

On appeal, appellant contends that she sustained a work-related ankle injury. She further contends that the employing establishment offered her a modified job assignment and then refused to allow her to perform the job which resulted in the termination of her case.

FACTUAL HISTORY

OWCP accepted that on January 15, 2011 appellant, then a 41-year-old city carrier, sustained a right ankle sprain when she slipped and fell while delivering mail. She stopped work on January 21, 2011. Appellant received wage-loss compensation beginning March 19, 2011.

In medical reports dated January 21 to October 13, 2011 and undated reports, appellant's attending physicians, Dr. Jerome Antony, a Board-certified internist, and Dr. Stacey Bielinski, a podiatrist, diagnosed sprain, ankylosis/insufficiency, and plantar fasciitis of the right ankle causally related to her January 15, 2011 employment-related injury and that she was totally disabled for work during this period.

By letter dated December 12, 2011, OWCP referred appellant, together with a statement of accepted facts (SOAF), a list of questions, and the medical record, to Dr. James P. Elmes, a Board-certified orthopedic surgeon, for a second opinion. In a January 3, 2012 report, Dr. Elmes reviewed the SOAF and medical record and provided examination findings. He diagnosed right ankle sprain, right plantar fasciitis, nonspecific right foot and right ankle pain, right ankle deconditioning, nonspecific low back pain, and exogenous obesity. Dr. Elmes opined that appellant's diagnosed right ankle and right foot conditions were medically connected to her accepted January 15, 2011 employment injury. He concluded, however, that she could return to modified-duty work with restrictions on a graduated work schedule for six weeks and then return to full-duty work.

On March 16, 2012 OWCP found a conflict in medical opinion between Drs. Elmes, Antony, and Bielinski regarding whether appellant continued to have work-related disability and need for further medical treatment. To resolve this conflict, it referred her to Dr. Jaroslaw B. Dzwinyk, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an April 23, 2012 report, Dr. Dzwinyk related a history of the January 15, 2011 employment injury and appellant's medical treatment, and reviewed the medical record. On physical examination, he reported that she was cooperative and exhibited no pain behaviors. Appellant had a normal gait. On examination of the right ankle, Dr. Dzwinyk found no swelling or discoloration. Tenderness to superficial palpation was elicited diffusely in all aspects of the ankle, heel, etc. Passive range of motion was recorded at 20 degrees of dorsiflexion and 50 degrees of plantar flexion. Subtalar motion was unrestricted and painless. Dr. Dzwinyk reviewed x-rays of the right ankle performed at the time of injury which revealed no abnormalities.

A magnetic resonance imaging (MRI) scan ordered by Dr. Richard N. Egwele, a Board-certified orthopedic surgeon, dated March 30, 2011 demonstrated nonspecific edema of the medial talar dome, possibly bony contusion with no other abnormalities. An October 20, 2011 right ankle MRI scan showed no change from the previous study with a small area of mild bony edema noted on the medial aspect of the talar dome. There was no associated fracture or

evidence of articular cartilage disruption. Dr. Dzwinyk diagnosed resolved right ankle sprain causally related to the accepted January 15, 2011 work injury. He related that appellant's current symptoms were out of proportion to objective findings on physical examination and radiologic imaging. Dr. Dzwinyk opined that she was fit to return to full duties as a city letter carrier without any work restrictions. He concluded that no additional treatment was required for the accepted January 15, 2011 work-related injury as this condition had resolved.

In duty status reports (Form CA-17), treatment notes, and attending physician's reports (Form CA-20) dated April 2, 2012 to February 7, 2013, Dr. Joseph G. Thometz, a Board-certified orthopedic surgeon, found that appellant had a right ankle sprain causally related to her January 15, 2011 work injury. He advised that she could return to work with restrictions as of April 2 and June 7, 2012. A March 6, 2012 functional capacity evaluation (FCE), performed by a physical therapist on behalf of Dr. Thometz, indicated that appellant could perform modified light-duty work.

By notice dated February 28, 2013, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Dzwinyk's April 23, 2012 report. It afforded her 30 days to submit additional evidence or argument regarding the proposed termination.

In a treatment note and Form CA-20 report dated March 25, 2013, Dr. Thometz reiterated his diagnosis of right ankle sprain, opinions on causal relationship, and appellant's capacity to perform light-duty work. On the form report, he checked a box marked "yes" in response to a question regarding whether appellant's diagnosed condition was work related.

By decision dated April 12, 2013, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that day. It found that the weight of the medical opinion evidence rested with Dr. Dzwinyk's April 23, 2012 report.

On April 16, 2013 appellant requested an oral hearing before an OWCP hearing representative. In an August 7, 2013 letter, she contended that she had a life-altering right ankle injury and other conditions that may never resolve.

