United States Department of Labor
Employees' Compensation Appeals Board

J.E., Appellant	)	
and	)	**Docket No. 17-0564**
	)	**Issued: March 5, 2018**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Fort Dix, NJ, 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 January 18, 2017 appellant filed a timely appeal from an August 31, 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]

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 28, 2015, as he no longer had residuals or disability due to his accepted June 28, 2005 employment injury; and (2) whether

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested oral argument before the Board. By order dated May 9, 2017, the Board exercised its discretion and denied oral argument, finding that appellant's arguments on appeal could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-0564 (issued May 9, 2017).

appellant has met his burden of proof to establish continuing disability after September 28, 2015, causally related to the accepted June 28, 2005 employment injury.

FACTUAL HISTORY

On June 29, 2005 appellant, then a 39-year-old electrical worker supervisor, filed a traumatic injury claim (Form CA-1) alleging that, on June 28, 2005, he twisted his left foot and ankle while working on a ladder. He stopped work. OWCP accepted appellant's claim for tenosynovitis of the left ankle and foot. It paid him wage-loss compensation on the periodic rolls, effective December 19, 2005.

OWCP proposed to terminate appellant's wage-loss compensation and medical benefits on June 14, 2006 because he no longer suffered residuals or disability as a result of his June 28, 2005 employment injury. By decision dated August 1, 2006, it finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. OWCP found that the weight of the medical evidence rested with the April 25, 2006 report of Dr. Zohar Stark, a Board-certified orthopedic surgeon and second opinion examiner, who determined that appellant no longer suffered residuals or disability causally related to his June 28, 2005 employment injury.

Appellant retired from federal employment due to disability on August 6, 2006. He elected to receive Office of Personnel Management (OPM) disability retirement benefits effective August 6, 2006.

On August 15, 2006 appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held on December 13, 2006. By decision dated March 2, 2007, the hearing representative set aside the August 1, 2006 termination decision due to an unresolved conflict in medical opinion evidence. He remanded the case for OWCP to arrange an impartial medical examination in order to resolve a conflict in medical opinion regarding whether appellant continued to suffer residuals causally related to the June 28, 2005 employment injury and whether OWCP should authorize left foot surgery in order to treat appellant's accepted employment injury.

OWCP referred appellant's claim to Dr. David A. Bundens, a Board-certified orthopedic surgeon, for an impartial medical examination. In a May 18, 2007 report, Dr. Bundens reviewed appellant's history and provided physical examination findings. He opined that appellant continued to have persistent symptoms and remained disabled from work due to his June 28, 2005 employment injury. Dr. Bundens further reported that appellant also sustained a severe sprain to his left subtalar joint.

On June 21, 2007 OWCP expanded the acceptance of appellant's claim to include severe sprain of the left subtalar joint.

Appellant began to receive medical treatment from Dr. Andrew J. Elliott, a Board-certified orthopedic surgeon. In a November 11, 2008 report, Dr. Elliott related appellant's history of injury and provided physical examination findings. He also indicated that x-ray examination findings of appellant's left foot were consistent with a moderate flatfoot. Dr. Elliott

diagnosed subtalar pathology, possibly likely to sprain type of injury coupled with pes planus. He recommended a new MRI scan to evaluate the subtalar region and determine whether appellant had degenerative arthrosis.

On April 9, 2011 appellant filed a notice of recurrence (Form CA-2a) of his June 28, 2005 employment injury alleging that he never returned to work and that his disability continued through the present. He explained that he retired due to disability on August 6, 2006, but continued to receive medical treatment for his June 28, 2005 employment injury. Appellant noted that he now required surgery on April 29, 2011. He also filed claims for wage-loss compensation (CA-7 forms) beginning August 5, 2006.

In an April 4, 2011 report, Dr. Scott Ellis, a general surgeon, related appellant's complaints of pain, particularly over the subtalar joint area dating back to a job-related injury five years earlier. Upon physical examination of appellant's left foot and ankle, he reported slight hindfoot valgus. Deep tendon reflexes were 2+. Dr. Ellis reviewed appellant's old scans and images and opined that appellant had evidence of some posterior subtalar joint arthrosis. He believed that appellant's pain was coming from the subtalar joint and recommended subtalar fusion with a partial tibial bone graft surgery.

