United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
	)	**Docket No. 17-1152**
and	)	**Issued: April 24, 2018**
	)	
DEPARTMENT OF VETERANS AFFAIRS, VETERANS AFFAIRS NEW JERSEY HEALTH CARE SYSTEM, Lyons, NJ, Employer	)	

Appearances:
Michael D. Overman, Esq., for the appellant[1]
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 May 4, 2017 appellant, through counsel, filed a timely appeal from a November 30, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 22, 2016, as her accepted right fifth metatarsal fracture had ceased without residuals.

FACTUAL HISTORY

OWCP accepted that on April 1, 2015 appellant, then a 59-year-old licensed practical nurse, tripped and fell at work on adhesive used to repair an uneven tile floor, twisting her right foot to the lateral side, causing a fracture of the fifth metatarsal of the right foot. Appellant stopped work on that same day. OWCP paid compensation for temporary total disability from May 17 through September 20, 2015.

Appellant was first treated in an urgent care center by Dr. Boris Yakubov, a Board-certified internist. Dr. Yakubov obtained April 2, 2015 x-rays of the right foot demonstrating "[a]cute transversely oriented comminuted nondisplaced intra-articular fractures of the proximal diametaphysis and base of the fifth metatarsal with associated surrounding soft tissue swelling and edema."

Dr. William Hoffman, an attending podiatrist, followed appellant beginning on April 2, 2015. He diagnosed a comminuted fifth right metatarsal base fracture with minimal displacement. Dr. Hoffman noted osteopenia in the bones of the right foot and ankle. He submitted periodic chart notes through June 19, 2015 relating appellant's symptoms of increasing pain, numbness, and tingling in her right foot although the fracture appeared to be healing.

In June 22, 2015 reports, Dr. Hoffman noted that x-rays taken at two-week intervals from April 14 to June 2, 2015 documented sequential improvement "suggestive of an adequate healing process." Although the fracture appeared to be healing, appellant complained of increasing pain symptoms at the fracture site, with numbness and tingling in the toes of the right foot. Dr. Hoffman opined that appellant's symptoms were consistent with Complex Regional Pain Syndrome (CRPS). He held appellant off work.[3] In an August 10, 2015 report, Dr. Hoffman noted that x-rays obtained that day showed that the accepted fracture had nearly healed, with only a "very small gap" at the lateral cortex. He referred appellant to a pain management specialist "for further evaluation and treatment of suspected complex regional pain syndrome." Dr. Hoffman continued to hold appellant off work.

Appellant was then followed by Dr. Sean Li, an attending Board-certified anesthesiologist. In August 19, 2015 reports, Dr. Li provided a history of injury and treatment. He noted appellant's antalgic gait, and related her symptoms of chronic right foot pain. On examination Dr. Li found "[f]ocal pain and slight rubor noted at the lateral aspect of the right foot over the 5th metatarsal," with no other changes in skin color or temperature. He opined that appellant's "clinical history

[3] From July to October 2015, appellant received medical management services from an OWCP field nurse.

and physical exam [were] not suggestive of complex regional pain syndrome." Dr. Li ordered a right foot magnetic resonance imaging (MRI) scan.[4]

On September 8, 2015 reports Dr. Hoffman released appellant to limited-duty work for four hours a day effective September 21, 2015.

On September 21, 2015 appellant returned to modified-duty work for four hours a day. OWCP paid compensation for the remaining four hours a day.

In a September 24, 2015 report, Dr. Li noted that appellant continued to report chronic shooting pain and paresthesias in the right foot. He recommended a diagnostic lumbar sympathetic block to determine if appellant had CRPS. OWCP authorized the nerve block procedure.

On October 14, 2015 OWCP obtained a second opinion from Dr. Lawrence Barr, a Board-certified orthopedic surgeon. Dr. Barr reviewed medical records dated through August 26, 2015, and the statement of accepted facts. On examination he found full motion of the right ankle and all toes. Dr. Barr opined that the accepted right fifth metatarsal fracture was at maximum medical improvement and required no further treatment. He explained that there were no objective findings to substantiate appellant's subjective complaints of pain and paresthesias, noting that she was able to stand on her toes and heels and there was no swelling present. Dr. Barr released appellant to full duty without restrictions.

Dr. Li performed a right-sided L3 sympathetic block on October 23, 2015 to address right foot pain and possible CRPS. In November 2, 2015 reports, he increased appellant's work tolerance from four to five hours a day. Appellant worked four hours a day from November 2, 2015 onward. OWCP paid compensation for the remaining four hours a day.

