

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

J.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buena Park, CA, Employer**

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**Docket No. 17-1716
Issued: March 1, 2018**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 3, 2017 appellant filed a timely appeal from a February 17, 2017 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 20, 2015; and (2) whether appellant met her burden of proof to establish continuing disability or residuals after July 20, 2015.

FACTUAL HISTORY

On April 5, 2013 appellant, then a 36-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that her left foot plantar fascial fibromatosis was due to standing and

¹ 5 U.S.C. § 8101 *et seq.*

walking at work for the past 12 years. OWCP accepted her claim for left plantar fascia strain and left strain of the talofibular and calcaneofibular ligaments on May 14, 2013 and paid her compensation on the supplemental rolls beginning May 18, 2013.²

On January 10, 2014 appellant underwent an accepted plantar fascial release/fasciotomy of the left foot which was performed by Dr. Dominic Signorelli, an orthopedic surgeon.

In a report dated June 5, 2014, Dr. Signorelli diagnosed post plantar fascia release of the left foot and ligamentous partial tearing of the posterior and cancaeofibular ligaments of the left ankle. He recommended continued multi-modal therapy twice a week for six weeks and he provided work restrictions of standing no more than three hours per day, walking no more than two hours per day, and climbing no more than two hours per day. Dr. Signorelli noted that appellant had continuing pain without orthotics, moderately better with orthotics.

On July 17, 2014 Dr. Signorelli examined appellant and reiterated his diagnoses. He recommended that her orthotics be replaced as they were very old and were no longer functioning as expected.

On August 21, 2014 OWCP referred appellant to Dr. Ghol B. Ha'Eri-Gharavi, a Board-certified orthopedic surgeon, for a second opinion examination in order to determine the status of her accepted conditions, along with treatment recommendations and appropriate work restrictions.

On October 17, 2014 appellant requested authorization for payment for orthopedic shoes. In an accompanying letter, Dr. Signorelli requested that she be supplied with a pair of orthopedic shoes.

On October 22, 2014 OWCP authorized appellant's request for orthopedic shoes.

In a visit with Dr. Signorelli on October 2, 2014, appellant received her new biomechanical orthotic shoes. He reported that she was able to return to full-duty work.

On October 8, 2014 Dr. Ha'Eri-Gharavi examined appellant and diagnosed left plantar fascia sprain and left ankle strain of the talofibular and calcaneofibular ligaments. He noted that her symptoms of left plantar fascia strain and left ankle strain had resolved, other than left foot pain that she experienced in the morning. Dr. Ha'Eri-Gharavi observed no objective findings supporting the continuation of appellant's left foot and ankle conditions. He noted a date of maximum medical improvement of July 1, 2014. Dr. Ha'Eri-Gharavi recommended that no further medical care was needed, such as physical therapy or acupuncture, except for orthotics in appellant's left shoe. He further recommended that she continue performing her regular duties on a full-time basis.

² The record reflects that OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls from May 18 until December 14, 2013. It then paid her compensation on the periodic rolls from December 15, 2013 through May 3, 2014. OWCP again paid appellant compensation on the supplemental rolls from May 5 through October 2, 2014.

On December 17, 2014 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Ha'Eri-Gharavi determination that she no longer had objective residuals of her accepted conditions, and no further medical care was required except for an orthotic device in her left shoe. It noted that, while Dr. Signorelli had indicated an ongoing need for orthotics and continued treatment, he did not explain a basis for his opinion when her examination findings were reported to be normal.

By letter dated January 10, 2015, appellant stated that, after being back to full duty at work for three months, she could tell her left foot had not completely recovered. She noted that in Dr. Ha'Eri-Gharavi's report, he noted that she would need to wear orthotics, meaning that she would have to be fitted for orthotics every year or two.

In a report dated December 11, 2014, Dr. Signorelli related that he had examined appellant and found that she ambulated in full weight bearing status with orthotics, improving as expected. He observed no significant abnormalities and noted normal range of motion of her feet and ankles. Dr. Signorelli recommended that appellant continue with orthotic intervention.

In a progress report dated February 12, 2015, Dr. Edward Mittleman, a family medicine physician, examined appellant and reviewed the October 8, 2014 report of Dr. Ha'Eri-Gharavi. He concurred with Dr. Ha'Eri-Gharavi that she had very minimal residuals from her plantar fasciitis. Dr. Mittleman further concurred with Dr. Ha'Eri-Gharavi's recommendation that appellant should wear orthotics on her left foot as part of her future medical care.

By decision dated July 22, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective July 20, 2015.