Appellant submitted a December 22, 2011 work capacity evaluation (Form OWCP-5c) from Dr. Bielinski who advised that appellant was unable to perform her usual job because she could not walk or stand for prolonged periods, but she could work eight hours a day with restrictions. Dr. Bielinski noted that the restrictions were indefinite. In an undated Form CA-20 report, she provided a history that appellant had fallen while delivering mail. Dr. Bielinski diagnosed sprain, plantar fasciitis, and tarsal tunnel of the right ankle. She indicated with an affirmative mark that the diagnosed conditions were caused or aggravated by work activity. Dr. Bielinski advised that appellant was totally disabled from January 15, 2011 through February 2, 2012. She concluded that appellant could perform sedentary work.

In a January 13, 2012 report, Dr. Juan Valdez, a Board-certified physiatrist, found that nerve conduction and electromyogram (NC/EMG) studies of appellant's right foot and ankle were consistent with right tarsal tunnel syndrome.

In December 13, 2012 to July 31, 2013 form reports and treatment notes, Dr. Thometz reiterated his diagnosis of right ankle sprain, and opinions on causal relationship and appellant's work capacity. His opinion on causal relationship consisted of a checkmark in a box marked "yes" in response to whether her condition was work related.

On August 13 and September 27, 2013 Dr. Malcom D. Herzog, a podiatrist, provided a history of the January 15, 2011 work injury. He noted appellant's complaint of severe radiating pain both proximally and distally along the course of the posterior tibial nerve, intermittent burning, numbness, and tingling along the plantar aspect of the right foot, and intermittent burning numbness and tingling in the first second and third toes of the right foot. Appellant's pain was becoming more severe. Dr. Herzog reviewed an August 9, 2013 MRI scan which revealed a sprained anterior talar ligament along the anterior lateral aspect of the right ankle, fusion within the posterior capsule recess of the ankle joint capsule with a ganglion cyst, and degenerative osteoarthropathy involving the sub-talar joints of the right rear foot. He diagnosed anterior talofibular ligament sprain, lateral gutter syndrome, tarsal tunnel syndrome, and bursitis tenosynovitis of the right foot.

Dr. Herzog opined that appellant had sustained a work injury in January 2011 and that she continued to suffer extreme pain in the anterior talofibular ligament region and the lateral gutter area of her right foot. He noted that she had developed consequential injuries causing the tarsal tunnel area of her right foot to be extremely active and painful. Dr. Herzog noted that if physical therapy and conservative modalities were not approved, appellant's condition would worsen and result in her prolonged disability and possible surgery, including right foot tarsal tunnel release, anterior talofibular ligament repair, and lateral gutter release. In the September 27, 2013 report, he described the development of consequential right ankle tarsal tunnel syndrome. Due to lateral ankle instability appellant ambulated with a supinated gait which created a tri-plane motion consisting of simultaneous adduction, plantar flexion, and inversion of the right foot. This created impingement of the tarsal tunnel canal and resulted in tarsal tunnel syndrome. Dr. Herzog opined that appellant's tarsal tunnel syndrome was a direct result of her work-related injury. In CA-17 and CA-20 form reports dated September 17, October 22, and November 26, 2013, he noted that the date of injury was January 15, 2011 and diagnosed right ankle sprain. In the CA-20 form reports, Dr. Herzog indicated by checking a box marked "no" that appellant's right ankle sprain was not caused or aggravated by an employment activity. He advised that she could not perform her regular work, but she could work with permanent restrictions.

In a December 5, 2013 decision, an OWCP hearing representative affirmed the April 12, 2013 termination decision. He found that the medical evidence submitted was insufficient to outweigh Dr. Dzwinyk's April 23, 2012 impartial medical opinion.

On January 16, 2014 appellant requested reconsideration and a review of the written record by an OWCP hearing representative.

In clinical notes dated September 17, 2013 to January 7, 2014, Dr. Herzog related that appellant had continued symptoms. He reiterated his opinion that she had developed tarsal tunnel of the medial aspect of the right ankle as a consequence of her accepted January 15, 2011 employment injury. In an undated letter, Dr. Herzog noted that he checked the wrong box on the

November 26, 2013 Form CA-20 report. He should have responded “yes” to the question whether the diagnosed condition was caused or aggravated by an employment activity.

In CA-20 and CA-17 form reports dated September 17, 2013 to March 25, 2014, Dr. Herzog reiterated his diagnoses of anterior talofibular ligament sprain, lateral gutter syndrome, tarsal tunnel syndrome, and bursitis tenosynovitis of the right foot. In the CA-20 form reports, he indicated with an affirmative mark that the diagnosed conditions were caused or aggravated by an employment activity. Dr. Herzog advised that appellant was totally disabled commencing August 13, 2013.

