

On appeal appellant argues that OWCP erred in finding that her right ankle condition had resolved with no disability or residuals.

FACTUAL HISTORY

On April 29, 2009 appellant, then a 45-year-old temporary mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 2009 she twisted her right foot and ankle when she stepped out of her postal vehicle. OWCP accepted the claim for right ankle sprain, and later expanded the acceptance to include right plantar fasciitis, as well as a September 9, 2009 claim for a recurrence of disability.³ Appellant received compensation benefits on the periodic rolls as of September 9, 2009.

In an April 16, 2010 report, Dr. Babak Alavynejad, a treating podiatrist, reviewed appellant's history of injury and performed a physical examination. Appellant's physical examination revealed no swelling, tenderness on palpation of the plantar fascia, no pain on tarsal tunnel palpation, and normal range of motion. Dr. Alavynejad opined that appellant continued to suffer from plantar fasciitis, but that she could return to work with no restrictions.

In subsequent reports and work status reports, Dr. Alavynejad provided examination findings and indicated that appellant could return to work with no restrictions.

On June 30, 2010 OWCP referred appellant to Dr. Joseph P. Conaty, a Board-certified orthopedic surgeon, for a second opinion regarding the status of her accepted employment conditions. In a July 13, 2010 report, Dr. Conaty, based upon a review of the medical record and statement of accepted facts (SOAF), diagnosed a resolved right ankle sprain. However, he related that her right foot plantar fascia still caused restrictions. Dr. Conaty opined that appellant was unable to work her date-of-injury job, but was able to work with restrictions. A physical examination revealed an abnormal right weight-bearing gait, normal range of motion, normal muscle strength, and normal neurological examination with mild tenderness in the sinus tarsi and lateral ankle joint. Dr. Conaty also observed no evidence of weakness in the dorsiflexors or plantar flexors. He related that appellant was restricted to two hours of intermittent walking during an eight-hour workday, and four hours of intermittent standing.

By letter dated September 22, 2010, OWCP referred appellant to Dr. Ronald W. Smith, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Alavynejad and Dr. Conaty, regarding appellant's ability to return to work.

In a November 23, 2010 report, Dr. Smith, based upon a review of the medical record, employment injury history, and SOAF, diagnosed right lateral ankle sprain and right plantar fasciitis with symptoms of spasm in the right foot mid-arch. He concluded that appellant required no active medical treatment for her ankle sprain or plantar fasciitis and that she was capable of working. Dr. Smith related that to give appellant "the benefit of the doubt" regarding her plantar fasciitis symptoms, she should continue with work restrictions of carrying up to 20 pounds for six hours in an eight-hour day, and only up to two hours of standing and intermittent sitting in an eight-hour day.

³ Appellant's temporary mail carrier appointment ended December 3, 2009.

On September 24, 2012 OWCP referred appellant to Dr. Smith for a follow-up examination on the issue of appellant's entitlement to benefits. Specifically, Dr. Smith was asked to provide an opinion as to whether the accepted right ankle sprain and right plantar fasciitis had resolved. If he found that the conditions had not resolved he was asked to explain why they had not resolved, and whether they were disabling on an objective basis.

In reports dated September 14 and October 12, 2012, Dr. Alavynejad provided examination findings and an assessment of possible right foot plantar fasciitis and right ankle sprain. He opined that appellant was capable of returning to work with restrictions of up to two hours of limited standing and walking, which was increased to three hours in his October 12, 2012 report.

In a November 5, 2012 report, Dr. Smith noted appellant's symptoms primarily concerned her right ankle although she did have complaints of right heel plantar aspect pain. Physical examination findings were provided and diagnoses of right plantar heel pain and right ankle chronic pain syndrome. Dr. Smith reported that appellant's symptoms exceeded what would be expected based on examination findings. He noted that she likely had a lateral collateral ligament injury which was consistent with hearing a pop at the time of her injury and with magnetic resonance imaging (MRI) scan findings. Dr. Smith concluded that appellant was capable of working a modified light-duty job. He also opined that no further medical treatment was required for appellant's accepted plantar fasciitis.

A notice of proposed termination of wage-loss compensation and medical benefits was issued by OWCP on January 2, 2013.

By decision dated February 7, 2013, OWCP terminated appellant's medical benefits and wage-loss compensation for her right plantar fasciitis as it found that she no longer had any residuals or disability due to this condition.

