

FACTUAL HISTORY

This case has previously been before the Board. On June 9, 2005 appellant, then a 43-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that, while walking back from the employing establishment's east compound, she twisted her ankle on stones that were laying on the sidewalk. OWCP accepted appellant's claim for sprain/strain of the left ankle. It paid wage-loss compensation and medical benefits, but terminated all compensation benefits effective June 30, 2012 as it determined that appellant had no residuals of the injury-related medical condition. Appellant requested a hearing. By decision dated January 11, 2013, an OWCP hearing representative affirmed this decision.

Appellant appealed to the Board on June 4, 2013.² By decision dated March 5, 2014 the Board reversed the termination of benefits. The Board noted that in terminating appellant's benefits, OWCP relied upon the opinion of the second opinion physician, Dr. Stanley Askin, a Board-certified orthopedic surgeon, who opined that appellant was fully recovered from her employment injury. However, the Board found that Dr. Askin's opinion conflicted with the opinion of appellant's treating podiatrist, Dr. Joseph A. Megara, who reported that appellant was still being treated for a high-grade ankle sprain and that she should continue in her current sedentary position. The Board found that at the time OWCP terminated appellant's compensation there was an unresolved conflict in the medical evidence and that therefore, OWCP had not met its burden of proof to terminate appellant's benefits. The facts as set forth in the Board's prior decision are incorporated herein by reference.³

On April 2, 2014 OWCP referred appellant to Dr. Samuel Epstein, a Board-certified osteopath, for an impartial medical examination. In a May 19, 2014 report, Dr. Epstein reviewed appellant's employment and medical history, including prior magnetic resonance imaging (MRI) scans and x-rays, and conducted a physical examination noting that there was tenderness to palpitation over the lateral collateral ligaments, syndesmosis and deltoid ligaments, tenderness to palpation over the Achilles tendon insertion into the calcaneus, and tenderness to palpitation over the medial and lateral malleolus. He checked the active range of motion of the ankle and provided measurements for range of motion and girth.

Dr. Epstein diagnosed mild high left ankle sprain which was directly caused by the June 9, 2005 employment incident, mild recurrent high left ankle sprain on or about August 6, 2005 which was a temporary aggravation of the high left ankle sprain, and iliotibial band syndrome with trochanteric bursitis of the right hip not related to the June 9, 2005 injury. He opined that appellant had fully recovered from the effects of the June 9, 2005 employment injury. Dr. Epstein noted that when appellant was unaware of being watched, her gait was normal. He noted no calf atrophy to suggest significant functional deficit in the left foot and ankle. Dr. Epstein noted that since her gait was normal, she was able to dorsiflex the left ankle, despite not dorsiflexing the left ankle when asked during examination. He also noted that x-rays of the left ankle taken in the office compared to x-rays previously taken of her right ankle showed no significant post-traumatic arthritis and no calcifications within the syndesmotomic ligament. Dr. Epstein noted that appellant did complain of post-traumatic chronic pain but that

² Docket No. 13-1438 (issued March 3, 2014).

³ *Id.*

this could not be verified due to symptom magnification. He stated that decreased range of motion of her left ankle could not be verified due to sub-maximal effort. Dr. Epstein did note swelling of the left ankle and left calf, but there was no evidence to support that it was related to the employment injury of June 9, 2005. He did not observe tendon injuries or medial or lateral collateral ligament injuries on either of the MRI scans. Dr. Epstein opined that no additional medical treatment was necessary. He indicated that appellant had reached maximum medical improvement by February 6, 2006 (three to six months after recurrent left high ankle sprain).

On June 12, 2014 OWCP proposed to terminate appellant's medical and wage-loss compensation benefits as the weight of the medical evidence established that appellant no longer had any residuals or continued disability from work as a result of the June 9, 2005 employment injury.

By letter dated June 18, 2014, appellant's counsel objected to the proposed termination.

By letter dated June 19, 2014, OWCP asked Dr. Epstein to respond to certain questions. Dr. Epstein submitted handwritten responses, referring OWCP to appendixes of his report with regard to measurements for loss of motion or atrophy. He also responded that the swelling in appellant's left ankle and calf was not due to her injury, noting normal gait and minimal findings on her MRI scan. Dr. Epstein further opined that appellant had recovered from her employment injury, noting that mild spasms as evinced by MRI scan should heal within three to six months.

On July 14, 2014 Dr. Epstein submitted typed responses to OWCP's queries. He again referred OWCP to the appendix of his May 19, 2014 report. With regard to the swelling in appellant's left ankle and calf and decreased sensation in her left lower extremity, Dr. Epstein provided further rationale to explain why these findings were not the result of her work injury. Specifically, he noted the paucity of radiographic findings, the subjectivity of the decreased sensation, the lack of the decreased sensation following a specific peripheral nerve distribution, and the presence of magnification signs. Dr. Epstein noted that these findings made it more likely than not that the swelling was due to other etiologies such as venous or lymphatic issues. He also noted decreased sensation due to magnification symptoms or peripheral neuropathy. Dr. Epstein concluded that the swelling in the left calf and ankle and decreased sensation are more likely than not unrelated to the accident of June 9, 2005 as peripheral neuropathy is not caused by trauma. He further explained his conclusion that appellant had recovered from the employment injury by noting that mild sprains, such as those indicated by the MRI scan and lack of post-traumatic arthritis or calcifications within the syndesmotric ligament (nine years after the injury) and by x-rays, fully heal within three to six months after injury.

