United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 17-1040**
	)	**Issued: January 8, 2018**
DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION SERVICE, Orono, ME, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 13, 2017 appellant filed a timely appeal from a November 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 26, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal appellant inquired as to why he could not submit further evidence to the Board. The Board is precluded by regulation from considering evidence that was not in the case record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On August 29, 1989 appellant, then a 39-year-old biologist, filed a traumatic injury claim (Form CA-1) alleging that, while carrying gear around a waterfall on August 24, 1989, he slipped on a branch and sprained his ankle. OWCP accepted his claim for right calcaneal spur, right plantar fasciitis, anxiety, and prolonged depressive reaction.

On January 8, 1993 appellant underwent surgery to remove a bone spur, and he returned to limited-duty work on March 2, 1993. However, he sustained a recurrence of his injury on April 8, 2003, stopped work on August 24, 2003 and has not worked since that date. OWCP accepted appellant's recurrence claim by decision dated July 17, 2003.

In a March 31, 2015 report, Dr. Michael Bruehl, a Board-certified family practitioner, noted that appellant had severe bilateral *pes planus* with loss of mobility both of the arch of the foot and of the ankles. He opined that appellant was incapable of standing more than a few minutes at a time. Dr. Bruehl further noted that appellant was also losing his capacity to climb stairs. He noted that appellant required narcotic analgesics and gabapentin. With regard to diagnosis of the work-related injury and causal relationship between appellant's current findings on examination and the accepted employment-related injury, Dr. Bruehl referred to the reports of Dr. Gregory Pomeroy, a Board-certified orthopedic surgeon, and Dr. Ray Corbin, a podiatrist.

In a July 19, 2002 report, Dr. Pomeroy noted that appellant complained of bilateral hind foot pain, worse on the left, which started after numerous sprains while working in the field as a biologist. He diagnosed grade 2 posterior tibial tendon insufficiency, which he attributed to multiple sprains in the field. Dr. Corbin, in a March 3, 2003 report, diagnosed posterior tibial tendinitis and dysfunction as well as sinus tarsal impingement and *pes planus*, bilateral. He indicated that appellant noted several ankle inversion injuries while working as a biologist. Dr. Corbin noted that appellant did have extremely flat feet and this may have predisposed him to being more susceptible to these injuries. He restricted appellant to standing and ambulation 15 to 30 minutes at a time, and noted that this was a permanent restriction.

On October 28, 2015 OWCP referred appellant to Dr. Philip R. Kimball, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 28, 2015 report, Dr. Kimball listed appellant's diagnoses as chronic pain disorder, chronic anxiety and depression (under treatment since 2003), planovalgus deformity and *pes planus* (flat feet) advanced, bilateral, with pain, limited motion, and altered gait. He noted appellant's history of multiple sprains of both feet and ankles, and that, according to the statement of accepted facts (SOAF), appellant's accepted August 24, 1989 employment injury caused an aggravation of his right plantar fasciitis. Dr. Kimball also noted that appellant had undergone right plantar fasciotomy with spur excision on January 8, 1993. He noted that appellant had a long history of feet and ankle pain. Dr. Kimball opined that appellant's right heel spur and plantar fasciotomy condition on the right side more likely than not resolved within a year of the January 8, 1993 surgery. He related that it was unknown whether appellant's long-term flat feet condition was aggravated by his employment or whether it was related in any manner to his work as a biologist. Dr. Kimball concluded that it was reasonable to expect that appellant's right plantar fasciitis on the right side recovered without additional treatment at some point in late 2003. He also noted that appellant's current complaints were to the left foot and ankle, which were not listed on the SOAF.

Dr. Kimball did opine that appellant was unable to return to work full time as a biologist due to the advanced planovalgus deformities with recognized degenerative changes in both feet. However, he noted that there was no indication that his accepted plantar fasciitis contributed in any manner to his incapacity to return to his full duties as a biologist, as he probably recovered from the effects of plantar fasciitis in late 2003 or early 2004. Dr. Kimball noted that no specific treatment was recommended for appellant's planovalgus feet at this time except for the proper wearing of footwear and using assists in ambulation as necessary. He also noted that appellant continued to be treated for anxiety and depression, which he did not see listed in the SOAF.

