

FACTUAL HISTORY

On May 20, 2010 appellant, a 50-year old census enumerator, injured his right ankle when he slipped and fell in a hole. He filed a traumatic injury claim (Form CA-1), which OWCP accepted for right ankle sprain, other specified sites, right fracture of other tarsal and metatarsal bones, and closed fracture of the fifth right metatarsal. Appellant began his temporary duties as a census enumerator on April 22, 2010. He stopped work on the date of injury, received continuation of pay from May 21 through July 24, 2010 and began receiving wage-loss compensation on the periodic rolls, effective July 5, 2010. Appellant continued to receive compensation except for brief intermittent periods of employment.

In a report dated March 2, 2011, Dr. Edwin Haronian, a specialist in orthopedic surgery and appellant's treating physician, advised that the condition of appellant's right ankle and right ankle fractures had reached the level of maximum medical improvement as well as permanent and stationary status. He reported that appellant could return to work with work restrictions of no walking on uneven terrain, no repetitive squatting activities and no prolonged stair climbing. Dr. Haronian asserted, however, that if the employing establishment was unable to accommodate these work restrictions, then appellant could be considered a qualified injured worker. He advised that appellant should have access to medications, orthopedic and podiatric re-evaluations, durable medical goods, possible physiotherapy, and further diagnostic studies if necessary. Dr. Haronian also instructed that appellant be provided with injections to alleviate pain in his right ankle if needed and recommended that a right ankle arthroscopy be considered if his pain increased in severity.

In an August 6, 2012 report, Dr. Haronian advised that appellant was experiencing chronic pain in his right ankle and right foot which limited his daily living activities. He recommended that appellant engage in activities which did not aggravate his symptoms.

To determine appellant's current condition and ascertain whether he still suffered residuals from his accepted conditions, OWCP referred appellant for a second opinion examination with Dr. Frederic G. Nicola, Board-certified in orthopedic surgery. In an August 27, 2013 report, Dr. Nicola reviewed appellant's medical history, the statement of accepted facts, and related his findings on examination. He advised that appellant's injuries had healed with no residuals and noted that he was able to perform all duties without restrictions. Dr. Nicola reported that appellant's right foot fracture at the base of the fifth metatarsal had healed uneventfully with no objective residuals, although he did have mild subjective complaints. He further asserted that appellant's right ankle sprain had resolved without residuals. Dr. Nicola reported that appellant's physical examination was normal and that he had normal radiographic studies for the right fifth metatarsal fracture and right ankle sprain. He concluded that appellant had no physical limitations, was able to perform all duties without restriction, and required no further treatment for the May 20, 2010 employment injury.

In an August 27, 2013 work capacity evaluation (Form OWCP-5c), Dr. Nicola indicated that appellant was capable of performing his usual job without restrictions and had reached maximum medical improvement.

On October 8, 2013 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Nicola's referral opinion, established that his accepted right ankle and right foot conditions had ceased and that he had no work-related residuals stemming from this condition.

In a duty status report of November 6, 2013, received by OWCP on November 25, 2013, Dr. Haronian asserted that appellant could work modified duty, with restrictions of no walking on uneven terrain, no repetitive squatting or prolonged climbing.

By decision dated November 25, 2013, OWCP terminated appellant's compensation for wage-loss and medical benefits, finding that Dr. Nicola's referral opinion represented the weight of the medical evidence.

On December 2, 2013 appellant requested a review of the written record by an OWCP hearing representative. He did not submit any additional medical evidence with his request.

By decision dated May 19, 2014, an OWCP hearing representative affirmed the November 25, 2013 termination decision, finding that Dr. Nicola's referral report was sufficient to establish that the accepted conditions of fractured right ankle and fractured right fifth metatarsal had resolved.

By letter dated and received on June 11, 2014 appellant requested reconsideration.

In a report dated May 13, 2014, received by OWCP on August 29, 2014, Dr. Haronian opined that appellant was experiencing continued compensatory pain in his right knee, which was a direct and compensable consequence of the original right foot injury. He noted that appellant was also complaining of continued right foot pain stemming from his fracture of the fifth metatarsal. Dr. Haronian reported that appellant had been declared permanent and stationary for that injury and that he was being seen on the basis of his need for future medical care for his right foot. He advised that he would continue with conservative medical management.

By decision dated September 10, 2014, OWCP denied modification.

By letter dated October 8, 2014, appellant again requested reconsideration.

In a report dated September 25, 2014, Dr. Haronian reiterated that appellant had complaints of chronic pain of his right ankle and subsequently developed right knee pain due to the consistent and persistent pain in his right ankle. He advised that appellant had to alter the dynamic of his ambulation due to the pain in the right ankle, which resulted in pain in his right knee. Dr. Haronian opined that appellant's pain was industrially related, that his current condition was a direct result of an occupation injury and that therefore his medical treatment was causally related to the work injury. He advised that his work status remained unchanged as permanent and stationary.

On June 15, 2015 appellant again requested reconsideration.

In a report dated February 12, 2015, received by OWCP on June 15, 2015, Dr. Haronian advised that appellant underwent a magnetic resonance imaging (MRI) scan of the right knee on February 2, 2015, the results of which showed a cleavage tear at the posterior horn and body of the lateral meniscus, in addition to a radial tear of the anterior horn. Appellant also had an MRI scan of his right foot on February 2, 2015; this test showed no evidence of right foot fracture, contusion or stress reaction, although osteoarthritic changes were noted in the first digit. Dr. Haronian reported that appellant had continued complaints of right knee pain, with mild catching and locking, especially when climbing stairs. Appellant also complained of tenderness on the back of the right ankle as well. On physical examination he had patellar crepitus on flexion and extension with lateral joint line tenderness. Dr. Haronian noted tenderness in the right heel and decreased range of motion in dorsiflexion and plantarflexion due to pain. He opined that appellant was a candidate for arthroscopic knee surgery but noted that he preferred conservative treatment at that time. Dr. Haronian continued appellant on work restrictions.

