United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
	)	
and	)	**Docket No. 18-1060**
	)	**Issued: November 1, 2018**
U.S. POSTAL SERVICE, POST OFFICE, North Kingstown, RI, 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 30, 2018 appellant filed a timely appeal from a March 30, 2018 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 4, 2018; and (2) whether appellant has met her burden of proof to establish continuing disability after February 4, 2018 causally related to her December 29, 2014 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 7, 2015 appellant, then a 57-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on December 29, 2014, she pulled a muscle in her right calf when she lifted a heavy package at work. She stopped work on December 30, 2014.

OWCP accepted that appellant sustained a right calf sprain and paid appellant disability compensation on the daily rolls beginning February 13, 2015 and on the periodic rolls beginning May 3, 2015.

In mid-May 2015, appellant sought treatment for a reddened wound on her right foot which she first noticed on May 12, 2015. She developed an infected abscess on the plantar aspect of her right foot. On May 21, 2015 a metal shard was surgically removed from appellant's right foot during irrigation and debridement surgery.[2] During additional irrigation surgery on May 28, 2015 appellant underwent a balloon angioplasty of her right foot with the insertion of two stents. Over the course of the latter half of 2015, she received treatment for infections related to her right foot abscess. During this period, appellant was diagnosed with diabetes which was thought to have been a longstanding condition.[3]

On January 4, 2016 Dr. John K. Czerwien, Jr., an attending Board-certified orthopedic surgeon, reported that appellant's right foot abscess had essentially healed. He diagnosed lumbar strain/sprain, lumbar degenerative disc disease, and right lower extremity radiculopathy.

The findings of April 11, 2016 electromyogram (EMG) and nerve conduction velocity (NCV) testing of appellant's lower extremities contained an impression of right sciatic nerve entrapment at its exit through the greater sciatic foramen beneath the piriformis muscle, and metabolic peripheral polyradicular neuropathy of the bilateral lower extremities.

In a May 1, 2017 report, Dr. Czerwein diagnosed lumbalgia, chronic axillary mechanical back pain, and piriformis syndrome which he felt were attributable to appellant's December 29, 2014 employment injury. He indicated that appellant could return to light-duty work.

On August 15, 2017 OWCP referred appellant for a second opinion examination to Dr. Joseph B. Fitzgerald, a Board-certified orthopedic surgeon. It requested that Dr. Fitzgerald evaluate appellant's right lower extremity condition and determine whether appellant had residuals of her December 29, 2014 employment injury.

[2] The medical reports of record reflect that appellant alternated between reporting that she stepped on a piece of metal at work and reporting that she was not sure when the metal shard entered her right foot. There is no indication in the case record that she filed a claim for an employment-related right foot injury.

[3] On July 16, 2015 OWCP referred appellant for a second opinion examination to Dr. Gilbert Shapiro, a Board-certified orthopedic surgeon, in order to further evaluate her medical condition. In an August 29, 2015 report, Dr. Shapiro opined that appellant's December 29, 2014 right calf sprain had resolved and that her continuing medical problems were due to several nonwork-related conditions, including diabetic lower extremity neuropathy and infection of the right foot.

In a September 8, 2017 report, Dr. Fitzgerald noted appellant's factual and history and detailed the findings of the physical examination he conducted on that date. He noted that appellant was observed to have an antalgic gait and an inability to heel and toe walk on the right. Appellant had an apparent sensory abnormality in her right lower extremity with increased sensation to light touch in her lateral calf, loss of sensation to light touch in the dorsum of her right foot, and tenderness associated with multiple scars on the plantar aspect of her right foot. Dr. Fitzgerald noted that darsalis pedis and posterior tibial pulses were absent on the right side and were trace positive on the left side. There was loss of active and passive motion of the toes of the right foot, and significant loss of both active and passive dorsiflexion of the right ankle. Dr. Fitzgerald diagnosed right calf strain, sciatic neuropathy plus metabolic bilateral peripheral neuropathy, arterial insufficiency in the right lower extremity, status post angioplasty and stent insertion, status post incision and drainage of right foot abscess, and lumbar spondylosis.