On November 4, 2015 Dr. Mitchell Pulver, a Board-certified psychiatrist, conducted a second opinion evaluation. In a report dated November 16, 2015, he diagnosed major depression, single episode, moderate-to-severe, bilateral ankle injuries and left hand injury, and occupational stress. Dr. Pulver opined that appellant's depression was the direct result of the injuries he sustained while working for the employing establishment, which had resulted in physical limitations and pain and in turn caused his depression. He did not expect appellant's depression to improve unless his pain and physical limitations markedly decreased. Dr. Pulver opined that appellant was not capable of working at this time due to ankle injuries and resulting pain and limited function, as well as subsequent depression. He noted that appellant's prognosis for recovery from depression was dependent on recovery from his ankle injuries, as the depression was a direct result of the pain and limited functioning due to his ankle injuries. In a November 15, 2015 work capacity evaluation, psychiatric/psychological conditions (OWCP-5a), Dr. Pulver determined that appellant was unable to work due to a combination of medical problems -- bilateral ankle injuries as well as major depression with low energy, impaired concentration.

In an April 3, 2016 report, Dr. Pulver noted that, while Dr. Kimball had related that appellant was currently suffering from planovalgus deformities and not bilateral ankle injuries, Dr. Kimball's report did not alter his opinion that appellant's psychological condition was due to his foot pain and the functional limitation of his feet. He related that it did not matter what exact medical diagnosis or cause was responsible for appellant's foot pain and functional limitation.

In an April 15, 2016 report, Dr. Bruehl reiterated the statements set forth in his prior reports.

On April 27, 2016 OWCP proposed terminating appellant's wage-loss compensation and medical benefits as the medical evidence of record established that appellant no longer had any residuals or continued disability from work as a result of the accepted August 24, 1989 employment injury. Appellant was afforded 30 days to submit additional evidence in support of his claim.

By letter dated May 13, 2016, appellant requested an additional 30 days to reply to the proposed termination of benefits in order to schedule needed medical appointments. He also resubmitted evidence already in the record.

On June 2, 2016 OWCP finalized the termination of appellant's wage-loss compensation and medical benefits. It found that the weight of the medical evidence rested with the opinion of Dr. Kimball and that, effective June 26, 2016, appellant's compensation would be terminated as

he no longer had any residuals related to his employment-related medical condition. OWCP noted that Dr. Pulver's report failed to establish that appellant's diagnosed psychological condition was the direct result of his accepted employment injury, as he noted that appellant's symptoms were entirely due to the unrelated medical condition of planovalgus deformities of both feet.

Appellant requested reconsideration on June 8, 2016. He related that his right foot and ankle conditions had become more limiting and were the main reason for his incapacity and need for additional pain management and psychological treatment. Appellant contended that the relationship of the development of the right heel spur and plantar fasciitis to the original foot injury was well documented.

Appellant submitted multiple documents that were already of record, including a copy of his claim form, a duplicate statement dated July 23, 1992 from his supervisor, and his own April 28, 1993 statement. He also submitted medical evidence previously of record.

By decision dated November 4, 2016, OWCP denied modification of its June 2, 2016 decision. It noted that appellant had not established that OWCP improperly relied on the report of the second opinion physician to terminate compensation benefits.

LEGAL PRECEDENT

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof 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]

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

[4] *Id.*

[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).

ANALYSIS

OWCP accepted appellant's claim for right calcaneal spur, right plantar fasciitis, anxiety, and prolonged depressive reaction.

On April 27, 2016 OWCP proposed terminating appellant's wage-loss compensation and medical benefits because the medical evidence of record established that he no longer had any continued disability or residuals of his accepted employment-related conditions. By decision dated June 2, 2016, it finalized the termination of wage-loss compensation and medical benefits, effective June 26, 2016. OWCP denied modification of the June 2, 2016 decision on November 4, 2016.

The Board finds that OWCP properly terminated appellant's medical benefits with regard to appellant's accepted right calcaneal spur and right plantar fasciitis conditions. However, the Board further finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits with regard to the accepted emotional conditions of anxiety and prolonged depressive condition.