An April 4, 2011 left foot and ankle radiology examination report by Dr. Carolyn Sofka, a Board-certified radiologist, showed pes planus with heel spur and mild hallux valgus and bunion formation.

OWCP referred appellant's case to Dr. Kenneth P. Heist, a Board-certified orthopedic surgeon and second opinion physician, to determine whether appellant continued to suffer residuals and disability causally related to his June 28, 2005 employment injury and whether OWCP should authorize left foot and ankle surgery in order to treat appellant's accepted injury. In an August 3, 2011 report, Dr. Heist reviewed appellant's history and related his complaints of constant pain across the ankle joint of his left foot. He provided physical examination findings and diagnosed post-traumatic osteochondral defect, lateral talar bone on the left, and degenerative joint disease, subtalar joint, of the left ankle. Dr. Heist recommended that appellant's claim be expanded to include the degenerative condition and that OWCP authorize surgical fusion surgery. He opined that appellant should be able to return to full duty after surgery.

In June 2012 appellant elected to receive FECA benefits in lieu of Office of Personnel Management (OPM) disability retirement benefits effective August 6, 2006. OWCP paid wage-loss compensation benefits retroactive to August 6, 2006 and placed appellant on the periodic rolls, effective June 9, 2013.

Appellant submitted a June 27, 2013 report by Dr. Ellis who related appellant's complaints of continued left foot pain on the lateral aspect. Upon physical examination of appellant's left foot, Dr. Ellis reported pain in the sinus tarsi and minor pain around the area of the ankle. Deep tendon reflexes and pedal pulses were 2+. Sensation examination was intact. Dr. Ellis noted that x-ray examination showed some joint space narrowing of the subtalar joint and some mild arthritis. He diagnosed primary localized osteoarthrosis of the left ankle and foot.

Dr. Ellis reported that appellant had tried everything in terms of conservative treatment and opined that left foot fusion surgery was needed.

In a June 27, 2013 left ankle and foot MRI scan report, Dr. Sofka noted mild flat foot deformity with midfoot osteoarthritis and heel spur.

OWCP referred appellant to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, for another second opinion examination to determine whether appellant continued to suffer residuals or disability causally related to his June 28, 2005 employment injury. In a July 5, 2013 report, Dr. Askin described the June 28, 2005 employment injury and provided physical examination findings. He opined that appellant no longer had tenosynovitis of the left foot and ankle and no current disability as a result of the June 28, 2005 employment injury.

Dr. Ellis provided a July 11, 2013 letter in which he related that appellant sustained a work injury in approximately 2006 and had experienced chronic problems in his left foot and ankle since the injury. He noted that he first examined appellant on June 25, 2009 and observed that appellant's foot had collapsed over time and he had extreme pain. Dr. Ellis reviewed the medical treatment he provided for appellant and recommended left foot fusion surgery. He explained that appellant had debilitating pain dating back to the accident at work. Dr. Ellis opined that the employment injury did damage to the posterior subtalar joint, which caused appellant's pain and likely caused the osteochondral defect in his ankle. He reported that the longer appellant's surgery was delayed, the more pain and instability appellant would have. Dr. Ellis opined that the problem with appellant's foot and subtalar joint was due to the injury as appellant was not symptomatic before the employment injury. He indicated that appellant would need, at least, modified work duty. Dr. Ellis diagnosed primary localized osteoarthrosis of the left ankle and foot.

In November 2014, OWCP referred appellant's claim to Dr. Donald Heitman, a Board-certified orthopedic surgeon, for another second opinion examination to determine whether he continued to suffer residuals and remained disabled from work due to his June 28, 2005 employment injury. In a December 3, 2014 report, Dr. Heitman described the June 28, 2005 employment injury and reviewed appellant's prior medical treatment. Upon physical examination of appellant's left foot, he noted obvious pes planus deformity bilaterally, slightly worse on the left than right. Dr. Heitman also observed extreme tenderness to palpation over the sinus tarsi and over the distal fibula laterally. He indicated that appellant was able to perform a heel rise on the right side, but was completely unable to do so on the left side. Dr. Heitman reported decreased strength against resisted inversion, eversion, and plantar flexion. He noted decreased range of motion findings.