On September 3, 2015 appellant requested reconsideration of OWCP's July 22, 2015 decision. With her request she included an August 5, 2015 letter from Dr. Mittleman which noted that, due to appellant's postsurgical plantar fascia release, she would require continued use of orthotics as part of her future medical care. He observed that Dr. Ha'Eri-Gharavi noted in his October 8, 2014 report that appellant had morning aching in her left foot which was a minimal residual from her plantar fasciitis. Dr. Mittleman further observed that Dr. Ha'Eri-Gharavi agreed as to the continued need for orthotics.

By decision dated December 1, 2015, OWCP reviewed the merits of appellant's claim, but denied modification of its July 22, 2015 decision. It found that the medical evidence of record supported that the recommendations for orthotics were of a "prophylactic nature" as the evidence of record supported appellant's periodic discomfort, including aching pain in the mornings. However, the record did not support objective residuals of her accepted injury.

In a diagnostic report dated May 2, 2016, Dr. Stuart E. Strausberg, a Board-certified neuroradiologist, examined a magnetic resonance imaging (MRI) scan of appellant's left ankle. He stated impressions of plantar tendon tendinitis; fluid in the posterior subtalar space, a small calcaneal spur, and a moderate amount of plantar tendon tendinitis adjacent to the calcaneal spur.

In a report dated May 19, 2016, Dr. Stephen C. Wan, a Board-certified podiatrist, examined appellant and diagnosed recurrent plantar fasciitis of the left foot. He explained that she would benefit from functional and mechanical control *via* a new pair of functional foot

orthotics. Dr. Wan further noted that compression of the abductor hallucis muscle of the left foot produced local tenderness, as well as direct palpation against the plantar calcaneal tubercle. Palpation of the plantar aponeurosis produced low-grade symptoms.

On November 30, 2016 appellant requested reconsideration of the December 1, 2015 merit decision.³ With her request, she submitted a November 17, 2016 letter from Dr. Mittleman explaining that it was not medically appropriate to close appellant's claim because she required new orthotics once per year. Dr. Mittleman further reasoned that appellant had recently been granted a schedule award for permanent impairment of the left lower extremity.

By decision dated February 17, 2017, OWCP reviewed the merits of appellant's claim and declined modification of its December 1, 2015 decision. It found that the fact that she received a schedule award for permanent impairment of her left lower extremity had no bearing on whether she still had residuals of her work injury. OWCP noted that impairment is based on medical evidence, while disability reflected an inability to earn wages.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.⁶

To be of probative value, a medical opinion must be based on a complete factual and medical background, must be of reasonable medical certainty, and be supported by medical rationale.⁷ Medical rationale is a medically sound explanation for the opinion offered.⁸

³ On September 30, 2016 OWCP granted appellant a schedule award for one percent permanent impairment of her left lower extremity.

⁴ *Gewin C. Hawkins*, 52 ECAB 242-43 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

⁵ *Mary A. Lowe*, 52 ECAB 223-24 (2001).

⁶ *Id.*; *Leonard M. Burger*, 51 ECAB 369, 369 (2000).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁸ *See Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained left plantar fascia strain and left strain of the talofibular and calcaneofibular ligaments as a result of the daily standing and walking required as a mail carrier. Effective July 22, 2015, it terminated her wage-loss compensation and medical benefits based on the second opinion report of Dr. Ha'Eri-Gharavi.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits as of July 20, 2015. However, the Board further finds that OWCP failed to meet its burden of proof to terminate her medical benefits.

On August 21, 2014 OWCP referred appellant to Dr. Ha' Eri-Gharavi for a second opinion evaluation to determine the status of appellant's accepted conditions, and recommendations for further medical treatment.

Prior to Dr. Ha'Eri-Gharavi's evaluation of appellant, appellant's own treating physician, Dr. Signorelli reported on October 2, 2014 that appellant could return to full-duty work.

In a report dated October 8, 2014, Dr. Ha'Eri-Gharavi noted that appellant's symptoms of left plantar fascia strain and left ankle strain had resolved, other than aching in the morning in her left foot. He related that she had no objective findings of her accepted left foot and ankle conditions. Dr. Ha'Eri-Gharavi recommended that appellant could continue performing her regular duties on a full-time basis. However, regarding further medical care, he recommended that she continue wearing an orthotic device in her left shoe. Dr. Ha'Eri-Gharavi noted that appellant would need to wear orthotics, meaning that she would have to be fitted for orthotics every year or two.

In a progress report dated February 12, 2015, Dr. Mittleman examined appellant and reviewed the October 8, 2014 report of Dr. Ha'Eri-Gharavi. He noted that she had returned to full-duty work and that she had very minimal residuals of her plantar fasciitis condition. Dr. Mittleman further concurred with Dr. Ha'Eri-Gharavi's recommendation of wearing orthotics on appellant's left foot as part of her future medical care.