By decision dated July 17, 2014, OWCP terminated appellant's compensation and medical benefits effective that date.

On July 22, 2014 appellant, through counsel, requested a hearing before an OWCP hearing representative. At the hearing held on November 24, 2014, appellant's counsel argued that Dr. Epstein tested range of motion passively, not actively. He also argued that Dr. Epstein did not indicate that the accepted condition was resolved. Counsel further argued that when Dr. Epstein looked at x-rays he noted no significant calcification or significant post-traumatic arthritis of the left ankle, which indicates some residuals. He argued that Dr. Epstein gave no rationale for his conclusion that the swelling in appellant's left ankle and calf and decreased

sensation were unrelated to the accident. Counsel concluded that for these reasons, Dr. Epstein's report should not carry the weight of evidence.

By decision dated January 27, 2015, the hearing representative affirmed OWCP's July 17, 2014 termination of benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ Following a proper termination of compensation benefits, the burden of proof shifts back to claimant to establish continuing employment-related disability.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁷

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.⁸ 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 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.⁹ 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.¹⁰

ANALYSIS

OWCP accepted appellant's claim for a sprain/strain of the left ankle causally related to an employment injury that occurred on June 9, 2005. However, it terminated appellant's medical and compensation benefits effective July 17, 2014. The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits based on the well-rationalized opinion of the impartial medical examiner, Dr. Epstein.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991); *see also J.P.*, Docket No. 13-1049 (issued August 16, 2013).

⁵ *John F. Glynn*, 53 ECAB 155 (2001).

⁶ *See T.P.*, 58 ECAB 524 (2007).

⁷ *See I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ 5 U.S.C. § 8123(a).

⁹ 20 C.F.R. § 10.321.

¹⁰ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

When issuing the March 5, 2014 decision reversing the termination of benefits, the Board found that the relevant and probative medical evidence was in equipoise, that OWCP should have referred appellant's case to an impartial medical examiner, and that as OWCP failed to resolve the conflict in medical evidence, it did not meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

Upon return of the case record, OWCP referred appellant to Dr. Epstein to resolve the conflict in the evidence. Dr. Epstein reviewed appellant's employment history and medical record, including prior x-rays and MRI scans and submitted responses to questions asked by OWCP. He diagnosed mild high left ankle sprain directly caused by the employment injury and mild recurrent high level ankle sprain on or about August 6, 2005 which was a temporary aggravation of the existing mild high left ankle sprain. Dr. Epstein opined that no further medical treatment was necessary for appellant's related condition. He also opined that appellant had fully recovered from the effects of the June 9, 2005 employment injury. In support of his conclusions, Dr. Epstein noted that when appellant was unaware that she was being watched, her gait was normal. He noted no calf atrophy to suggest significant functional deficit in the left foot and ankle. Dr. Epstein also reviewed appellant's x-rays of the left ankle and found no significant post-traumatic arthritis and no calcifications within the syndesmotic ligament. He opined that the swelling in appellant's left ankle and calf and decreased sensation in her left lower extremity was unrelated to the employment injury. In further support of his conclusion that appellant had recovered from her employment injury, Dr. Epstein noted that mild sprains, such as those evinced by appellant's objective tests, fully heal within three to six months after the injury.

When a case is referred to an impartial medical examiner to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹ The Board finds that OWCP properly deferred to Dr. Epstein's findings in concluding that appellant's compensation and medical benefits should be terminated. The impartial medical examiner provided a well-reasoned report based on a proper factual and medical history. Additionally, Dr. Epstein conducted a thorough physical examination of appellant, and his reports included detailed findings and medical rationale supporting his opinion.¹² As the impartial medical examiner, Dr. Epstein's opinion was entitled to special weight.¹³

Counsel's arguments that Dr. Epstein's opinion is insufficient to represent the weight of the evidence are unpersuasive. Counsel contends that Dr. Epstein only measured passive loss of motion in the left ankle. Dr. Epstein did take range of motion measurements, but noted that appellant provided a sub-maximal effort on examination. His statement that the x-rays showed no significant post-traumatic arthritis or calcifications does not logically infer that there was some residuals. Furthermore, Dr. Epstein clearly noted in his reports that appellant had no post-traumatic arthritis and that the employment injury would have resolved within three to six months based on appellant's diagnostic tests. Finally, contrary to counsel's assertions, he explained his conclusions as to why the swelling in appellant's left ankle and calf and decreased sensation in her left lower extremity were not the result of the employment injury when he noted

¹¹ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹² *See D.S.*, Docket No. 13-1326 (issued November 8, 2013).

¹³ *Supra* note 11.

that paucity of radiographic findings, the subjectivity of decreased sensation, and the presence of magnification issues. Dr. Epstein opined that all of these factors made it more likely that these symptoms were due to other etiologies such as venous or lymphatic issues. He also explained that the swelling was more likely unrelated to the employment injury as peripheral neuropathy is not caused by trauma. Dr. Epstein also indicated that appellant's injury occurred in 2005 and that her injuries would have been expected to have resolved within three to six months.

Dr. Epstein, the impartial medical examiner, provided a rationalized medical opinion in this case. Therefore, the Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as Dr. Epstein concluded that no further medical treatment was necessary and that appellant had fully recovered from the effects of the June 9, 2005 injury.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 17, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2015 is affirmed.

Issued: March 29, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board