Dr. Heitman reported that there were objective findings of obvious pes planus deformity bilaterally, slightly worse on the left than right. He explained that appellant had gone on to develop a contusion to the anterolateral talus and a mild-to-moderate degree of subtalar arthrosis and mild tenosynovitis of his posterior tibialis tendon. Dr. Heitman opined that appellant presently suffered from residuals of the accepted condition. He noted that appellant had decreased ambulation and chronic pain when walking at all times of the day. Dr. Heitman reported that appellant's condition would not resolve spontaneously without further diagnostic work-ups and likely surgery. He indicated that appellant was not currently able to perform the

full duties of his employment and that this disability was due to the accepted June 28, 2005 work injury. Dr. Heitman noted that appellant would likely have permanent restrictions to work capacity, regardless of treatment rendered, but that treatment would improve his pain. He opined that appellant could work in a light-duty capacity that did not involve prolonged standing for more than a few minutes at a time. Dr. Heitman further recommended that appellant's claim be expanded to include tibialis tendinitis and flatfoot deformity. He reported that appellant likely required surgery. Dr. Heitman recommended an updated MRI scan of the left ankle to see the degree of progression of his adult-acquired flatfoot deformity.

In a January 5, 2015 left ankle MRI scan report, Dr. Vince Jarrett, an osteopath specializing in diagnostic radiology, noted mild soft tissue edema in the region of the sinus tarsi and mild degenerative changes of the second and third tarsometatarsal joints. He reported no ligamentous or tendinous injury.

Dr. Heitman provided an addendum report dated January 7, 2015. He reviewed the January 5, 2015 left ankle MRI scan report and related that appellant did not have any objective findings of the accepted conditions. Dr. Heitman noted that the MRI scan showed only degenerative changes. He explained that it appeared that appellant's physical examination did not correlate with the recent MRI scan findings, which showed only degenerative changes. Dr. Heitman reported that appellant was not disabled from work due to his accepted conditions and that the proposed surgery was not appropriate or causally related to the June 28, 2005 employment injury. He noted that there was no other pathology shown on the MRI scan, which prohibited this claimant from returning to full duty. Dr. Heitman indicated that appellant had reached maximum medical improvement , but he was unable to determine approximately when it had occurred since it had been almost 10 years since appellant's work injury.

In a February 13, 2015 statement, appellant alleged that Dr. Heitman's December 3, 2014 and January 7, 2015 reports were in conflict and that Dr. Heitman's revised report lacked any medical explanation. He asserted that this was the second occasion that a conflict of medical opinion existed in his claim with his treating physician, Dr. Ellis. Appellant noted that a similar conflict existed between Dr. Askin's second opinion report and Dr. Ellis' reports. He requested that OWCP schedule an impartial medical examination to resolve the conflicting medical opinions and also requested that he participate in the selection of the impartial medical specialist. Appellant alleged that these conflicts were directly delaying the necessary medical surgical procedures and his recovery.

On February 22, 2015 appellant elected to receive OPM retirement benefits in lieu of FECA benefits. He noted that he still wanted to pursue FECA benefits because his treating physician's requests included surgery, recovery, and a schedule award.

OWCP terminated appellant's wage-loss compensation benefits, effective February 22, 2015.

In a March 6, 2015 letter, counsel noted that in his December 13, 2014 second opinion report, Dr. Heitman requested that appellant's claim be expanded to include tibialis tendinitis and flatfoot deformity and recommended surgery. He provided an excerpt of Dr. Heitman's report. Counsel alleged that appellant's claim should be expanded to accept left foot tenosynovitis, left

systematic sclerosis, and left tibialis tendinitis. He further requested OWCP authorize left foot and ankle surgery for appellant.

OWCP referred appellant to Dr. Gregory Maslow, for an impartial medical examination, in order to resolve the conflict in medical opinion evidence between Dr. Ellis and Dr. Heitman regarding whether appellant continued to suffer residuals of his June 28, 2005 employment injury, whether he remained disabled from work as a result of the accepted conditions, and whether OWCP should authorize left foot and ankle surgery.

