

FACTUAL HISTORY

This case was previously before the Board.² The facts and circumstances surrounding the prior appeal are incorporated herein by reference. The relevant facts follow.

On November 1, 2013 appellant, then a 50-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2013 he sustained plantar fasciitis of his left foot/heel. He stopped work on October 26, 2013. By decision dated February 5, 2014, OWCP accepted the claim for an occupational disease of left plantar fibromatosis. In an October 9, 2014 decision, it terminated appellant's wage-loss compensation and medical benefits effective October 8, 2014. The termination was based on the August 8, 2014 report of Dr. Stanley Askin, a Board-certified orthopedic surgeon and second opinion specialist, who found that appellant's accepted condition had resolved, his disability had ceased, and any limitations on his physical ability to work did not relate to the October 23, 2013 employment injury. By decision dated March 12, 2015, a hearing representative affirmed the October 9, 2014 decision terminating appellant's medical and wage-loss compensation benefits, finding that he failed to establish continuing disability on or after October 8, 2014 causally related to the accepted employment-related conditions. It noted that the weight of the medical evidence rested with Dr. Askin. On August 18, 2015 the Board affirmed OWCP's October 9, 2014 and March 12, 2015 decisions to terminate medical benefits and wage-loss compensation effective October 8, 2014 and further found that appellant failed to establish continuing employment-related disability on or after October 8, 2014 as a result of his accepted October 23, 2013 employment injury.³ The Board's review of the previous evidence of record is *res judicata*.⁴

Following the Board's August 18, 2015 decision, appellant requested reconsideration. In an October 21, 2015 narrative statement, he stated that his left foot injury was caused by his city carrier duties which entailed carrying 50 to 60 pounds of mail on his back, on grassy and paved residential developments, 5 to 6 days a week, 7 to 9 hours per day, for approximately 5 to 6 months. Appellant argued that his left plantar fasciitis caused his back condition as evidenced by magnetic resonance imaging (MRI) scans and electromyography (EMG) studies establishing nerve damage. He noted that this was established in reports provided by his treating physician, Dr. Jeffrey R. Gleimer, a doctor of osteopathic medicine. Appellant's reconsideration request was accompanied by an October 13, 2015 report from Dr. Gleimer.

In his October 13, 2015 report, Dr. Gleimer noted appellant's complaints of pain in the left foot and lower back. He provided findings on physical examination and diagnosed lumbar radiculopathy, epidural lipomatosis most severe at L5-S1, and herniated nucleus pulposus at L5-S1, central to left paracentral. Dr. Gleimer opined that given appellant's work-related responsibilities, carrying approximately 50 to 60 pounds of mail per day on his back with pedestrian-type deliveries 5 to 6 days a week, 7 to 9 hours a day, over a 4- to 5-month time

² Docket No. 15-0907 (issued August 18, 2015).

³ *Id.*

⁴ See *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014). As the Board has previously reviewed the evidence of record submitted prior to OWCP's April 8, 2013 decision, the issue of its weight is *res judicata* and not subject to further consideration by the Board.

period, resulted in local aggravation of his foot pain, but most specifically in a herniated disc in his low back and subsequent radiculopathy. He explained that this radicular pain was corroborated by the EMG and nerve conduction velocity (NCV) findings of bilateral S1 radiculopathy.⁵ Dr. Gleimer further noted that appellant was more symptomatic on the left than the right which was consistent with his lumbar disc injury as a result of his repetitive work-related responsibilities. Dr. Gleimer concluded that his recommendations for restrictions in his work-related capacity were maintained.

By decision dated January 21, 2016, OWCP denied modification of its prior decision, finding that the medical evidence failed to establish any residuals or disability due to his accepted work-related condition. It noted that the weight of the medical evidence remained with Dr. Askin's August 8, 2014 report.

LEGAL PRECEDENT

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the employee. In order to prevail, the employee must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁶

For conditions not accepted by OWCP as being employment 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.⁷

ANALYSIS

OWCP accepted that appellant developed left plantar fibromatosis as a result of the October 23, 2013 work-related injury. Effective October 8, 2014, it terminated compensation and medical benefits based on Dr. Askin's August 8, 2014 second opinion evaluation finding that appellant's accepted condition had resolved with no continuing residuals related to his October 23, 2013 work injury. The Board previously affirmed OWCP's decision to terminate medical benefits and wage-loss compensation.

Once OWCP has properly modified or terminated benefits, the burden of reinstating benefits shifts to the employee.⁸ Because OWCP properly terminated benefits, the only

⁵ In a July 11, 2014 report, Dr. Anette Brzozowski, a doctor of podiatric medicine, noted that review of an EMG study revealed left S1 radiculopathy, left L4 lumbar radiculopathy, and right L5-S1 radiculitis. In a November 10, 2014 EMG/NCV study of the right lower extremity, Dr. T.J. Citta-Pietrolungo, a doctor of osteopathic medicine, reported that testing revealed right S1 radiculopathy, right L5 lumbar radiculopathy, right tibial neuropathy, and no evidence of lumbar plexopathy or myopathy.

