

appellant has met her burden of proof to establish continuing residuals or disability after January 21, 2017.

FACTUAL HISTORY

On June 20, 2015 appellant, then a 42-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained a dog bite to her right foot and heel³ while delivering a package that day in the performance of duty. She stopped work on the date of injury and received treatment in a hospital emergency department for a dog bite to the right posterior tibular-fibular area.⁴

In a report dated July 2, 2015, Dr. Sidney J. Morgan, Jr., a treating Board-certified family practitioner, noted a small, well-healed puncture wound of the right ankle without swelling or restricted motion. He restricted appellant to sedentary work for one week.

In a report dated August 3, 2015, Dr. Steven Shapiro, an attending Board-certified orthopedic surgeon, diagnosed right foot pain and right Achilles tenosynovitis caused by the June 20, 2015 dog bite. In a report dated August 25, 2015, he diagnosed post-traumatic insertional tendinitis of the right Achilles tendon.⁵ Dr. Shapiro limited appellant to sedentary work, then held appellant off work effective November 2, 2015. Appellant remained off work.⁶

On July 16, 2015 OWCP accepted that appellant sustained an “open wound of leg, and ankle with complications, right (Achilles).” It paid her wage-loss compensation for total disability commencing September 19, 2015. Appellant remained off work.

On December 15, 2015 Dr. Shapiro performed an authorized right gastrocnemius lengthening and injection to address tightness of the Achilles and gastrocnemius tendons. He prescribed physical therapy.⁷ Dr. Shapiro continued to submit periodic progress reports. In a report dated April 12, 2016, he diagnosed possible neuritis to the cutaneous nerve of the right great toe, with improving range of motion in the right ankle.

In a report dated May 24, 2016, Dr. Jonathan Shults, a treating physician Board-certified in orthopedic surgery, noted that appellant’s condition had worsened following the December 15, 2015 surgery. On examination of the right lower extremity, he observed mild tenderness over the distal Achilles tendon and mild numbness in the plantar aspect of the great toe. Dr. Shults diagnosed an open wound of the right knee and/or leg and/or ankle with complication, and Achilles

³ The claim form of record is a copy submitted for legibility. On its face, the form notes that appellant sustained a dog bite to her left foot in the June 20, 2015 incident. As the remainder of the evidence of record addresses a dog bite to the right foot and heel, the reference to the left foot is likely a typographical error.

⁴ On June 20, 2015 the employing establishment completed and issued an authorization for examination and treatment (Form CA-16).

⁵ An October 20, 2015 magnetic resonance imaging (MRI) scan of the right ankle showed focal inflammation within Kager’s fat pad. The Achilles tendon was unremarkable.

⁶ Appellant received medical management nurse services from September 2015 to February 2016.

⁷ Appellant participated in physical therapy treatments from February to May 2016.

tenosynovitis. He ordered an electromyography and nerve conduction velocity (EMG/NCV) studies to rule out possible neuropathy.

OWCP, by letter dated August 16, 2016, referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of seven questions, to Dr. Henry Clark Deriso, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether she continued to suffer from residuals of her work-related condition. Question five asked Dr. Deriso about appellant's physical limitations. Question six requested that he assess appellant's work capacity. Question seven asked Dr. Deriso whether appellant continued "to suffer residuals of the injury" and to explain his medical rationale for the opinion expressed.

In a report dated September 1, 2016, Dr. Deriso provided a history of injury and treatment. He noted that appellant exhibited some symptoms of reflex sympathetic dystrophy (RSD) Type 1, but did not meet the diagnostic criteria. On examination, Dr. Deriso found a small scar on the right anterior gastrocnemius, limited ankle motion due to pain, two centimeters of atrophy ten centimeters below the inferior pole of the patella, and hypersensitivity to palpation of the right forefoot and midfoot. He diagnosed a history of right lower leg, ankle, and foot pain, and "[d]oubt RSD."