Dr. Fitzgerald opined that appellant's December 29, 2014 right calf sprain/strain had resolved and noted that no objectively verifiable residual damage to the right calf muscle was present upon physical examination. He indicated that appellant had preexisting conditions of right sciatic nerve impingement and metabolic polyneuropathy which were the primary cause of numbness/tingling in her right lower extremity, but he noted that the December 29, 2014 incident caused a slight aggravation/exacerbation of those preexisting conditions.[4] Dr. Fitzgerald indicated that the surgical scarring related to appellant's nonwork-related right foot abscess and the preexisting nonwork-related neuropathy of her right lower extremity caused appellant to be permanently limited to sedentary light duty.[5]

On October 5, 2017 Dr. Czerwein noted that appellant reported that she continued to have back pain and radicular-type right lower extremity pain. He diagnosed lumbar strain/sprain and lumbar spondylosis and indicated that appellant reported she was going to return to light-duty work.[6]

On October 6, 2017 OWCP requested that Dr. Fitzgerald provide a supplemental report to clarify whether the December 29, 2014 employment injury caused an aggravation of appellant's preexisting sciatic nerve impingement and metabolic polyneuropathy that still caused residuals.

In a November 11, 2017 supplemental report, Dr. Fitzgerald indicated that appellant sustained a right calf sprain on December 29, 2014 by lifting a heavy package at work. He opined that the right foot numbness and tingling she developed later that day constituted a temporary aggravation of her preexisting sciatic neuropathy and metabolic peripheral neuropathy. Dr. Fitzgerald noted that appellant's right foot abscess from 2015 was a consequence of arterial insufficiency in her right lower extremity. In order to treat the abscess and preserve her right foot,

[4] Dr. Fitzgerald indicated that appellant also had the preexisting conditions of arterial insufficiency of the lower extremities and lumbar spondylosis.

[5] In a September 8, 2017 work capacity evaluation form (Form OWCPc), Dr. Fitzgerald recommended various work restrictions, including walking for no more than two hours per day, standing for no more than six hours per day, and lifting, pushing, pulling no more than 10 pounds.

[6] Although Dr. Czerwein indicated since May 2017 that appellant could return to light-duty work, she did not, in fact, return to any type of work after she stopped work on December 30, 2014.

appellant underwent multiple surgical procedures which caused permanent damage and loss of function of the foot. Dr. Fitzgerald opined that the development of appellant's right foot abscess was not related to her December 29, 2014 calf strain and that the sciatic neuropathy and metabolic peripheral neuropathy both had returned to their preinjury status.

In a November 8, 2018 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she no longer had residuals of her December 29, 2014 employment injury. It informed her that the proposed termination action was justified by the opinion of Dr. Fitzgerald. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed termination action.

In a December 15, 2017 report, appellant asserted that, even though Dr. Czerwein and Dr. Fitzgerald had cleared her to return to light-duty work, she believed that she still had "permanent medical issues" due to her December 29, 2014 employment injury. She noted that Dr. Czerwein had opined that the nerve pain which traveled from her back down to her right foot was related to her December 29, 2014 employment injury, rather than to a preexisting condition. Appellant indicated that she was unaware she had diabetes until she was diagnosed with the condition after December 29, 2014 and noted that she understood her right foot problems were not employment related.

Appellant submitted a December 7, 2017 report from Dr. Czerwein who indicated that appellant reported that her right calf still bothered her and that she had back pain which radiated down her right leg. Dr. Czerwein advised that appellant had tenderness over the lumbar spine and right calf upon physical examination, and he diagnosed sciatic neuropathy, piriformis-type syndrome, lumbalgia, and right calf pain. He noted, "I know Dr. Fitzgerald mentioned that the calf strain had healed. It is very possible. She is still having some calf pain but she does have a sciatic neuropathy that has been confirmed on EMG. With this being said, there is objective evidence of pathologic significance." Dr. Czerwein indicated that appellant could perform light-duty work.