In an April 4, 2014 decision, OWCP denied appellant’s request for a review of the written record. As she had previously received an oral hearing, appellant was not entitled to a second hearing or a review of the written record as a matter of right. OWCP considered the request within its discretion and found that the matter could be equally well addressed through reconsideration.

On April 19, 2014 appellant requested reconsideration of the April 12, 2013 decision and submitted evidence. In CA-20 and CA-17 form reports and clinical notes dated February 25 to June 10, 2014, Dr. Herzog noted appellant’s continuing right ankle and right foot symptoms. He reiterated his diagnoses of anterior talofibular ligament sprain, lateral gutter syndrome, tarsal tunnel syndrome, and bursitis tenosynovitis of the right foot. Dr. Herzog also reiterated that appellant was totally disabled as of August 13, 2013. In the April 29, 2014 CA-20 form report, he again indicated with an affirmative mark that the diagnosed conditions were caused or aggravated by work activity.

In a July 7, 2014 decision, OWCP denied modification of the April 4, 2014 decision. It found that the medical evidence submitted was insufficient to outweigh the special weight accorded to Dr. Dzwinyk’s April 23, 2012 impartial medical opinion.

On January 15, 2015 appellant requested reconsideration. In CA-20 form reports dated June 10 to November 18, 2014, Dr. Herzog again indicated with a checkmark that appellant’s anterior talofibular ligament sprain, lateral gutter syndrome, tarsal tunnel syndrome, and bursitis tenosynovitis of the right foot were caused or aggravated by the January 5, 2011 employment incident. He advised that she could return to light-duty work on August 18, 2014. In CA-17 form reports, an excuse/return to work note, and a light-duty status report dated July 8 to October 17, 2014, Dr. Herzog reiterated his diagnosis of right ankle sprain and opinion regarding appellant’s work capacity. In CA-17 form reports dated September 16, October 17, 2014, he advised her that she could return to full-time regular work with restrictions. In a February 3, 2015 Form CA-17 report, Dr. Herzog released appellant to full-time regular work with no restrictions. In reports and a clinical note dated July 8 and 15, 2014, he again opined that she had right foot tarsal tunnel syndrome as a result of her January 15, 2011 work injury and that her condition would worsen if the necessary medical treatment was not approved. Dr. Herzog also reiterated the development of injury provided in his previous September 27, 2013 report. In clinical notes dated September 16 and November 18, 2014, and January 6, 2015, he recommended that appellant could return to light-duty work with a slight increase in her work duties until she could perform full-duty tasks. On September 16, 2014 Dr. Herzog ordered an FCE.

By decision dated April 10, 2015, OWCP denied modification of the July 7, 2014 decision. It found that Dr. Herzog's reports were insufficient to establish that appellant had any continuing residuals or disability due to her January 15, 2011 work injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.² It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁶

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁷ For a conflict to arise the opposing physicians viewpoints must be of virtually equal weight and rationale.⁸ Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of April 12, 2013. OWCP accepted that on January 15, 2011 appellant sustained a right ankle sprain while in the performance of duty. She stopped work on January 21, 2011. OWCP determined that a conflict in medical evidence had been created between the opinions of appellant's treating physicians, Dr. Antony and Dr. Bielinski, and the OWCP referral physician, Dr. Elmes, as to whether appellant continued to be disabled

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

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

⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁷ 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

⁹ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

due to residuals of her accepted condition. It referred appellant to Dr. Dzwinyk for an impartial medical examination pursuant to 5 U.S.C. § 8123(a).

Dr. Dzwinyk conducted an impartial medical examination on April 23, 2012 and reviewed appellant's history of injury and medical history. He diagnosed resolved right ankle sprain causally related to the accepted January 15, 2011 work injury. Dr. Dzwinyk performed an extensive review of the medical records and found essentially normal findings on examination which led him to opine that appellant's accepted injury had resolved. He advised that her current symptoms were out of proportion to objective findings on physical examination and radiologic imaging. Dr. Dzwinyk opined that appellant was fit to return to full duties as a city letter carrier without any work restrictions. He concluded that no additional treatment was required for the accepted January 15, 2011 work-related injury.

