



## ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 22, 2016.

## FACTUAL HISTORY

On January 14, 2011 appellant, then a 35-year-old city carrier, filed a traumatic injury claim alleging that, on that date, she twisted her left foot and ankle while in the performance of duty and stopped work that day.

On April 6, 2011 OWCP accepted the claim for left ankle sprain and left foot sprain. It provided wage-loss compensation benefits and she was placed on the periodic rolls.

In a May 8, 2012 report, Dr. Bradley Lamm, Board-certified in reconstructive rear-foot and ankle surgery, noted that appellant indicated she was limited with walking and standing for long periods of time and admitted to her ankle giving out on her. He diagnosed tarsal tunnel syndrome and complex regional pain syndrome. Dr. Lamm recommended a physical therapy treatment plan.

By letter dated August 31, 2014, OWCP requested that the treating physician, Dr. Lamm, provides an update regarding appellant's current condition and capabilities.

In a September 16, 2014 report, Dr. Lamm, examined appellant and provided findings which included that appellant had dorsiflexion within normal limits. Additionally, he determined that there was no pin point metatarsal palpation pain, but she had pain over the fourth metatarsal diffusely along with pain over the anterior and lateral gutters. Dr. Lamm determined that appellant had mild swelling and that her digits three, four, and five had minimal flexion. He also noted that her second digit still maintained normal flexion. Dr. Lamm advised that appellant was seen for follow up of complex regional pain syndrome and tarsal tunnel syndrome, which seemed to have improved.

On December 9, 2015 OWCP referred appellant for a second opinion examination, along with a statement of accepted facts, a set of questions, and the medical record to Dr. Robert A. Smith, a Board-certified orthopedist.

In a report dated January 8, 2016, Dr. Smith described appellant's history of injury and treatment and examined appellant. His findings included: that the ankle revealed no deformity or swelling; that there were no dystrophic signs in the leg or foot: there was active motion in the first, second and third toes; but appellant did not actively move her fourth and fifth toes. Dr. Smith related that there was satisfactory and functional range of motion of the ankle and subtalar joints without any instability or crepitation. He also found no atrophy in the calf musculature and motor strength in the muscles and one foot and ankle was satisfactory. Dr. Smith also determined that there were no tendon problems, a normal arch, and neurovascular status was intact.

Dr. Smith specifically opined that appellant had fully recovered from the work injury of a left ankle sprain related to the January 14, 2011 incident and that there was nothing that warranted that the case be expanded to include any additional diagnoses. Additionally, Dr. Smith noted there were no preexisting conditions that would impact the case. He explained that there was nothing

objective on physical examination with respect to the accepted left ankle condition. Dr. Smith noted that it had in fact resolved without residuals and would not result in any ongoing physical limitation, restriction, and/or disability related to the claim. He advised that appellant was at maximum medical improvement related to the claim and that there was nothing objective that would indicate that appellant required ongoing or future testing, medical care, and or physical therapy, reflexology, or any other type of treatment related to the claim. Dr. Smith indicated that appellant reached maximum medical improvement.

On January 19, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as the medical evidence of record established that she no longer had any residuals or continuing disability from work. It accorded the weight of the evidence to Dr. Smith, who found that she no longer had any residuals or continuing disability from work stemming from her work-related injury of January 14, 2011. OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

In February 18, 2016 statements, appellant indicated that she had a video clip and photographs of her current condition of her left ankle and foot injury. However, no video was received. Appellant noted that she had three toes that did not move and pivoting leftward was not normal range of motion. She also indicated that swelling was still regular.

On February 22, 2016 OWCP terminated appellant's compensation, effective that date, finding that she no longer had any employment-related residuals or disability. It found that the weight of the evidence rested with Dr. Smith, who determined that appellant could return to her date-of-injury job and that the residuals of the accepted conditions had ceased.

On March 1, 2016 counsel for appellant requested a telephonic hearing, which was held on September 22, 2016.

By decision dated November 2, 2016, OWCP's hearing representative affirmed the February 22, 2016 termination decision.

### **LEGAL PRECEDENT**

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

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<sup>3</sup> V.C., 59 ECAB 490 (2008); *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

### ANALYSIS

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits.

On December 9, 2015 OWCP referred appellant for a second opinion examination with Dr. Smith, a Board-certified orthopedist.

In a January 8, 2016 report, Dr. Smith examined appellant and provided findings. They included that the ankle revealed no deformity or swelling, that there were no dystrophic signs in the leg or foot, and that there was active motion in the first, second, and third toes. Dr. Smith found that appellant did not actively move her fourth and fifth toes. He found satisfactory and functional range of motion of the ankle and subtalar joints without any instability or crepitation. Dr. Smith determined that there was no atrophy in the calf musculature and that motor strength in the muscles, foot, and ankle was satisfactory. He also found no tendon problems, a normal arch, and determined that neurovascular status was intact. Dr. Smith opined that appellant had fully recovered from the work injury of a left ankle sprain related to the January 14, 2011 incident. He advised that there were no objective findings in his examination with respect to the accepted left ankle condition. Dr. Smith opined that the accepted conditions had resolved without residuals. He determined that there were no ongoing physical limitations, restrictions, and/or disability related to the claim. Dr. Smith opined that appellant was at maximum medical improvement. He explained that there was nothing objective that would indicate that appellant required ongoing or future testing, medical care and or physical therapy or reflexology or any other type of treatment related to the claim.

The Board finds that Dr. Smith's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted conditions. The Board also notes that there are no current reports from a treating physician to contradict these findings. Because the evidence of record establishes that appellant no longer has residuals or disability related to her accepted employment conditions. OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective February 22, 2016. Accordingly, OWCP's decision to terminate appellant's compensation and medical benefits shall be affirmed.

### CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 22, 2016.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2018  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board