In a November 12, 2015 report, Dr. Li noted that appellant experienced 70 percent pain relief in her right foot following the lumbar sympathetic block. Appellant continued in physical therapy and taking prescribed medications. Dr. Li increased appellant's work tolerance from four to six hours during the following two weeks.

In a November 19, 2015 report, Dr. Li noted that appellant had 70 percent relief of right foot pain and paresthesias from the time of the October 23, 2015 lumbar sympathetic nerve block to November 15, 2015. He diagnosed a closed metatarsal fracture, right foot and ankle pain, and Type 1 CRPS of the right lower extremity, based on her significant response to the nerve block. Dr. Li commented that appellant showed few "objective findings of residual dysfunction," with the only objective finding being her "significant response to the lumbar sympathetic block." He scheduled appellant for a second nerve block. Dr. Li noted continuing work restrictions.

By notice dated December 15, 2015, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits as the accepted right fifth metatarsal fracture had resolved without residuals, based on Dr. Barr's opinion. It noted that Dr. Li failed to provide

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[4] An August 26, 2015 MRI scan of the right forefoot demonstrated "a healed or nearly healed nondisplaced fracture of the base of the fifth metatarsal" with bony bridging at the center of the fracture line. Appellant participated in physical therapy in August and September, 2015.

adequate rationale explaining why appellant still required treatment or had any work-related disability. OWCP afforded appellant 30 days to submit additional evidence and argument.

In response, appellant, through counsel, submitted a January 7, 2016 report from Dr. Hoffman. Counsel contended that there was a conflict of opinion between Dr. Hoffman, for appellant, and Dr. Barr, for the government, as to whether the accepted right metatarsal fracture resolved without residuals.

In his January 7, 2016 report, Dr. Hoffman noted that he initially believed appellant's right foot paresthesias were transient neuropraxia, but appellant's symptoms became chronic. As August 10, 2015 x-rays demonstrated a well-healed fracture, he referred appellant to Dr. Li. While Dr. Li initially discounted CRPS, appellant exhibited a significant response to a diagnostic lumbar sympathetic nerve block. Dr. Hoffman therefore opined that appellant's "continued pain could be attributed to complex regional pain syndrome," causally related to prolonged immobilization and the delay in beginning physical therapy. He explained that, while appellant's subjective findings were consistent throughout treatment, they did "not correlate clinically with all objective findings seen with complex regional pain syndrome," although appellant's response to prescription medication and the nerve block indicated "some degree of a neurological component to her pain." Dr. Hoffman restricted appellant to limited duty.

By decision dated January 22, 2016, OWCP terminated appellant's wages-loss compensation and medical benefits effective that day, finding that the accepted right fifth metatarsal fracture resolved without residuals, based on Dr. Barr's opinion as the weight of the medical evidence. It noted that Dr. Hoffman opined that appellant's subjective findings did not correlate with the objective signs of CRPS.

In a February 8, 2016 letter, appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. In a June 14, 2016 letter, counsel requested that OWCP expand the acceptance of the claim to include CRPS.

At the hearing, held September 26, 2016, counsel asserted that Dr. Li's reports concerning appellant's significant response to the lumbar sympathetic nerve block were sufficient to expand the claim to include CRPS. He also contended that OWCP erred by terminating appellant's compensation because Dr. Barr did not have an opportunity to review Dr. Li's reports. Alternatively, counsel asserted that there was a conflict of medical opinion between Dr. Barr and appellant's physicians requiring resolution by an impartial medical examiner. Counsel submitted additional evidence.

In a January 11, 2016 report, Dr. Li explained that "complex regional pain syndrome is often characterized by persistent pain despite healing of the initial injuries due to abnormal healing of the local peripheral nerves." He noted that while appellant's initial presentation on August 19, 2015 was questionable for CRPS, "there was an element of neuropathic pain that was treated with topical anti-inflammatory, an oral anti-convulsant, and physical therapy." As appellant continued to report "burning, numbness, and sensitivity" in the right foot, he recommended a "diagnostic lumbar sympathetic block to help rule in or out sympathetically mediated pain." As appellant "responded positively to the diagnostic lumbar sympathetic block, there is clinical evidence supporting the diagnosis of sympathetically mediated neuropathic pain concerning for complex

regional pain syndrome despite fulfilling the full Budapest criteria." Dr. Li strongly recommended a repeat lumbar sympathetic nerve block to give appellant the greatest chance of recovery.

