He further indicated that the sprain or minor avulsion fracture and the preexisting cyst in the bone were not altered or aggravated.

Dr. Dennis further found a tarsal tunnel decompression of the left foot was not indicated and carried far more risks than benefits, he opined that no further treatment was needed, and that appellant's progress was good to excellent. Dr. Dennis noted the clinical examination did not fully support appellant's complaints or the need for a cane. He concluded that appellant could

resume his regular duties as there was no residual alteration of the left ankle as related to the accepted injury.

The Board finds that Dr. Dennis' report represents the special weight of the medical evidence regarding appellant's left ankle condition. It is well rationalized and based on a complete and accurate history, a complete statement of accepted facts, and the entire case record, including a position description. Dr. Dennis examined appellant thoroughly, reviewed the medical records, and reported accurate medical and employment histories. He concluded, with supporting medical rationale, that appellant had no residuals from the accepted left ankle condition and was able to return to full-duty work without limitations. Thus, Dr. Dennis' opinion is entitled to special weight and OWCP properly terminated appellant's compensation benefits in reliance on his report.[8]

The January 6, 2014 report from Dr. Licciardi is insufficient to overcome the weight accorded to Dr. Dennis as an impartial medical specialist. While Dr. Licciardi submitted an additional report, he had been on one side of the conflict in medical opinion regarding whether residuals of the accepted condition remained and whether additional surgery was warranted. Reports from a physician who was on one side of a medical conflict are generally insufficient to overcome the weight accorded to the opinion of the impartial physician or to create a new conflict.[9] In his January 6, 2014 report, Dr. Licciardi stated that appellant remained persistently symptomatic within his left ankle despite conservative and arthroscopic intervention. Appellant had persistent pain, intolerance of attempts at prolonged periods of standing or ambulation affecting activities of daily life and quality of life, and complaints of paresthesias and dysesthesia radiating into the medial plantar aspect of his left foot. Examination findings of the left ankle were provided. Dr. Licciardi provided an assessment of status post arthroscopy of the left ankle and opined that appellant remained disabled and required tarsal tunnel decompression of the left foot. However, he provided no medical rationale as to how his continued findings were related to the accepted injury and would cause disability in light of the fact Dr. Dennis stated appellant's pes planus and calcaneal valgus deformity of both feet were congenital and the clinical examination revealed both feet and calves were symmetrical. Dr. Licciardi also provided insufficient medical rationale as to why the tarsal tunnel syndrome was indicated or causally related to the accepted work incident or condition.

The Board notes that OWCP has not accepted the back condition as being work related. For conditions not accepted by OWCP as being work related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.[10] While Dr. Licciardi requested inclusion of the lumbar spine as a consequential condition, he offered no medical rationale in support of his opinion. A mere conclusion without the necessary rationale explaining how a claimant's accepted exposure could

[8] *See Bryan O. Crane*, 56 ECAB 713 (2005).

[9] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[10] *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

result in a consequential condition is not sufficient to meet a claimant's burden of proof.[11] In this regard the Board also notes that Dr. Heist found no evidence of lumbar radiculopathy.

Therefore, the Board finds that OWCP properly terminated appellant's wage-loss and medical compensation benefits effective January 24, 2014, as the weight of the competent medical evidence established that the accepted February 27, 2010 fracture of lateral malleolus of ankle, closed, left had resolved without residuals.

On appeal, appellant's counsel contends that Dr. Dennis' report cannot carry the weight of the medical evidence as Dr. Licciardi's March 6, 2014 report confirmed appellant had residuals of the left ankle surgery and had persistent pain on standing and walking and numbness in the left foot. As noted, however, Dr. Licciardi provided no medical rationale to explain how or why appellant would have residuals from the work-related condition or any explanation as to why the tarsal tunnel syndrome was causally related to the accepted condition or work incident.

Counsel further argues it was inappropriate for Dr. Dennis to compare appellant's ankles as appellant had severe flat feet and a calcaneal valgus deformity of both feet and the right foot and ankle were not normal. Dr. Dennis opined that appellant had equal deficiencies in both ankles given the congenital conditions. In this case, it was appropriate to compare appellant's feet and ankles to determine whether or not the work injury had aggravated appellant's preexisting condition, which Dr. Dennis found it did not. Contrary to counsel's assertions regarding Dr. Dennis' examination and conclusion with regard to the left tarsal tunnel syndrome, he specifically stated that he found no asymmetry or difference between the two ankles, there was no swelling or edema or evidence of ligament damage or instability, and no evidence of a tarsal tunnel syndrome. Counsel's remaining assertions lack validity as Dr. Dennis was provided an updated statement of accepted facts along with a job description.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to him to establish that he has continuing disability after that date related to his accepted injury.[12] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[13] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[14]

[11] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

[12] *See Manuel Gill*, 52 ECAB 282 (2001).

[13] *Id.*

[14] *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence to establish residuals of the accepted conditions after January 23, 2014.

OWCP received additional medical reports from Dr. Licciardi dated March 6, April 17, June 5, July 21, and September 3, 2014. In his reports, Dr. Licciardi noted appellant's subjective complaints and advised the objective examination was unchanged from previous examination. An assessment of status post arthroscopy of the left ankle was provided. He continued to opine that appellant was totally disabled. However, Dr. Licciardi failed to provide a medical diagnosis and also failed to provide any medical rationale explaining how appellant remained disabled from the accepted condition. A mere conclusion without the necessary medical rationale to explain how and why the physician believes that appellant's accepted exposure could result in a diagnosed condition is not sufficient to meet his burden of proof. The medical evidence must also explain how the physician reached the conclusion he is supporting, which Dr. Licciardi failed to do.[15] As such, Dr. Licciardi's reports are insufficient to meet appellant's burden of proof.

There is no other medical evidence of record from a physician providing reasoned support that appellant had any employment-related residuals or disability after January 23, 2014.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective January 23, 2014 because he no longer had any residuals or disability causally related to his accepted February 27, 2010 employment-related injury. The Board further finds that he did not meet his burden of proof to establish that he had any employment-related residuals or disability after January 23, 2014.

[15] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (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).

ORDER

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

Issued: July 1, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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