By decision dated September 3, 2015, OWCP denied modification, finding that appellant's benefits were properly terminated based upon the report of Dr. Nicola, and that Dr. Haronian's new reports did not establish that appellant's right knee condition was causally related to his May 20, 2010 employment injury.

LEGAL PRECEDENT -- ISSUE 1

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.² 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 require further medical treatment.³

ANALYSIS -- ISSUE 1

In his August 27, 2013 report, Dr. Nicola, the second opinion physician, found that appellant had no residuals from his accepted May 20, 2010 employment injury and noted that he was able to perform all employment duties without restrictions. Dr. Nicola asserted that his physical examination was normal and reported that he had normal radiographic studies for the right fifth metatarsal fracture and right ankle sprain. He opined that appellant's right foot fracture at the base of the fifth metatarsal had healed uneventfully with no objective residuals, although he did have mild subjective complaints. Dr. Nicola further asserted that appellant's right ankle sprain had resolved without residuals. He opined that appellant had no physical limitations, was able to perform all duties without restriction and required no further treatment for the May 20, 2010 employment injury. OWCP relied on Dr. Nicola's opinion in its November 25, 2013 decision, when terminating appellant's wage-loss compensation and medical benefits, finding that appellant had no continuing disability or impairment causally related to his right ankle sprain and fractured right fifth metatarsal conditions.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *T.P.*, 58 ECAB 524 (2007).

The Board finds that Dr. Nicola's second opinion is probative and well rationalized and represents the weight of the medical evidence. His report is sufficient to establish that appellant's accepted right ankle sprain and right fifth metatarsal fracture had resolved without residuals.

The progress reports from Dr. Haronian submitted prior to the termination of appellant's compensation benefits merely indicated that appellant experienced some right ankle and right foot pain following surgery and remained off work. He asserted in his November 6, 2013 work status report that appellant's condition was permanent and stationary and could perform modified work with restrictions. These reports do not contain a probative, rationalized medical opinion, with objective findings, indicating that appellant was totally disabled due to his work-related right ankle sprain and right fifth metatarsal fracture. The weight of the medical evidence establishes that appellant no longer has any residuals from these conditions. The Board therefore finds that Dr. Nicola's opinion constituted the weight of medical opinion and supports OWCP's November 25, 2013 decision to terminate appellant's wage-loss compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.⁴ To establish causal relationship between the condition, any attendant disability, and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ To prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁷

ANALYSIS -- ISSUE 2

Following the November 25, 2013 termination decision, appellant requested a review of the written record, but did not submit any additional medical evidence. In a May 19, 2014 decision, the OWCP hearing representative affirmed the November 25, 2013 termination decision. Appellant subsequently submitted progress reports from Dr. Haronian, his treating physician, who found that appellant had ongoing, chronic right ankle and right foot discomfort, in addition to right knee pain. These reports indicated that appellant was able to work with restrictions, but did not provide any probative medical rationale to support any subsequent disability causally related to his accepted right ankle sprain and right foot fracture. Dr. Haronian advised that appellant's right foot condition had resulted in an altered, compensatory gait which

⁴ See V.A., Docket No. 15-1073 (issued November 25, 2015).

⁵ See C.P., Docket No. 15-0617 (issued August 4, 2015).

⁶ See *id.*

⁷ See J.A., Docket No. 15-0908 (issued August 6, 2015).

resulted in a consequential right knee condition. OWCP, however, has not accepted a claim for a right knee condition and appellant has not filed such a claim. A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁸

In his May 13, 2014 report, Dr. Haronian opined that appellant was experiencing continued compensatory pain in his right knee as a direct and compensable consequence of the original right foot injury. He also reported that he had continued right foot pain stemming from his fracture of the fifth metatarsal. In a September 25, 2014 report, Dr. Haronian reiterated that appellant had complaints of chronic pain of his right ankle and subsequently developed right knee pain due to the consistent and persistent pain in his right ankle. He opined that appellant had to alter the dynamic of his ambulation due to the pain in the right ankle, which resulted in pain in his right knee. Dr. Haronian asserted that appellant's pain was industrially related, that his current condition was a direct result of an occupation injury and that therefore his medical treatment was causally related to the work injury. He noted that his work status remained permanent and stationary. In a February 12, 2015 report, Dr. Haronian reported that appellant underwent a right knee MRI scan on February 2, 2015 which showed a cleavage tear at the posterior horn and body of the lateral meniscus and a radial tear of the anterior horn; an MRI scan of his right foot taken on the same day revealed no evidence of right foot fracture, contusion or stress reaction. While he reported that appellant had continued complaints of right knee pain and tenderness on the back of the right ankle, he provided no rationalized opinion, with supporting objective findings that appellant had continuing residuals of his right ankle injury, which could have caused any further employment-related disability.

Dr. Haronian did not provide a well-reasoned and sufficiently supported opinion that would vitiate OWCP's November 25, 2013 termination of benefits. Thus, appellant has not established continuing disability causally related to the May 20, 2010 right ankle sprain and right foot fracture.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective November 25, 2013. Appellant has not met his burden to establish continuing disability or residuals causally related to his accepted conditions.

⁸ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson, *The Law of Workers' Compensation* § 1300; see *Charles W. Downey*, 54 ECAB 421 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board