In a July 6, 2016 report, Dr. Hoffman reviewed appellant's history of injury and treatment. He opined that she had elements of neuropathic pain beginning in the fifth week of treatment. Although appellant had few objective signs of CRPS, her strong response to the lumbar sympathetic nerve block was a substantial indicator that she did have the condition. Dr. Hoffman opined that the April 1, 2015 fifth metatarsal fracture precipitated CRPS.

By decision dated November 30, 2016, OWCP's hearing representative affirmed the January 22, 2016 termination, finding that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits at that time. She explained that Dr. Li initially found that appellant "did not have clinical evidence of CRPS and Dr. Hoffman only speculated that [appellant] might have neurologic pain." Dr. Barr noted that appellant had only subjective complaints without clinical correlation. The hearing representative found that, following the January 22, 2016 termination, Dr. Li's January 11, 2016 report and Dr. Hoffman's July 6, 2016 report provided sufficient rationale discussing the development of CRPS to warrant additional development on the issue of continuing residuals or disability. She directed that OWCP request that a district medical adviser review the record and opine if the accepted April 1, 2015 fracture caused CRPS for any period, and if there was evidence of record that the CRPS continued after January 22, 2016. The hearing representative noted that a district medical adviser could also "offer guidance with regard to any need for further examination or studies."

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[5] 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.[6] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[8] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[9]

[5] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[6] *Id.*

[7] *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

[8] *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

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

ANALYSIS

OWCP accepted that appellant sustained a right fifth metatarsal fracture on April 1, 2015 when she tripped and fell on adhesive used to repair a tile floor. It paid compensation for total disability through September 20, 2015. Since the date of injury, appellant was followed by Dr. Hoffman, an attending podiatrist. In reports through August 10, 2015, he observed that, while the accepted fracture was healing well, appellant complained of increasing pain and paresthesias in the right foot indicative of CRPS. Dr. Hoffman referred appellant to Dr. Li, an attending Board-certified anesthesiologist, who opined that, although appellant's clinical history and physical examination were not suggestive of CRPS, on September 24, 2015, he recommended a diagnostic lumbar sympathetic nerve block.

On October 14, 2015 OWCP obtained a second opinion from Dr. Barr, a Board-certified orthopedic surgeon, who opined that there were no objective findings to substantiate appellant's right foot pain and paresthesias. As the accepted fracture had resolved, Dr. Barr released appellant to full duty without restrictions. He noted that there was no basis on which to attribute any continuing condition or disability to the April 1, 2015 work injury.

Following Dr. Barr's examination, Dr. Li performed a right-sided L3 sympathetic block on October 23, 2015. He explained, in a November 19, 2015 report, that appellant's achievement of 70 percent reduction in pain and paresthesia symptoms following the nerve block corroborated a diagnosis of CRPS although she did not meet the diagnostic criteria. Dr. Hoffman offered similar rationale in his January 7, 2016 report, adding that prolonged immobilization and a delay in beginning physical therapy were also known triggers for CRPS.

OWCP terminated appellant's wage-loss compensation and medical benefits, effective January 22, 2016, predicated on Dr. Barr's opinion as the weight of the medical evidence. The Board finds that the termination was proper. Both Dr. Li and Dr. Hoffman opined that appellant had CRPS although her presentation did not meet standard diagnostic criteria for the condition. The equivocal nature of these opinions significantly diminishes their probative value.[10] In contrast, Dr. Barr provided a detailed history and findings on examination, explaining that appellant had no objective evidence of any injury-related residuals, or any abnormality that would explain her subjective symptoms. His well-rationalized opinion is sufficient to represent the weight of the medical evidence.[11]

On appeal counsel contends that Dr. Li's and Dr. Hoffman's reports on CRPS received by OWCP prior to the termination were sufficient to warrant additional development. As noted

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[10] *See Steven S. Saleh*, 55 ECAB 169 (2003).

[11] As noted, OWCP's hearing representative found that additional development was warranted regarding whether appellant established continuing residuals or associated disability due to the accepted right fifth metatarsal fracture on and after January 22, 2016, and remanded the case to obtain additional medical opinion. The Board is without jurisdiction to address this aspect of the hearing representative's decision as Board regulations provide that there will be no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case. 20 C.F.R. § 501.2(c)(2).

above, the reports of record at the time of the termination were equivocal in nature and, therefore, insufficient to require further development.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 22, 2016, as her accepted right fifth metatarsal fracture had ceased without residuals.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2016 is affirmed.

Issued: April 24, 2018
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