

**United States Department of Labor
Employees' Compensation Appeals Board**

B.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 16-0734
Issued: October 19, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 29, 2016 appellant filed a timely appeal from a January 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits as of January 6, 2016 because she no longer had residuals or disability causally related to her accepted employment-related injury.

FACTUAL HISTORY

On October 24, 1997 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed chronic plantar fascia inflammation as a

¹ 5 U.S.C. § 8101 *et seq.*

result of her federal employment duties, which required standing for long periods of time on cement floors for 8 to 12 hours a day. She first became aware of her condition and of its relationship to her employment on April 14, 1997. OWCP accepted the claim for bilateral plantar fibromatosis.

Appellant did not stop work following the filing of her claim and continued working as a mail handler with restrictions in a semi-modified position. Following her date of injury, she worked eight hours maximum per day, with a break between each four hours of standing or walking, with limited standing, walking, lifting, pushing, pulling, and no overtime.

By decision dated March 12, 1999, OWCP reduced appellant's compensation to zero based on its determination that the full-time limited-duty position of mail handler fairly and reasonably represented her wage-earning capacity as she was earning wages at a "saved pay rate," equal to the current grade and step of her date-of-injury job as a mail handler. It determined that appellant had work residuals which required permanent work restrictions, but this did not prevent her from performing her date-of-injury job as a mail handler. As appellant continued to work as a mail handler for eight-hour work shifts since July 1, 1998, she demonstrated her ability to perform her date-of-injury job, resulting in no loss of wages due to the accepted employment injury.

Appellant requested reconsideration on April 26, 1999. OWCP denied modification by its July 29, 1999 decision.

On June 4, 2009 appellant accepted an offer for a modified mail handler position based on her medically-defined work limitations. Her limitations were noted as lifting up to five pounds intermittently; sitting seven hours per day intermittently; standing/walking one hour per day intermittently; and no climbing, kneeling, bending, stooping, twisting, pulling, pushing, simple grasping, fine manipulation, reaching above shoulder, driving a vehicle, and operating machinery.

Appellant continued treatment for her condition. She began treatment with Dr. Aaron J. Fritzhand, a doctor of podiatric medicine, on July 26, 2010.

In an October 31, 2014 report, Dr. Fritzhand reported that he first began treating appellant on July 26, 2010 for pain in her heels. He noted that appellant tried to sit as much as possible at work. Dr. Fritzhand explained that appellant had been seen nine times in his office over the past four years. It had been approximately 1.5 years since she had last been evaluated. Dr. Fritzhand noted that most of appellant's pain was below both heels and that she had been diagnosed with plantar fasciitis of both heels. He further noted that tarsal tunnel syndrome had also been diagnosed based on magnetic resonance imaging (MRI) scan, x-rays, and physical examination. Despite treatment, appellant complained of continued daily discomfort and pain with any increased activity and standing. Dr. Fritzhand opined that her job at the employing establishment contributed to her plantar fasciitis and was aggravating her medical condition.

In a July 6, 2015 report, Dr. Fritzhand reported that appellant complained of persistent heel pain. Physical examination revealed continued pain at the plantar aspect of both heels. Dr. Fritzhand diagnosed chronic plantar fasciitis of both feet, diabetes with possible neuropathy,

bunions on both feet, hammertoes on both feet, possible calcaneal spurs, and pain in limb. He discussed the need for surgery and appellant agreed to undergo the endoscopic plantar fasciotomy procedure. In a July 20, 2015 duty status report (Form CA-17), Dr. Fritzhand provided appellant her ongoing work restrictions for pain in both heels. On July 22, 2015 Dr. Fritzhand requested authorization for an endoscopic plantar fasciotomy.

On July 30, 2015 OWCP referred appellant, a series of questions, a statement of accepted facts (SOAF), and the medical record to Dr. Gerard Papp, a doctor of osteopathic medicine and Board-certified orthopedic surgeon, for a second opinion examination.

In his August 17, 2015 report, Dr. Papp provided findings on physical examination, a history of injury, review of past medical records, and appellant's work limitations. With regard to any residuals of, or any disability from work stemming from the work-related injury, he determined that appellant's current complaints were due to nonwork-related factors and that surgery was not warranted as her work injury had resolved. Dr. Papp explained that her bilateral plantar fibromatosis had resolved, noting that the condition was usually present between 1.5 to 2 years and with symptoms resolving in 6 to 12 months. He noted that her chronic pain was due to nonwork-related factors associated with diabetes mellitus type 2 and neuropathic changes, as well as morbid obesity. Dr. Papp further reported that appellant had been performing modified work duties since 2007 which entailed taking care of damaged mail in a seated position. However, as appellant's condition had resolved and she experienced no residuals of her accepted work condition, he opined that she was capable of performing her usual job without restrictions. Dr. Papp concluded that he did not find injections and endoscopic fasciotomy of the feet to be appropriate treatment.

On November 4, 2015 OWCP notified appellant of a proposal to terminate her medical and wage-loss compensation benefits based on Dr. Papp's report that she was not experiencing any residuals or disability connected to her employment injury as her accepted condition had ceased. Appellant was afforded 30 days to submit additional medical evidence that she still had residuals of the accepted condition.