In another December 7, 2017 report, Dr. Czerwein expressed his belief that appellant still had neurologic symptoms in her right lower extremity. He also indicated that appellant continued to have evidence of right calf pain. Dr. Czerwein felt that an "independent medical examination" was necessary to evaluate appellant's right calf condition.

By decision dated January 8, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 4, 2018, because she had no residuals of her December 29, 2014 employment injury after that date. It found that the weight of the medical evidence with respect to appellant's employment-related residuals rested with the opinion of Dr. Fitzgerald, OWCP's referral physician. OWCP noted that the reports of Dr. Czerwein were of limited probative value with respect to such residuals.

On February 1, 2018 appellant requested reconsideration of OWCP's January 8, 2018 decision.

Appellant submitted a January 22, 2018 narrative report from Dr. Czerwein who noted that appellant was "still having work-related right lower extremity sciatic neuropathy." In a

January 22, 2018 disability report, Dr. Czerwein advised that appellant was unable to return to work until after her next medical appointment on March 22, 2018.

By decision dated March 30, 2018, OWCP denied modification of its January 8, 2018 decision. It found that the weight of the medical evidence with respect to appellant's employment-related residuals continued to rest with Dr. Fitzgerald's opinion and that the newly submitted reports of Dr. Czerwein did not establish disability after February 4, 2018 due to the December 29, 2014 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[7] It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[8] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.[9]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 4, 2018.

OWCP accepted appellant's claim for right calf sprain. It based its termination of appellant's wage-loss compensation and medical benefits effective February 4, 2018 on the September 8 and November 11, 2017 reports of Dr. Fitzgerald, an OWCP referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Fitzgerald. The opinion of Dr. Fitzgerald establishes that appellant had no disability due to her December 29, 2014 employment injury after February 4, 2018.

In September 8 and November 11, 2017 reports, Dr. Fitzgerald detailed the findings of the physical examination he conducted on September 8, 2017. He noted that appellant had an apparent sensory abnormality in her right lower extremity with increased sensation to light touch in her lateral calf, loss of sensation to light touch in the dorsum of her right foot, and tenderness associated with multiple scars on the plantar aspect of her right foot. Dr. Fitzgerald diagnosed right calf strain, sciatic neuropathy plus metabolic bilateral peripheral neuropathy, arterial insufficiency in the right lower extremity, status post angioplasty and stent insertion, status post incision and drainage of right foot abscess, and lumbar spondylosis. He opined that appellant's December 29, 2014 right calf sprain/strain had resolved and noted that no objectively verifiable

[7] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[8] *Id.*

[9] *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

residual damage to the right calf muscle was present upon physical examination. Dr. Fitzgerald opined that the right foot numbness/tingling appellant developed on December 29, 2014 constituted only a temporary aggravation of her preexisting right sciatic neuropathy and metabolic peripheral neuropathy condition, each of which had returned to its preinjury status.[10] He indicated that the surgical scarring related to appellant's nonwork-related right foot abscess and the preexisting nonwork-related neuropathic condition of her right lower extremity caused appellant to be permanently limited to sedentary light duty.[11]

The Board has reviewed the opinion of Dr. Fitzgerald and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Fitzgerald provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[12] He provided medical rationale for his opinion by explaining that appellant had no longer had any objective signs of her employment-related right calf sprain and that her continuing right lower extremity problems were due to nonwork-related conditions, including surgical scarring related to her right foot abscess and the preexisting neuropathy of her right lower extremity.[13]

After receiving OWCP's notice of proposed termination, appellant submitted two December 7, 2017 reports of Dr. Czerwein. However, these reports are of limited probative value regarding appellant's employment-related residuals because Dr. Czerwein did not provide a rationalized medical opinion that appellant continued to have residuals of her December 29, 2014 right calf sprain. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[14]

