

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

J.H., Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 15-1726
Issued: January 19, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 17, 2015 appellant filed a timely appeal from a March 4, 2015 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 justify termination of appellant's medical and wage-loss compensation benefits for his accepted injury effective March 4, 2015.

FACTUAL HISTORY

On November 6, 2012 appellant, then a 52-year-old marine machinery mechanic, filed a traumatic injury claim (Form CA-1) for a twisted right ankle due to stepping into a pothole and rail track on November 2, 2012. By decision dated February 28, 2013, OWCP accepted his

¹ 5 U.S.C. § *et seq.*

claim for right ankle sprain. Appellant received intermittent payments of wage-loss compensation on the short-term rolls from March 22, 2013 through May 2, 2014.

By letter dated May 9, 2013, Dr. Michael A. Caines, a Board-certified orthopedic surgeon, noted that it was his professional opinion that the acute component of appellant's sprain had resolved. However, he noted:

“[W]hen I last saw [appellant] on April 1, 2013, my impression was that he had anterolateral soft tissue impingement syndrome of the right ankle.... Indeed, [appellant] does have preexisting osteoarthritis of his right ankle, for which he has a focal anterolateral talar dome OCD, as well as degenerative changes.... The proposed arthroscopy of the right ankle is in no way to address his preexisting osteoarthritis. It is to address anterolateral soft tissue impingement syndrome.... Numerous studies show that anterolateral soft tissue impingement syndrome is related to anterolateral right ankle sprains, which is indeed what he sustained on November 2, 2012.”

On July 10, 2013 appellant underwent an OWCP authorized surgical procedure of arthroscopic debridement of the right ankle and chondroplasty.²

In a medical report dated September 3, 2013, an OWCP field nurse noted that appellant would resume light-duty work on September 4, 2013.

On November 25, 2013 appellant claimed compensation for leave without pay from November 22 through December 6, 2013.

By letter dated November 25, 2013, OWCP noted that the evidence of record indicated that appellant stopped work on November 22, 2013 and had not returned. It stated that the evidence of record was insufficient to establish disability for this period, as a physician's explanation of appellant's inability to perform his light-duty position had not been provided.

In a letter dated December 5, 2013, appellant noted that his sole reason for work stoppage was that the employing establishment did not have work available within his current restrictions and had withdrawn the light-duty position, not because he had claimed a worsening of his condition.

On December 13, 2013 appellant claimed compensation for leave without pay from December 7 through 20, 2013. He continued to request compensation for leave without pay through May 2, 2014.

In an e-mail dated December 17, 2013, a supervisor for the employing establishment confirmed that work was not available within appellant's medical restrictions.

In a report dated March 12, 2014, Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon, reviewed an x-ray scan and diagnosed right ankle sprain with traumatic ankle arthritis.

² The record reflects that appellant received wage-loss compensation from July 10 through September 3, 2013.

He included progress notes which reported that appellant continued to have pain and reduced range of motion in his right ankle.

On April 4, 2014 OWCP referred appellant to a second opinion examiner to determine the extent of his diagnosed condition and continuing disability. In a report dated April 30, 2014, Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, examined appellant and reviewed the medical record. On examination, he found that “there [was] some tenderness over the anterolateral corner but, other than that, no hard objective findings to suggest an ongoing problem in the ankle.” Dr. Hanley opined, “[Appellant] sustained an ankle sprain on November 2, 2012. It is my belief that this condition has resolved, and he no longer has any findings that would be attributable to that particular date of injury.” He noted, “[Appellant] has been treated in an appropriate fashion for the injuries sustained, but continues to report subjective complaints in the face of little or no objective findings. That is the basis for a very poor prognosis. Recommendations for medical treatment would be to brace the ankle for work activities and the utilization for over-the-counter anti-inflammatories.” Dr. Hanley opined that appellant had a brief period of total disability following his injury, but was fit for full duties within three months. He further opined that appellant had no residual physical limitations and provided a work capacity evaluation recommending full duty.

By letter dated June 12, 2014, appellant requested that OWCP add the condition of anterolateral soft tissue impingement syndrome to the list of appellant’s accepted conditions.

On July 10, 2014 appellant underwent a functional capacity evaluation (FCE) regarding his right ankle. Testing revealed moderate decreases in right ankle range of motion and strength. The physical therapist noted that appellant could continue to work with restrictions.

In a narrative report dated August 6, 2014, Dr. Wardell endorsed the conclusions of the FCE dated July 10, 2014. He noted prior examinations on May 9 and June 5, 2014, which revealed stiffness and soreness as well as reduced range of motion. Dr. Wardell further noted diffuse ankle tenderness and recommended that appellant return to work with restrictions.

In an attending physician’s report dated August 6, 2014, Dr. Wardell diagnosed appellant with right ankle traumatic arthritis as a result of a right twisted ankle. He checked a box noting that he believed that the condition was related to appellant’s federal employment.