In a May 27, 2015 report, Dr. Maslow described the June 28, 2005 employment injury and noted that appellant's claim was accepted for left ankle tenosynovitis. He also noted that appellant had sustained a sprain of the left ankle as a result of the accepted employment injury. Upon physical examination of appellant's lower extremities, Dr. Maslow noted bilateral pes planus. He reported that appellant's uninjured right side had no tenderness about the foot or ankle and normal range of motion and stability. Examination of appellant's left ankle showed normal range of motion. Dr. Maslow also observed no tenderness at the Achilles, no swelling measurable of the circum malleolar, and no tenderness over the posterior tibialis tendon and over the peroneal tendon around the ankle. He reported some tenderness over the lateral ankle and over the subtalar joint area on the lateral side of the ankle. Dr. Maslow indicated that neurological examination showed intact reflexes. Sensation and strength examinations were normal throughout.

Dr. Maslow reported that appellant's complaints of left ankle pain were not credible based on the most recent MRI scan and various diagnostic studies. He also noted that upon examination, appellant had normal gait and was not using a supportive cane or crutch. Dr. Maslow opined that there was no objective evidence that appellant could not return to employment. He indicated that given appellant's bilateral pes planus and mild degenerative changes in the feet some 10 years after the employment injury, it was reasonable for him to have a work capacity evaluation. Dr. Maslow concluded that there was no evidence of the accepted work-related condition of tenosynovitis and no medical reason for continued total disability. He also reported that surgical intervention would be a mistake.

In a work capacity evaluation form (OWCP-5c), Dr. Maslow checked a box marked "yes" indicating that appellant was capable of performing his employment with no restrictions.

On August 25, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that the special weight of medical evidence rested with Dr. Maslow's May 27, 2015 impartial medical report, which found that there were no objective findings to demonstrate that appellant continued to suffer residuals or disability causally related to the June 28, 2005 employment injury. Appellant was advised by OWCP that he had 30 days to submit additional evidence or argument if he disagreed with the decision.

No additional documentation was received by OWCP.

By decision dated September 28, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits. It found that the special weight of medical evidence rested with the impartial medical examiner, Dr. Maslow, who determined in his

May 27, 2015 report that appellant's work-related left ankle and foot injury had ceased and that he could return to work.

On October 5, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

Appellant submitted a September 24, 2015 examination and narrative report by Dr. Ellis who related that appellant complained of severe pain in multiple areas on his left foot. Upon physical examination of appellant's left ankle and foot, he observed slight hindfoot valgus, slightly worse on the other side, and not highly abducted. Dr. Ellis reported that appellant could not do a single heel raise on the left side in large part just due to the more general pain. Deep tendon reflexes were positive. Dr. Ellis indicated that appellant's sensation examination was intact and range of motion examination was somewhat reduced. He noted that a left ankle and foot MRI scan showed some mild degenerative changes at the posterior subtalar joint. Dr. Ellis reported: "it is amazing that such an MRI [scan] dramatically changed Dr. Heitman's opinions in a very short period of time." He explained that an MRI scan is one small tool and should not change an overall opinion. Dr. Ellis requested a repeat MRI scan to look at structures, including the subtalar joint, lateral ankle ligaments, and personeal tendons. He also recommended a selected guided injection under ultrasound in the subtalar joint of the left ankle in order to determine whether appellant could expect pain relief from the fusion surgery.

Dr. Ellis opined that appellant had continued pain and problems since the June 28, 2005 employment injury. He indicated that appellant's surgery was still very likely to help him because a subtalar fusion and heel slide would neutralize his heel in a neutral position. Dr. Ellis diagnosed primary localized osteoarthritis of the ankle and foot.

In a September 24, 2015 left ankle and foot MRI scan report, Dr. Sofka noted mild bunion formation, bipartic medial hallux sesamoid, heel spur, and mild midfoot osteoarthritis. He diagnosed bunion formation, heel spur, and mild midfoot osteoarthritis.

Dr. Ellis provided an October 6, 2015 note and related that he spoke at length with appellant on the telephone about his complaints of persistent pain. He believed that the pain was most likely lateral impingement. Dr. Ellis requested a repeat subtalar injection to confirm that appellant's impingement was coming from the subtalar joint and another left ankle and foot MRI scan of better quality. He explained that these diagnostic studies would guide his surgical decision making at the time of surgery.

In a January 21, 2016 left ankle MRI scan report, Dr. Sofka noted pes planovalgus deformity with findings consistent with lateral subtalar impingement, mild degenerative pattern of cartilage wear in the ankle and posterior subtalar joints with more moderate chondral wear in the talonavicular joint, moderate insertional degeneration of the posterior tibial tendon with thickening and scar remodeling of the superomedial fibers of the spring ligament, and mild-to-moderate diffuse tendinosis of the posterior tibial tendon. He diagnosed primary osteoarthritis of the left ankle and foot.