The Board, therefore, finds that the reports from appellant's treating physicians, Dr. Signorelli and Dr. Mittleman, as well as the second opinion report dated October 8, 2014 of Dr. Ha'Eri-Gharavi, all support a finding that she was able to return to full-time regular work and was no longer disabled as of July 20, 2015. Under FECA,⁹ the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁰ Whether a particular injury causes an employee to be disabled from work and the duration of that disability are medical issues which must be established by a preponderance of the reliable, probative, and substantial medical evidence.¹¹ As the physicians of record agreed that appellant could perform her regular employment duties full time, OWCP

⁹ *Supra* note 1.

¹⁰ See *Prince E. Wallace*, 52 ECAB 357 (2001).

¹¹ See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

met its burden of proof to terminate her wage-loss compensation benefits based on its finding that her disability from work had ceased.¹²

The Board finds however that OWCP failed to meet its burden of proof to establish that appellant no longer required medical treatment as a result of the accepted conditions.

OWCP authorized the purchase of biomechanical orthotic shoes, which Dr. Signorelli provided to appellant on October 2, 2014. Dr. Ha'Eri Gharavi reported on October 8, 2014 that she would not require further medical care, except for left shoe orthotics. Dr. Mittleman, in a progress note dated February 12, 2015 related that he concurred with Dr. Ha'Eri-Gharavi that appellant would require left foot orthotics as a part of her future medical care.

Each physician recommended that appellant continue to receive orthotics for treatment of her condition, which establishes a need for continued periodic medical treatment. There is no basis in the medical record for OWCP's statement in its decision of December 1, 2015 that the unanimous recommendation for continued use of orthotics was merely "prophylactic." While Dr. Ha'Eri-Gharavi's report suggested that appellant no longer had residuals of her accepted injury, he did also opine that her accepted injury would require continued use of orthotic devices. Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issue(s) in the case.¹³ Prior to finding that appellant would only require orthotic devices on a "prophylactic" basis, OWCP would be required to clarify this issue with Dr. Ha'Eri-Gharavi. As such, OWCP did not meet its burden of proof to terminate her medical benefits.¹⁴

The Board will, therefore, affirm OWCP's termination of appellant's wage-loss compensation, but reverse OWCP's termination of her medical benefits.

LEGAL PRECEDENT -- ISSUE 2

As OWCP properly terminated appellant's compensation benefits, the burden shifts to her to establish continuing disability and residuals after that date causally related to her accepted injury.¹⁵ To establish causal relationship the claimant must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.¹⁶ Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁷

¹² *Supra* note 5.

¹³ *See Richard F. Williams*, 55 ECAB 343, 346 (2004).

¹⁴ *See K.B.*, Docket No. 16-1146 (issued March 21, 2017).

¹⁵ *Manuel Gill*, 52 ECAB 282 (2001).

¹⁶ *R.D.*, Docket No. 16-0982 (issued December 20, 2016).

¹⁷ *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established continuing disability after July 22, 2015 causally related to her accepted employment injury.

Following the termination of compensation benefits, OWCP received additional medical evidence. In reports dated August 5, 2015 and November 17, 2016, Dr. Mittleman again reiterated appellant's need for continuing orthotics and provided an opinion that she had continuing disability. In a May 6, 2016 report, Dr. Wan diagnosed recurrent plantar fasciitis of the left foot, but did not offer an opinion regarding her disability status. These reports are of limited probative value as they do not provide medical rationale explaining that appellant had continuing disability causally related to the accepted employment injury.¹⁸

OWCP also received a left ankle MRI scan report from Dr. Strausberg, dated May 2, 2016, in which he noted findings of plantar tendon tendinitis, fluid in the posterior subtalar space, and small calcaneal spur. However, the Board has previously held that diagnostic reports are insufficient to discharge the burden of proof regarding continuing disability as they do not offer a physician's opinion regarding disability or causal relationship.¹⁹ Appellant has not, therefore, submitted medical evidence sufficient to demonstrate continuing disability causally related to her accepted injury.

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 met its burden of proof to justify termination of appellant's wage-loss compensation, effective July 20, 2015, but failed its burden of proof to justify termination of her medical benefits. The Board further finds that she has not established continuing disability after July 20, 2015.

¹⁸ See *K.C.*, Docket No. 17-0379 (issued November 9, 2017).

¹⁹ See *G.G.*, Docket No. 17-0537 (issued July 20, 2017).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: March 1, 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