On November 5, 2014 OWCP proposed to terminate appellant’s medical and wage-loss compensation benefits, finding that the weight of the medical evidence established no continuing residuals of his accepted work-related condition. It noted that it had received a request to add an additional condition of anterolateral soft tissue impingement syndrome, but that Dr. Caines had not provided a medical rationale for his opinion that this condition was work related. OWCP found that Dr. Hanley’s April 30, 2014 report represented the weight of the medical evidence. It noted that Dr. Caines had noted that appellant’s arthritis was a preexisting condition, and as such Dr. Wardell’s diagnosis of right ankle traumatic arthritis was not well-reasoned in terms of supporting a continuing work-related disability.

By letter dated November 21, 2014, appellant responded to the proposal to terminate appellant’s medical and wage-loss compensation benefits. He argued that there was an unresolved conflict of medical opinion between Dr. Wardell and Dr. Hanley. Counsel noted that

OWCP had authorized arthroscopic surgery based upon Dr. Caines' letter of May 9, 2013, which justified the procedure based upon a diagnosis of anterolateral soft tissue impingement syndrome. He argued that Dr. Hanley's second opinion report was devoid of rationalized medical opinion evidence and that it was merely conclusory in nature. Counsel requested again that OWCP add anterolateral soft tissue impingement syndrome to the list of appellant's accepted conditions.

In an attending physician's report dated January 6, 2015, Dr. Wardell recommended permanent continuing work restrictions for appellant's injury.

By decision dated March 4, 2015, OWCP terminated appellant's medical and wage-loss benefits effective March 4, 2015, based upon Dr. Hanley's April 30, 2014 report.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ 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, which requires further medical treatment.⁵

FECA provides that, if there is a 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 the 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 or impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁷

³ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁵ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁶ 5 U.S.C. § 8123(a).

⁷ 20 C.F.R. § 10.321.

To be of probative value, a medical opinion must be based on a complete factual and medical background, must be of reasonable medical certainty, and be supported by medical rationale.⁸ Medical rationale is a medically sound explanation for the opinion offered.⁹

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹⁰

ANALYSIS

The Board finds that OWCP did not meet its burden to justify termination of medical and wage-loss benefits.

OWCP based its decision to terminate appellant's benefits on an April 30, 2014 report by Dr. Hanley, a second opinion physician, who conducted a physical examination and reviewed appellant's medical history. Dr. Hanley opined that appellant's condition of right ankle sprain had resolved and that there was no evidence of an ongoing problem in the right ankle. Dr. Wardell submitted progress reports and contemporaneous examinations in which he diagnosed appellant with right ankle sprain with right ankle traumatic arthritis, noted reduced range of motion and continued pain, and recommended continuing work restrictions.

Drs. Hanley and Wardell both reviewed appellant's medical history and conducted physical examinations. However, Dr. Wardell reported continuing reduced range of motion and pain in appellant's right ankle, while Dr. Hanley noted full range of motion and tenderness. Dr. Hanley opined that appellant's condition had fully resolved with no work-related symptoms of appellant's right ankle, while Dr. Wardell noted continuing symptoms of right ankle sprain with right ankle traumatic arthritis. Right ankle traumatic arthritis was not an accepted condition in this case, but Dr. Wardell clearly related this condition to the work-related right ankle sprain and never noted in his reports that the accepted condition of right ankle sprain had resolved. He, in fact, documented continuing residual symptoms in his progress notes from the date of injury through the date of termination.

The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation effective March 4, 2015, because as of this date there was a conflict of medical opinion between Drs. Hanley and Wardell. Each physician had the opportunity to examine appellant and review the diagnostic studies of record. Contrary to OWCP's findings, Dr. Wardell's reports did not lack probative value for lack of a medical rationale for treating a nonaccepted condition. Appellant's right ankle arthritis was listed as a diagnosis alongside his accepted right ankle sprain and Dr. Wardell's treatment of and reporting of symptoms from the right ankle arthritis are compatible with treatment of and reporting of symptoms from a continuing right ankle sprain injury or a consequential condition. With respect to the existence

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁹ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

¹⁰ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

and extent of any ongoing employment-related residuals, the Board finds that the relevant and probative medical evidence is in equipoise.

It is well established that, where there exists opposing medical reports of virtually equal weight and rationale, the case should be referred to an impartial medical specialist for the purpose of resolving the conflict.¹¹ The Board notes that the reports of Dr. Wardell were of record prior to the March 4, 2015 termination decision of OWCP. The Board finds that OWCP should have submitted both Dr. Hanley and Dr. Wardell's reports to an impartial specialist to resolve the conflict in medical opinion evidence before rendering a termination decision. As OWCP failed to base its decision on a resolution of the opinion evidence, the Board finds that it did not meet its burden of proof to terminate appellant's benefits. Referral to an impartial medical specialist is warranted. Accordingly, OWCP's decision to terminate appellant's compensation and medical benefits is reversed.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits effective March 4, 2015.

¹¹ *H.S.*, Docket No. 10-1220 (issued May 24, 2011).

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2015 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action consistent with this opinion of the Board.

Issued: January 19, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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