

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

_____)	
T.P., Appellant)	
)	
and)	Docket No. 18-1565
)	Issued: February 10, 2020
U.S. POSTAL SERVICE, LAFAYETTE)	
PROCESSING & DISTRIBUTION FACILITY,)	
Lafayette, LA, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 13, 2018 appellant filed a timely appeal from March 1 and May 4, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ The Board notes that, during the pendency of this appeal, OWCP issued an August 27, 2018 decision denying modification of the May 4, 2018 decision that is the subject of the current appeal. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue. 20 C.F.R. §§ 501.2(c)(3), 10.626. *See W.D.*, Docket No. 19-1124, n3 (issued October 22, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's August 27, 2018 decision is set aside as null and void.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal and to OWCP following the May 4, 2018 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's entitlement to medical benefits; and (2) whether appellant has met her burden of proof to establish a recurrence of the need for medical treatment causally related to her December 14, 2017 employment injury.

FACTUAL HISTORY

On December 14, 2017 appellant, then a 55-year-old mail processor lead clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained stabbing pain in her right heel and increased right knee pain when pushing containers to a machine to continue loading while in the performance of duty. OWCP accepted the claim for an unspecified sprain of the right foot.

Appellant received treatment at the emergency department on December 14, 2017 for right foot pain. In a duty status report (Form CA-17) of even date, Dr. Stephanie Humble, Board-certified in family medicine, diagnosed a right foot sprain and provided limitations.

On December 15, 2017 appellant accepted a limited-duty position offered by the employing establishment.

In a report dated January 8, 2018, Dr. James Noriega, a podiatrist, obtained a history of appellant experiencing pain in her right heel after walking and standing at work loading mail onto machines. He noted that x-rays showed no fracture. Dr. Noriega diagnosed right foot pain and plantar fascial fibromatosis.

In progress reports dated January 29, 2018, Dr. Noriega diagnosed plantar fascial fibromatosis and right foot pain and referred appellant for physical therapy. In a Form CA-17 of even date, he provided the same diagnoses and checked a box marked "yes" that the history provided by her was the same as that on the form of her injuring both feet pushing heavy equipment and standing for prolonged periods. Dr. Noriega indicated that appellant could perform her usual employment with the exception of intermittently lifting up to 35 pounds rather than 70 pounds.

On January 30, 2018 Dr. Noriega requested that OWCP authorize physical therapy for appellant.

In a February 7, 2018 Form CA-17, Dr. Noriega diagnosed plantar fascial fibromatosis and right foot pain, checked a box marked "yes" indicating that the history provided by appellant corresponded to that on the form and listed work restrictions.

OWCP advised appellant on March 1, 2018 that it had closed her case as the January 29, 2018 Form CA-17 had indicated that she could resume work without restrictions.

On March 13, 2018 appellant filed a notice of recurrence (Form CA-2a) of the need for medical treatment beginning December 29, 2017 causally related to her accepted employment injury. She indicated that she had performed modified employment following her injury. Appellant asserted that she required physical therapy for her condition.

In a development letter dated April 3, 2018, OWCP advised appellant of the type of evidence necessary to establish an employment-related recurrence of the need for medical treatment. It afforded her 30 days to submit additional evidence. No response was received.

By decision dated May 4, 2018, OWCP found that appellant had not established that she sustained a recurrence of the need for medical treatment causally related to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ 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.⁵

OWCP's procedures provide that pretermination notice is required before terminating a claimant's entitlement to medical benefits unless the treating physician provides that additional treatment "is not necessary or treatment has ended."⁶

OWCP's procedures further provide that a decision is not necessary regarding a claim for a recurrence of a medical condition when the recurrence is only for medical care "and there has been no release from care or significant gap in treatment."⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's entitlement to medical benefits.

OWCP accepted appellant's December 14, 2017 traumatic injury claim for a right foot sprain. Appellant received medical treatment for her condition on the date of injury and thereafter on January 8 and 29 and February 7, 2018. In a January 29, 2018 progress report, Dr. Noriega diagnosed plantar fascial fibromatosis and right foot pain and referred her for physical therapy. He completed a Form CA-17 of even date providing that appellant could resume work with limitations on lifting of up to 35 pounds intermittently.

On March 1, 2018 OWCP advised appellant that her claim was closed for medical benefits after finding that Dr. Noriega had released her to resume her usual employment in the January 29, 2018 Form CA-17. The Board finds that this March 1, 2018 communication constitutes a final adverse decision of OWCP over which it has jurisdiction.⁸ As discussed, however, to terminate entitlement to medical benefits, it must show that appellant has no further residuals of her

⁴ See *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *T.P.*, 58 ECAB 524 (2007).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(a)(8) (February 2013).

⁷ *Id.* at Chapter 2.1500.3(e)(2) (June 2013).

⁸ 20 C.F.R. §§ 501.2(c) and 501.3.

employment-related condition which require further medical treatment.⁹ OWCP procedures provide that it must also issue a pretermination notice unless the attending physician provides that further medical treatment is unnecessary.¹⁰ Dr. Noriega had not released appellant from care and there had been no significant gap in her obtaining medical treatment. Therefore, the Board finds that OWCP improperly terminated her entitlement to medical benefits as it failed to follow the necessary procedures.¹¹

On remand, OWCP should reinstate her entitlement to medical benefits.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's entitlement to medical benefits.¹²

⁹ *Supra* note 4; *see also* S.S., Docket No. 17-0781 (issued August 1, 2018).

¹⁰ *Supra* note 6.

¹¹ In light of the Board's findings as to issue 1, issue 2 is rendered moot. The Board notes that appellant had not been released from medical treatment for her accepted employment injury and was requesting further treatment.

¹² Upon return of the case record OWCP shall administratively remove all evidence relating to a different claimant's claim.

ORDER

IT IS HEREBY ORDERED THAT the May 4 and March 1, 2018 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: February 10, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board