In support of her claim, appellant submitted an October 16, 2015 narrative report from Dr. Fritzhand. Dr. Fritzhand reported that he began treating appellant on July 26, 2010 for bilateral heel pain for which she had received prior treatment stemming back to April 14, 1997. At the time of his initial July 26, 2016 examination, he diagnosed plantar fasciitis. Dr. Fritzhand explained that he treated appellant for plantar fasciitis over the past five years. While he did not see her consistently over the years, appellant's heel pain continued and restrictions were made at her work to accommodate her pain level. Dr. Fritzhand further noted that appellant was also diagnosed with diabetes and complaints of occasional numbness. He noted that part of her chronic pain could be from diabetic neuropathy. Dr. Fritzhand opined that the original April 14, 1997 date of injury was the start of a long, progressive, chronic heel pain condition. He noted that despite intermittent periods of pain relief, appellant continued to have pain with any increased activity and standing. Dr. Fritzhand concluded that there was a direct correlation between the original injury date and the current pain in her heels, and as such she required work restrictions to accommodate her pain level.

By decision dated January 6, 2016, OWCP terminated appellant's medical and wage-loss compensation benefits effective that same date finding that the weight of the medical evidence rested with Dr. Papp who found that appellant no longer had any residuals related to the accepted work-related medical condition or continued disability as a result of the work injury or illness.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.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 OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

ANALYSIS

OWCP accepted appellant's claim for bilateral plantar fibromatosis as a result of her occupational disease injury on or about April 14, 1997. The issue is whether OWCP properly terminated her medical and wage-loss compensation benefits effective January 6, 2016 as she was not experiencing any residuals or disability of the accepted employment injury. The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical and wage-loss compensation benefits.

In its termination decision, OWCP determined that the weight of the medical evidence rested with Dr. Papp, a Board-certified orthopedic surgeon serving as the second opinion physician. The Board finds that the opinion of Dr. Papp is not well rationalized and fails to represent the weight of the medical evidence.⁸

² 5 U.S.C. § 8102(a).

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Edwin Lester*, 34 ECAB 1807 (1983).

⁵ *Roger G. Payne*, 55 ECAB 535 (2004).

⁶ *Pamela K. Guesford*, 53 ECAB 726 (2002).

⁷ *T.P.*, 58 ECAB 524 (2007); *Furman G. Peake*, 41 ECAB 351 (1975).

⁸ *C.f. Y.M.*, Docket No. 14-1050, 14-1193 (issued December 24, 2014).

In his August 17, 2015 medical report, Dr. Papp opined that appellant's bilateral plantar fibromatosis had resolved and she no longer required treatment. His opinion is insufficient to establish that appellant's condition had ceased and she was no longer experiencing residuals or disability related to the April 14, 1997 employment injury. Dr. Papp's assertion that plantar fasciitis is typically present between 1.5 to 2 years with symptoms resolving in 6 to 12 months lacks sound medical rationale for the stated conclusions. He based his opinion on speculation and not on appellant's individual circumstance as determined through her physical examination and medical history. Dr. Papp's report is insufficiently rationalized to establish that appellant ceased to have residuals of her employment injuries.⁹ As such, his opinion is speculative and of diminished probative value.¹⁰

With regard to any residuals of, or any disability from work stemming from the accepted work injury, Dr. Papp determined that appellant's current complaints were due to nonwork-related factors associated with diabetes mellitus type 2 and neuropathic changes, as well as morbid obesity. He explained that the neuropathic changes of both lower extremities were likely due to high blood sugars and diabetes mellitus, which were causing her chronic pain. While Dr. Papp generally opined that appellant's complaints were due to nonwork-related factors, he failed to provide a fully-rationalized explanation as to why appellant's accepted plantar fibromatosis apparently had no effect on her condition. The Board notes that it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship.¹¹ An employee is not required to prove that occupational factors are the sole cause of his or her claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, it is compensable.¹² OWCP did not seek clarification from Dr. Papp with regard to whether appellant's nonoccupational conditions aggravated her plantar fibromatosis.¹³ Dr. Papp's brief opinion that appellant was capable of performing her job without restrictions was vague and speculative and failed to establish that the work-related condition had resolved.¹⁴

The Board notes that the reports of Dr. Fritzhand, serving as appellant's treating physician, provided support that appellant had continued residuals of the accepted condition. Dr. Fritzhand opined that her job at the employing establishment contributed to her plantar

⁹ V.C., Docket No. 11-1561 (issued February 15, 2012).

¹⁰ See *Leonard J. O Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹¹ H.C., Docket No. 16-0740 (issued June 22, 2016).

¹² See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); see also *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹³ When it refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues. See *Ayanle A. Hashi*, 56 ECAB 234 (2004) (when OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, it should secure an appropriate report on the relevant issues); *Mae Z. Hackett*, 34 ECAB 1421 (1983) (where OWCP referred appellant to a second opinion physician, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).

¹⁴ N.C., Docket No. 15-1855 (issued June 3, 2016).

fasciitis and was aggravating her medical condition. He recommended an endoscopic plantar fasciotomy explaining that appellant's heel pain continued despite work restrictions provided to accommodate her pain level. Dr. Fritzhand concluded that appellant required work restrictions as there was a direct correlation between the original injury date and the current pain in appellant's heels.

The evidence upon which OWCP terminated compensation benefits for the accepted condition of plantar fibromatosis does not establish that the condition has resolved or is unrelated to the accepted work injury.¹⁵

CONCLUSION

The Board finds that OWCP did not meet its burden of proof in terminating appellant's medical and wage-loss compensation benefits effective January 6, 2016.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2016 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 19, 2016
Washington, DC

Christopher J. Godfrey, 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

¹⁵ *P.T.*, Docket No. 09-68 (issued September 2, 2009).