The Board finds that Dr. Dzwinyk's report represents the weight of the medical evidence. Dr. Dzwinyk provided a detailed report reviewing the medical and employment injury history, medical records, and physical examination findings. He concluded, with supporting medical rationale, that appellant had no residuals from the accepted right ankle condition and was able to return to full-duty work without limitations. As Dr. Dzwinyk's report is based on a proper factual history, he provided findings and included rationalized medical reasoning, supporting his conclusions, the Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits.¹⁰

The Board further finds that the additional medical evidence submitted by appellant prior to the termination of benefits is insufficient to overcome the weight accorded to Dr. Dzwinyk or to create a new medical conflict. Dr. Thometz's form reports and treatment notes dated April 2, 2012 to February 7, 2013 are of diminished probative value. In the Form CA-20 reports, he used only an affirmative mark to relate his opinion on causal relationship. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.¹¹ Other reports from Dr. Thometz also did not provide any medical rationale to support that appellant had continuing residuals or disability attributable to the January 15, 2011 right ankle sprain.¹² Thus, this evidence is of limited probative value.

The Board finds that OWCP met its burden of proof to terminate appellant's benefits effective April 12, 2013.

LEGAL PRECEDENT -- ISSUE 2

It is well established that after termination or modification of 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

¹⁰ See *Bryan O. Crane*, 56 ECAB 713 (2005).

¹¹ *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹² See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

substantial evidence that she had an employment-related disability or residuals which continued after termination of compensation benefits.¹³

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained a right ankle sprain. It properly terminated her wage-loss compensation and medical benefits effective April 12, 2013 based on the opinion of Dr. Dzwinyk, the referee physician, who found that the accepted right ankle sprain had ceased without residuals and that appellant could return to her regular work duties with no restrictions. The burden then shifted to appellant to demonstrate that she continued to have residuals or disability for work on and after April 12, 2013 due to the accepted injury.¹⁴

After the termination of benefits, appellant submitted numerous medical reports. Reports from Dr. Herzog dated August 13 and September 27, 2013 listed findings and diagnosed appellant with anterior talofibular ligament sprain, lateral gutter syndrome, tarsal tunnel syndrome, and bursitis tenosynovitis of the right foot. He opined that she continued to have residuals and consequential injuries from the accepted January 2011 work injury as she had extreme pain in the anterior talofibular ligament region and lateral gutter area of her right foot. Dr. Herzog related that appellant's consequential right ankle tarsal tunnel syndrome resulted from lateral ankle instability which caused her to ambulate with a supinated gait that created a tri-plane motion consisting of simultaneous adduction, plantar flexion, and inversion of the right foot which created impingement of the tarsal tunnel canal.

While Dr. Herzog supported causal relationship, he did not clearly explain the mechanism through which the January 15, 2011 accepted right ankle sprain caused the tarsal tunnel syndrome. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁵ Dr. Herzog also provided various Form CA-20 reports which indicated with an affirmative mark that the diagnosed condition was caused by the accepted January 15, 2011 employment injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.¹⁶ Consequently, these form reports are of diminished probative value and insufficient to meet appellant's burden of proof.

Appellant also provided an undated Form CA-20 report from Dr. Bielinski which also indicated with an affirmative mark that appellant had a sprain, plantar fasciitis, and tarsal tunnel of the right ankle causally related to the accepted January 15, 2011 injury. As explained, a physician's opinion on causal relationship, which consists only of checking a box marked "yes" to a form question has little probative value.¹⁷ Furthermore, Dr. Bielinski was on one side of the

¹³ See *Virginia Davis-Banks*, 44 ECAB 389 (1993); see also *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

¹⁴ *Virginia Davis-Banks*, *id.*

¹⁵ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁶ See *supra* note 11; see also *Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁷ *Id.*

conflict in medical evidence that was resolved by Dr. Dzwinyk. The Board has held that submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally, insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.¹⁸ Similarly, Dr. Thometz provided Form CA-20 reports subsequent to the termination of benefits which provided diagnoses and checked a box “yes” on the form as to whether appellant’s condition was work related. He did not provide any medical rationale to support his opinion on causal relationship. Thus, this evidence is of limited probative value and insufficient to meet appellant’s burden of proof.

Other medical evidence received by OWCP after the termination of benefits is of limited probative value as it does not specifically address whether appellant’s condition is causally related to the January 15, 2011 right ankle sprain. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹⁹

For these reasons, the medical evidence submitted after OWCP’s termination of benefits is insufficient to meet appellant’s burden of proof to establish continuing residuals or disability due to her accepted right ankle condition.

On appeal, appellant contends that she sustained a work-related ankle injury. She further contends that the employing establishment offered her a modified job assignment and then refused to allow her to perform the job which resulted in the termination of her case. OWCP accepted appellant’s claim for a right ankle sprain and paid compensation benefits. As discussed above, her wage-loss compensation and medical benefits were terminated because the medical evidence established that she no longer had any residuals or disability causally related to her accepted January 15, 2011 employment 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 properly terminated appellant’s wage-loss compensation and medical benefits effective April 12, 2013. The Board further finds that appellant failed to meet her burden of proof to establish any continuing employment-related residuals or disability after April 12, 2013.

¹⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁹ *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo, id.*; *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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