⁶ *I.J.*, 59 ECAB 408 (2008); *Gary R. Sieber*, 46 ECAB 215, 222 (1994); see *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁷ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ *Joseph A. Brown Jr.*, 55 ECAB 542 (2004).

remaining question is whether appellant has since demonstrated any employment-related residuals or disability on or after October 8, 2014.⁹ The Board finds that the medical evidence received after March 12, 2015 does not establish that he continues to suffer from residuals or disability from his October 23, 2013 employment injury.¹⁰

The only new evidence received following OWCP's last merit review on March 12, 2015 was Dr. Gleimer's October 13, 2015 medical report which related appellant's herniated disc and subsequent radiculopathy to his employment duties. The Board finds that Dr. Gleimer's report fails to establish continuing employment-related residuals or disability on or after October 8, 2014 as a result of his accepted October 23, 2013 employment injury.¹¹

In his October 13, 2015 report, Dr. Gleimer does not discuss the previously accepted condition of left plantar fibromatosis. Rather, he diagnosed lumbar radiculopathy, epidural lipomatosis most severe at L5-S1, and herniated nucleus pulposus at L5-S1, conditions which were not previously accepted. Dr. Gleimer opined that given appellant's work-related responsibilities, carrying approximately 50 to 60 pounds of mail per day on his back with pedestrian-type deliveries 5 to 6 days a week, 7 to 9 hours a day, over a 4- to 5-month time period, resulted in local aggravation of his foot pain, but most specifically in a herniated disc in his low back and subsequent radiculopathy. While it appears that Dr. Gleimer has some understanding of appellant's employment duties, his statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to the previously accepted claim. Dr. Gleimer appears to be outlining factors of a new occupational disease claim, namely, how walking for extended periods of time while carrying 50 to 60 pounds of mail affected his lower back.

While appellant's narrative statement of October 21, 2015 suggested that his October 21, 2015 left plantar fasciitis condition caused his back condition, Dr. Gleimer did not explain how the initial left plantar fasciitis injury would result in a herniated disc and radiculopathy.¹² Without explaining how physiologically the previously accepted employment injury caused or contributed to the additional lumbar conditions, his opinion on causal relationship is equivocal in nature and of limited probative value.¹³

With respect to appellant's condition of left plantar fasciitis, Dr. Gleimer noted that appellant complained of severe left foot pain. However, an increase in pain alone does not

⁹ *Id.*

¹⁰ *D.M.*, Docket No. 12-1298 (issued November 7, 2012); *N.F.*, Docket No. 12-95 (issued August 1, 2012).

¹¹ *L.J.*, Docket No. 14-523 (issued August 7, 2014).

¹² Appellant essentially alleged a consequential injury. Once the primary injury is causally connected with the employment, 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. *See S.L.*, Docket No. 14-1250 (issued December 2, 2015).

¹³ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

constitute objective evidence of disability or that his left plantar fasciitis remains unresolved.¹⁴ Dr. Gleimer failed to state that appellant continued to suffer from the initial injury of plantar fibromatosis or that this condition caused him continuing disability.¹⁵ He further failed to provide any explanation as to why appellant was disabled as a result of his original October 23, 2013 work-related injury.¹⁶ As his report contains no rationale explaining why appellant was disabled beginning October 8, 2014, his opinion is insufficient to establish continuing disability on or after October 8, 2014 as a result of his accepted October 23, 2013 employment injury.¹⁷

The Board finds that the record does demonstrate that appellant continues to be disabled from residuals of his October 23, 2013 employment injury. The Board notes that it is appellant's burden to establish continued disability causally related to the October 23, 2013 employment injury.¹⁸ Because appellant has not submitted any reasoned medical opinion evidence to show that he continued to suffer from residuals or disability on or after October 8, 2014 as a result of his accepted plantar fibromatosis injury, the Board finds that appellant has failed to establish his claim for disability compensation.¹⁹

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant failed to establish he has continuing residuals or disability on or after October 8, 2014 as a result of his accepted October 23, 2013 employment injury.

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6.a(2) (June 2013).

¹⁵ *S.T.*, Docket No. 11-1316 (issued January 25, 2012).

¹⁶ *J.H.*, Docket No. 12-1848 (issued May 15, 2013).

¹⁷ See *Sedi L. Graham*, 57 ECAB 494 (2006).

¹⁸ Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment. See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁹ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation. *L.L.*, Docket No. 13-2146 (issued March 12, 2014). See also *William A. Archer* 55 ECAB 674, 679 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2016
Washington, DC

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

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

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