Dr. Deriso responded to the first four of OWCP's seven questions. In his answers, he opined that appellant was "post-op dog bite" with no residuals from the injury or surgery. Dr. Deriso explained that appellant did not have Type 1 RSD as her symptoms had persisted longer than the expected duration for the condition. The final line of his report is "... continued." Dr. Deriso appended a work capacity evaluation for musculoskeletal conditions (Form OWCP-5c) dated September 1, 2016 indicating that appellant could resume full-time, full-duty work with no restrictions.

On November 15, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Deriso's opinion. It noted that Dr. Shults based his opinion only on appellant's subjective complaints without reference to objective test results documenting the presence of Type 1 RSD or a neurologic condition. OWCP afforded appellant 30 days to submit additional evidence or argument.

In response, appellant submitted a November 22, 2016 report from Dr. Shapiro diagnosing possible right tarsal tunnel syndrome.

By decision dated January 20, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective January 21, 2017. It found that the weight of the medical evidence rested with Dr. Deriso's opinion and established that appellant no longer had disability or residuals due to her accepted injury.

On January 19, 2018 appellant, through counsel, requested reconsideration. He contended that OWCP erred in terminating appellant's compensation and medical benefits as Dr. Deriso's opinion was incomplete, failed to directly reference the SOAF, and lacked clear medical rationale. Counsel submitted additional evidence.

In reports dated November 21, 2016 to February 16, 2017, Dr. Shapiro related appellant's complaints of significant pain in the toes of her right foot into the arch with numbness and paresthesias. On examination, he noted a one-centimeter atrophy in the right calf, and a positive

percussion test over the right proximal tarsal tunnel radiating into the right great and second toes. Dr. Shapiro diagnosed right tarsal tunnel syndrome.

In a report dated August 27, 2017, Dr. Shapiro reviewed Dr. Deriso's report. He concurred that appellant did not have RSD, but questioned why Dr. Deriso had not observed the objective signs of tarsal tunnel syndrome. Dr. Shapiro noted that EMG/NCV studies performed on April 12, 2017 confirmed moderately severe right tarsal tunnel syndrome. He recommended a right tarsal tunnel release.

By decision dated April 12, 2018, OWCP affirmed the January 20, 2017 termination decision, finding that the medical evidence of record was insufficient to overcome the weight accorded to Dr. Deriso's opinion.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁸ OWCP may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹⁰ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 21, 2017.

OWCP terminated appellant's wage-loss compensation and medical benefits based on the second opinion report of Dr. Deriso. In his September 1, 2016 report, Dr. Deriso opined that the accepted injury had ceased without residuals. He responded to the first four of seven questions from OWCP, followed by the word "... continued." However, there is no response to questions five to seven. This suggests that Dr. Deriso did not provide answers to OWCP's questionnaire in its entirety or his complete report is not present in the electronic case record as transmitted to the Board.

Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.¹² The Board finds that, once

⁸ *G.C.*, Docket No. 18-0842 (issued December 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

¹⁰ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹¹ *G.C.*, *supra* note 8; *Calvin S. Mays*, 39 ECAB 993 (1988).

¹² *G.C.*, *supra* note 8.

OWCP undertook development of the evidence by referring appellant to a second opinion physician, it had an obligation to obtain a sufficiently reasoned report.¹³ This includes requesting a supplemental report if the opinion is missing pages.¹⁴ However, OWCP did not request a supplemental report in this case. Instead, it terminated appellant's wage-loss compensation and medical benefits predicated on Dr. Deriso's incomplete report. As OWCP failed to obtain a complete, probative second opinion report, the Board finds that it has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.¹⁵

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 21, 2017.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 11, 2019
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

¹³ *M.E.*, Docket No. 18-0808 (issued December 7, 2018).

¹⁴ *See H.Y.*, Docket No. 12-0969 (issued February 26, 2013) (the Board held that where a second opinion report had pages missing, OWCP should have requested a supplemental opinion).

¹⁵ In light of the Board's disposition in Issue 1, Issue 2 is moot.