In a May 9, 2013 report, Dr. Paul A. Anilie, a treating osteopath, diagnosed joint ankle pain and ankle foot sprain/strain. A physical examination revealed right ankle tenderness and restricted range of motion.

In an August 16, 2013 report, Dr. Alavynejad diagnosed right ankle sprain with possible sural neuritis. A physical examination revealed full ankle range of motion, no neurological deficits, and normal strength. Dr. Alavynejad indicated that appellant was capable of working with restrictions. He related that appellant was limited to standing and walking for three hours a day.

In a September 25, 2013 report, Dr. Smith provided an updated review of the medical record and physical examination findings. He requested authorization for appellant to have a right ankle arthroscopic surgical consultation with Dr. Thomas Harris, a Board-certified orthopedic surgeon. Diagnoses included right ankle lateral ankle pain following a 2009 inversion sprain and possible right arthrofibrosis subtalar joint. Dr. Harris noted that appellant had persistent significant symptoms, but there were no signs of measurable calf atrophy and her neurological symptoms were not confirmed by objective evidence. He found no evidence of any right foot plantar fasciitis. Dr. Harris recommended continuing medical care and found no

objective evidence of disability. He attributed appellant's symptoms to her accepted right ankle injury.

Dr. Alavynejad submitted September and October 2014 follow-up podiatric reports, provided examination findings, and indicated that appellant was capable of working with restrictions. Diagnoses included right sural neuritis and right lateral ankle sural neuritis. Range of motion findings were provided, which included guarded right ankle range of motion.

In a December 1, 2014 report, Dr. Ronald E. Bishop, an examining physician specializing in anesthesiology and pain medicine, diagnosed right sural neuritis and possible L5-S1 radiculitis, which was unlikely due to the accepted employment injury. He noted the history of the injury and medical treatment provided and that appellant's chief complaint was right ankle pain. A physical examination revealed trace right ankle swelling, diminished right extensor hallucis and right ankle dorsiflexors strength, and limited ankle range of motion.

Dr. Bishop, in a follow-up pain management report dated January 12, 2015, reported reduced right heel light touch sensation. He diagnosed right lower extremity pain, diagnosed right sural neuritis, and possible L5-S1 radiculitis, which was unlikely due to the accepted employment injury.

On January 26, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Richard A. Rogachefsky, a Board-certified orthopedic surgeon, for an opinion as to whether appellant has any continuing residuals and disability due to her accepted April 20, 2009 employment injury.

In a February 19, 2015 report, Dr. Rogachefsky, based upon a review of the medical evidence, SOAF, and physical examination, noted diagnoses of right ankle sprain, and right foot plantar fasciitis due to the accepted April 20, 2009 employment injury. Physical examination findings included full right ankle range of motion, mild tenderness in the right lateral ankle region on palpation, intact sensory and pulses, slight right ankle lateral aspect fullness, and negative posterior and anterior drawer, varus, and valgus tests. Dr. Rogachefsky reported that appellant continued to have complaints of pain in the right lateral ankle region. A review of the right ankle MRI scan showed anterior talofibular and calcaneofibular ligaments tears and objectively appellant had mild increased lateral ankle region fullness. Dr. Rogachefsky noted minimal physical findings, but opined that no further medical treatment or diagnostic testing was required. He observed that appellant had significant subjective findings with minimal supportive objective findings. Dr. Rogachefsky concluded that appellant had no restrictions and was capable of working full duty.

On March 10, 2015 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits for her right ankle sprain as it determined that she no longer had any residuals or disability due to this condition.

Following the proposal to terminate her benefits, OWCP received a February 19, 2013 report by Dr. F. John Hajaliloo, an examining Board-certified orthopedic surgeon, and February 9, 2015 follow-up pain management report from Dr. Bishop. Dr. Hajaliloo reviewed medical records of treatment provided for appellant's injuries. Physical examination findings

included mild right ankle swelling, abnormal range of motion, and absent sural nerve distribution sensation. Dr. Hajaliloo diagnosed right ankle instability and sural neuritis.

Dr. Bishop, in the February 9, 2015 follow-up pain management report, reiterated findings and diagnoses from his January 12, 2015 report.