On June 16, 2016 a telephone hearing was held. Appellant expressed his disagreements with Dr. Maslow's May 27, 2015 impartial medical report. He alleged that Dr. Ellis' most recent

narrative medical report and left ankle MRI scan report showed that he continued to suffer residuals and remained disabled as a result of his June 28, 2005 employment injury. Appellant noted that his surgery was cancelled three times due to second opinion examinations and his case had not yet been resolved after 11 years. He requested that his wage-loss compensation and medical benefits be reinstated so he could receive proper medical treatment for his accepted medical conditions.

By decision dated August 31, 2016, an OWCP hearing representative affirmed the September 28, 2015 decision, which terminated appellant's wage-loss compensation and medical benefits. He found that the weight of medical evidence rested with the medical opinion of Dr. Maslow,[3] an OWCP second opinion examiner, who determined in a May 27, 2015 report that there was no objective evidence to support that appellant continued to suffer residuals or disability causally related to the June 28, 2005 employment injury.

LEGAL PRECEDENT -- ISSUE 1

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.[4] OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[5] Its 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 compensation.[7] 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.[8]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained left foot and ankle tenosynovitis and severe sprain of the subtalar joint as a result of a June 28, 2005 employment injury. Appellant received wage-loss compensation and medical benefits until February 22, 2015. By decision dated September 28, 2015, OWCP terminated his wage-loss compensation and medical benefits based

[3] The hearing representative also noted that although OWCP referred to Dr. Maslow as a referee medical examiner, he was in fact a second opinion physician as a conflict in medical opinion evidence did not exist between an OWCP referral physician and the claimant's physician. *See* 5 U.S.C. § 8123(a). The hearing representative related that conflicting opinions from the same physician (in this case Dr. Heitman) were insufficient to cause a conflict in medical opinion within the meaning of FECA.

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

[5] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[6] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[7] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

[8] *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P., id.*

on the opinion of Dr. Maslow, the second opinion examiner, who concluded in a May 27, 2015 report that appellant no longer suffered residuals of his June 28, 2005 employment injury and was capable of returning to work. The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 28, 2015, as the medical evidence of record established that he did not have any residuals or disability causally related to the June 28, 2005 employment injury.

In his May 27, 2015 report, Dr. Maslow described the June 28, 2005 employment injury and related appellant's complaints of continued pain of the left ankle. Upon physical examination of appellant's lower extremities, he noted bilateral pes planus. Dr. Maslow reported normal range of motion of appellant's left ankle and no tenderness at the Achilles, no swelling, and no tenderness over the posterior tibialis tendon and over the peroneal tendon. Neurological examination showed intact reflexes. Sensation and strength examinations were normal throughout. Dr. Maslow opined that appellant's complaints of left ankle pain were not credible based on the most recent MRI scan and various diagnostic studies. He also noted that upon examination, appellant had normal gait and was not using a supportive cane or crutch. Dr. Maslow opined that there was no objective evidence that appellant could not return to employment. He concluded that there was no objective evidence of appellant's June 28, 2005 employment injury and no medical reason for continued total disability.

The Board finds that OWCP properly accorded the weight of medical opinion with Dr. Maslow who reported that appellant no longer had residuals or disability as a result of the June 28, 2005 employment injury. Dr. Maslow based his opinion on a proper factual and medical history and physical examination findings and he provided medical rationale for his opinion that appellant did not have any current residual injury or work limitations. He reported essentially normal objective findings on physical examination, except for pes planus, and diagnostic testing. Dr. Maslow related that he found no objective signs or clinical findings to demonstrate any residuals related to his accepted left foot and ankle tenosynovitis and severe sprain injury.

The Board notes that Dr. Maslow's opinion that appellant no longer had residuals of the accepted conditions was supported by the second opinion reports of Dr. Askin and Dr. Heitman. Dr. Askin opined on July 5, 2013 that appellant no longer had tenosynovitis of the left foot and ankle, and was no longer disabled due to the accepted employment injury. Dr. Heitman explained in his January 7, 2015 report that appellant's January 5, 2015 MRI scan of the left ankles showed only degenerative changes, and no objective findings of the accepted conditions.