With regard to appellant's physical conditions, Dr. Bruehl, appellant's treating physician, opined in reports dated March 31 and April 15, 2015 that appellant was incapable of returning to work as he had severe bilateral *pes planus* with loss of mobility both of the arch of the foot and ankles and was unable to stand for more than a few minutes at a time. With regard to the causal relationship of appellant's condition, he referred to a July 19, 2002 report by Dr. Pomeroy and a March 3, 2003 report by Dr. Corbin. Dr. Bruehl's opinion is of diminished probative value. He never offered his own opinion as to whether appellant's current right foot condition in March and April 2015 was still causally related to appellant's accepted employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] Instead, Dr. Bruehl referenced opinions from Drs. Pomeroy and Corbin, which were over a decade old, and did not address appellant's condition in 2015.

The weight of the medical evidence rests with the opinion of Dr. Kimball, the second opinion physician, who opined that appellant's right heel spur and plantar fasciitis more likely than not resolved within a year of his January 8, 1993 right plantar fasciotomy and heel spur surgery. Dr. Kimball explained that appellant's current complaints were to the left foot and ankle. However, appellant also had advanced bilateral planovalgus deformities with degenerative changes, which limited his ability to return to full-time work. Dr. Kimball further explained that there was no evidence that appellant's accepted plantar fasciitis contributed in any way to his inability to return to full duties. The Board finds that the second opinion of Dr. Kimball was sufficiently rationalized to establish that appellant's accepted conditions of right calcaneal heel spur and plantar fasciitis had resolved.[9] Because appellant no longer had residuals causally related to his accepted conditions of right calcaneal bone spur and right plantar fasciitis,

[8] *See O.L.*, Docket No. 16-0616 (issued October 24, 2016).

[9] *A.H.*, Docket No. 16-1828 (issued August 17, 2017).

the Board finds that OWCP properly terminated appellant's entitlement to medical benefits for these conditions.

The Board further finds, however, that OWCP did not properly terminate appellant's wage-loss compensation and medical benefits with regard to the accepted emotional conditions of anxiety and prolonged depressive reaction.

Dr. Kimball related that appellant continued to be treated for anxiety and depression, which were conditions not noted in the SOAF.

Appellant was then referred for a second opinion evaluation by Dr. Pulver, a Board-certified psychiatrist. In a report dated November 16, 2015, Dr. Pulver concluded that appellant's depression was the direct result of the injuries he sustained while working for the employing establishment which resulted in his physical limitations and pain which in turn caused his depression. He concluded that appellant was incapable of working due to his ankle injuries and attendant pain and limited function, as well depression. In terminating appellant's benefits OWCP determined, however, that Dr. Pulver's report failed to establish that appellant's diagnosed psychological condition was the direct result of his accepted work injury. However, it had already accepted appellant's condition for anxiety and prolonged depressive condition.

Once OWCP accepts appellant's claim for a particular condition, it may not terminate wage-loss compensation without establishing that the disability has ceased or is no longer related to appellant's employment.[10] To terminate medical treatment, OWCP must establish that appellant no longer has residuals of the stated medical condition which requires further treatment.[11] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[12]

Dr. Pulver did not opine that appellant's accepted anxiety and depression conditions had in fact resolved. There is no rationalized medical opinion evidence of record establishing that appellant's accepted emotional conditions had ceased or were no longer related to appellant's employment.

Accordingly, the Board finds that OWCP properly terminated appellant's medical benefits with regard to the accepted physical conditions of right calcaneal spur and right plantar fasciitis. The Board further finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits with regard to the accepted emotional conditions of anxiety and prolonged depressive condition.

CONCLUSION

OWCP met its burden of proof to terminate appellant's medical benefits, effective June 26, 2016, with regard to his right calcaneal spur and right plantar fasciitis. However, it did

[10] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[11] *Pamela K. Guesford*, 53 ECAB 726 (2002).

[12] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits with regard to his anxiety and prolonged depression.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 4, 2016 is affirmed in part and reversed in part.

Issued: January 8, 2018
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