In one of the December 7, 2017 reports, Dr. Czerwein indicated that appellant had tenderness over the lumbar spine and right calf upon physical examination, and he diagnosed sciatic neuropathy, piriformis-type syndrome, lumbalgia, and right calf pain. However, Dr. Czerwein did not provide a clear opinion that appellant had residuals of her December 29, 2014 right calf sprain.[15] Rather, he provided an equivocal opinion on this matter when he noted, "I know Dr. Fitzgerald mentioned that the calf strain had healed. It is very possible. She is still having some calf pain, but she does have a sciatic neuropathy that has been confirmed on EMG. With this being said, there is objective evidence of pathologic significance." The Board has held

[10] Dr. Fitzgerald noted that appellant also had the preexisting conditions of arterial insufficiency of the lower extremities and lumbar spondylosis. He did not indicate that these conditions were aggravated on December 29, 2014.

[11] In a September 8, 2017 work capacity evaluation form, Dr. Fitzgerald recommended various work restrictions due to appellant's nonwork-related conditions.

[12] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[13] The Board notes that, although Dr. Fitzgerald included the diagnosis of right calf strain in his September 8, 2017 report, he was unequivocal in expressing his opinion that the December 29, 2014 right calf sprain had resolved.

[14] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[15] The Board notes appellant's case has not been accepted for a lumbar condition or sciatic neuropathy in the right lower extremity.

that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship.[16] In another December 7, 2017 report, Dr. Czerwein expressed his belief that appellant still had neurologic symptoms in her right lower extremity. He also indicated that appellant continued to have evidence of right calf pain. However, this report is of limited probative value because Dr. Czerwein did not provide a rationalized medical opinion that appellant's right calf pain was caused by the December 29, 2014 employment injury as opposed to some nonwork-related condition.[17]

For these reasons, the Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective February 4, 2018.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates appellant's compensation benefits, the burden shifts to the claimant to establish that he or she has continuing disability after that date related to the accepted injury.[18] To establish causal relationship between an accepted condition and any attendant disability claimed, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.[19] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.

ANALYSIS -- ISSUE 2

After OWCP's January 8, 2018 termination decision, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after February 4, 2018 due to residuals of her December 29, 2014 employment injury. Given that the Board has found that OWCP properly relied on the opinion of OWCP's referral physician, Dr. Fitzgerald, in terminating appellant's compensation, effective February 4, 2018, the burden shifts to appellant to establish that she is entitled to compensation after that date.[20] The Board has reviewed the additional evidence submitted by appellant and finds that it is not of sufficient probative value to establish that she had disability or residuals of her accepted December 29, 2014 employment injury after February 4, 2018.

Appellant submitted a January 22, 2018 narrative report from Dr. Czerwien who indicated that appellant was "still having work-related right lower extremity sciatic neuropathy." However, this report is of limited probative value regarding whether employment-related residuals continued after February 4, 2018 because Dr. Czerwein did not provide any medical rationale in support of his opinion on causal relationship. The Board again notes that appellant's case has not been

[16] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

[17] *See supra* note 14.

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

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

[20] *See supra* note 9.

accepted for a lumbar condition or sciatic neuropathy. As noted above, a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[21]

In a January 22, 2018 disability report, Dr. Czerwein advised that appellant was unable to return to work until after her next medical appointment on March 22, 2018. This report is of limited probative value regarding whether employment-related residuals continued after February 4, 2018 because Dr. Czerwein did not provide any opinion on the cause of appellant's disability. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[22]

Thus, the Board finds that appellant has not met her burden of proof.

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 terminate appellant's wage-loss compensation and medical benefits, effective February 4, 2018. The Board further finds that appellant has not established continuing disability after February 4, 2018 causally related to her accepted December 29, 2014 employment injury.

[21] *See supra* note 14.

[22] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 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