Because Dr. Maslow provided a well-rationalized opinion based on medical evidence regarding appellant's June 28, 2005 employment injury, OWCP properly relied on his May 27, 2015 second opinion report in terminating appellant's wage-loss compensation and medical benefits for the June 28, 2005 employment injury.[9]

The Board finds that the other medical evidence of record temporally pertinent to the termination of appellant's compensation benefits on September 28, 2015 is of limited probative value and insufficient to create a conflict with the report from Dr. Maslow.

[9] *See A.F.*, Docket No. 16-0393 (issued June 24, 2016).

After June 2012 when appellant elected to receive FECA benefits in lieu of OPM disability retirement benefits, OWCP paid wage-loss compensation benefits retroactive to August 6, 2006 and placed appellant on the periodic rolls, effective June 9, 2013.

OWCP thereafter received continuing reports from appellant's treating physician, Dr. Ellis. Dr. Ellis, however, offered no opinion as to whether appellant had residuals of the accepted conditions of left ankle and foot tenosynovitis, and severe sprain of the left subtalar joint. In his report dated June 27, 2013, he provided physical examination findings and diagnosed primary localized osteoarthritis of the left ankle and foot. Dr. Ellis offered no opinion regarding the cause of the appellant's left ankle and foot osteoarthritis. It is appellant's burden of proof to establish that an additional diagnosed medical condition was causally related to the accepted employment injury.[10] Without a medical opinion establishing causal relationship between the newly diagnosed condition and the accepted employment injury, this report does not establish medical residuals resulting from either the accepted condition or from an additional employment-related condition.[11]

Dr. Ellis further explained in his July 11, 2013 report that he first examined appellant on June 25, 2009 for a "work injury in approximately 2006." He related that the employment injury damaged appellant's posterior subtalar joint, which "likely" caused the osteochondral defect in appellant's ankle. Dr. Ellis concluded that appellant's "problem" with his foot and subtalar joint was due to the employment injury because he was not symptomatic prior to the employment injury. This report is of limited probative value for several reasons. The Board notes initially that appellant's accepted employment injury occurred on June 28, 2005, not in 2006, Dr. Ellis' opinion is therefore premised upon an incorrect history of injury.[12] Furthermore, his opinion regarding causal relationship of the diagnosed left ankle osteochondral defect, which was not an accepted condition, is speculative and unrationalized. An opinion that an additionally diagnosed condition was "likely" causally related to a previous injury is speculative and does not provide conclusive evidence of continuing residuals.[13] The Board has held that medical opinions that are speculative or equivocal in character have little probative value.[14] Furthermore, Dr. Ellis' opinion that appellant's current foot and subtalar joint conditions were caused by the employment injury because he was not symptomatic prior to the injury lacks probative value. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support causal relationship.[15]

[10] *See Y.L.*, Docket No. 14-1337 (issued March 27, 2015).

[11] *Id*.

[12] *See Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

[13] *See J.C.*, Docket No. 17-0089 (issued July 18, 2017).

[14] *See L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[15] *See P.L.*, Docket No. 17-0082 (issued April 13, 2017).

Appellant also submitted several diagnostic test results to the record. Dr. Sofka interpreted a June 27, 2013 left ankle and foot MRI scan and noted mild flatfoot deformity, midfoot osteoarthritis, and heel spur. Dr. Jarrett interpreted a January 5, 2015 left ankle MRI scan, noting mild tissue edema of the sinus tarsi and mild degenerative changes of the second and third tarsometarsal joints. These diagnostic tests did not make findings relative to the accepted employment conditions. The Board has found that diagnostic studies which offer no findings regarding the accepted conditions, and provide no opinion regarding the cause of the diagnosed conditions are of limited probative value.[16]

On appeal appellant alleges that his medical benefits were unfairly terminated because OWCP did not provide an impartial medical examination to resolve the conflict in medical evidence. As explained, however, in OWCP's August 31, 2016 decision, a conflict in medical evidence did not exist in this case because conflicting opinions from the same physician are insufficient to cause a conflict in medical opinion within the meaning of FECA.[17] As appellant has not submitted probative medical evidence from a treating physician regarding whether he continued to suffer residuals or disability causally related to his June 28, 2005 employment injury, OWCP was not required to refer his claim to an impartial medical examiner.[18] Appellant also asserted that OWCP should not have relied on Dr. Maslow's May 25, 2017 report because he is not a foot specialist. As explained above, however, Dr. Maslow provided a well-rationalized opinion based on medical evidence explaining how appellant no longer suffered residuals or disability as a result of his June 28, 2005 employment injury.