By decision dated April 16, 2015, OWCP finalized the termination of appellant's compensation benefits for her accepted right ankle sprain effective May 3, 2015. It found the report of Dr. Rogachefsky, the second opinion physician, constituted the weight of the evidence establishing that her right ankle sprain had resolved with no continuing residuals or disability. OWCP also noted that none of appellant's treating physicians found any objective findings of disability.

Dr. Bishop, in an April 6, 2015 follow-up pain management report, received by OWCP on May 4, 2015, noted reduced right ankle range of motion. He diagnosed right sural neuritis and right lower extremity pain.

In an April 24, 2015 report, Dr. Alavynejad reported full right ankle range of motion, no neurological deficit, and full muscle strength. He diagnosed right sural neuritis and indicated that appellant was capable of working with restrictions of up to two hours of limited walking and standing.

On May 7, 2015 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated October 19, 2015, the hearing representative affirmed the April 16, 2015 decision terminating appellant's compensation benefits for her accepted right ankle sprain.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ After it has determined that an employee has disability causally related to 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.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

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.⁹

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for right ankle sprain and right plantar fasciitis. In a decision dated February 7, 2013, it terminated her compensation benefits for her accepted right plantar fasciitis, but continued to provide medical and wage-loss compensation for her accepted right ankle sprain. By decision dated April 16, 2015, OWCP terminated appellant's compensation benefits for her accepted right ankle condition as it found she no longer required further medical treatment or had any disability due to this condition. A hearing representative affirmed the April 16, 2016 decision terminating benefits for the accepted right ankle condition on October 19, 2015. The issue on appeal is whether OWCP met its burden of proof to terminate appellant's compensation benefits for her accepted right ankle sprain effective May 3, 2015. The Board finds that OWCP improperly terminated appellant's medical and wage-loss benefits.

In its termination decision, OWCP determined that the weight of the medical evidence resided with the opinion of Dr. Rogachefsky, a Board-certified orthopedic surgeon serving as a second opinion physician. However, Dr. Rogachefsky's opinion regarding appellant's disability and residuals contains inconsistent statements and opinions on whether appellant continues to have residuals or disability due to the accepted ankle sprain. In his February 19, 2015 report, Dr. Rogachefsky reported continued residuals from the injury based on the lateral aspect fullness of the right ankle when compared with the normal left ankle. He also found tenderness on palpation and pain in the lateral ankle region. In responding to OWCP's question regarding the need for further medical treatment and surgery options, Dr. Rogachefsky opined that no further medical treatment or surgery was necessary, but noted minimal objective findings, but significant subjective findings. In responding to a question regarding appellant's physical limitations, he opined that appellant was capable of returning to work with no restrictions, but also reported minimal objective findings and subjective complaints. Dr. Rogachefsky opined that appellant had no disability or residuals due to her accepted conditions, but also concluded that appellant continued to have minimal objective findings. Due to the inconsistent responses to questions posed by OWCP in his report regarding appellant's ability to work, the Board finds Dr. Rogachefsky's opinion to be equivocal. The Board has held that a medical report that is equivocal is of diminished probative value.¹⁰ Due to the inconsistencies and equivocal nature of his report, the Board finds that Dr. Rogachefsky's report is insufficient to support OWCP's burden of proof.

⁸ *Kathryn E. Demarsh, id.; James F. Weikel*, 54 ECAB 660 (2003).

⁹ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁰ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

Furthermore, the record contains no other medical reports contemporaneous with the termination of benefits establishing that appellant's accepted ankle sprain had resolved with no residuals. The medical reports from Drs. Alavynejad, Bishop, and Hajaliloo, appellant's treating physicians, provide some support for a continuing employment-related condition.

The Board finds that OWCP failed to satisfy its burden of proof to terminate appellant's medical and wage-loss benefits. The medical evidence of record is insufficiently rationalized to establish that appellant no longer has residuals from her accepted right ankle sprain. Dr. Rogachefsky's report did not establish by the weight of the evidence that appellant no longer had any residuals or disability due to her accepted right ankle sprain. OWCP failed to follow its own procedures to seek clarification from Dr. Rogachefsky.¹¹ Further development of the medical evidence was called for, particularly in light of Dr. Rogachefsky's inconsistent and equivocal report.

Consequently, OWCP has failed to meet its burden to terminate appellant's compensation benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective May 3, 2015. Given the Board's determination regarding the first issue, the Board finds the second issue is moot.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9(j) (June 2015).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 19, 2015 is reversed.

Issued: October 17, 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