LEGAL PRECEDENT -- ISSUE 2

After OWCP has met its burden of proof to terminate compensation benefits, the burden for reinstating compensation benefits shifts to appellant to establish that he or she had continuing disability causally related to the accepted employment injury.[19] To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such causal relationship.[20] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[21]

[16] *See T.H.*, Docket No. 17-0025 (issued July 6, 2017).

[17] *John H. Taylor*, 40 ECAB 1228 (1989).

[18] The Board has found that for a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale." *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[19] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

[20] *Manuel Gill*, 52 ECAB 282 (2001).

[21] *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ANALYSIS -- ISSUE 2

Following OWCP's September 28, 2015 decision terminating appellant's wage-loss compensation and medical benefits, effective September 28, 2015, appellant submitted additional reports from Dr. Ellis and diagnostic test results. The Board finds that the additional medical evidence is of diminished probative value to establish that appellant had any remaining work-related residuals or disability after September 28, 2015. Therefore, the Board finds that appellant has not met his burden of proof to establish disability or need for medical care due to his June 28, 2005 employment injury after September 28, 2015.

In his September 24, 2015 report, Dr. Ellis related appellant's complaints of continued pain in multiple areas of his left foot. He reported slight hindfoot valgus upon examination of appellant's left ankle and foot. Dr. Ellis noted that appellant could not do a single heel raise and deep tendon reflexes were positive. He indicated that a left ankle and foot MRI scan showed some mild degenerative changes at the posterior subtalar joint and requested another repeat MRI scan. Dr. Ellis opined that appellant had continued left ankle and foot pain and problems since the June 28, 2005 employment injury. He diagnosed primary localized osteoarthritis of the ankle and foot. In an October 6, 2015 note, Dr. Ellis noted that he spoke with appellant over the telephone about his complaints of persistent left ankle and foot pain. He requested additional diagnostic testing to confirm that appellant's impingement was coming from the subtalar joint. The Board notes that although Dr. Ellis reported that appellant continued to experience problems and symptoms as a result of the June 28, 2005 employment injury, such generalized statements are unsupported by medical rationale explaining how appellant's current symptoms and disability are causally related to the accepted employment injury.[22] On the contrary, Dr. Ellis attributes appellant's current symptoms to his localized osteoarthritis of the left ankle and foot, which is not an accepted condition. He failed to explain how appellant had continuing and disabling residuals of his accepted left foot and ankle tenosynovitis and severe sprain injury and required further medical treatment. The Board finds that Dr. Ellis' reports are entitled to little probative value and are insufficient to meet appellant's burden of proof to establish that he continued to have work-related disability as a result of his June 28, 2005 employment injury.[23]

Similarly, in a September 24, 2015 left ankle and foot MRI scan report, Dr. Sofka noted mild bunion formation, bipartic medial hallux sesamoid, heel spur, and mild midfoot osteoarthritis. In a January 21, 2016 left ankle MRI scan report, he also noted pes planovalgus deformity, mild degenerative pattern in the ankle and posterior subtalar joints, and mild-to-moderate diffuse tendinosis of the posterior tibial tendon. Dr. Sofka diagnosed primary osteoarthritis of the left ankle and foot. Although these diagnostic testing reports contain various diagnoses, none of them have an opinion on the cause of these conditions nor explain how these conditions caused or contributed to appellant's inability to work. As previously explained the Board has found that diagnostic 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.[24] These reports, therefore, are insufficient to establish appellant's claimed disability

[22] *K.W.*, Docket No. 10-98 (issued September 10, 2010).

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

[24] *Willie M. Miller*, 53 ECAB 697 (2002).

after September 28, 2015. Appellant did not meet his burden of proof to establish continuing residuals or disability related to the accepted June 28, 2005 employment injury after September 28, 2015.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective September 28, 2015, as he no longer had any residuals or disability causally related to the June 28, 2005 employment injury. The Board also finds that appellant has not met his burden of proof to establish continuing disability after September 28, 2015, causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 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