

wage-loss compensation and medical benefits, effective August 4, 2021, as she no longer had disability or residuals due to her accepted employment injury.

FACTUAL HISTORY

On April 4, 2019 appellant, then a 44-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that she developed inflammation in her feet due to factors of her federal employment. She noted that she first became aware of her condition and realized its relationship to her federal employment on March 12, 2019. Appellant stopped work on March 13, 2019 and returned to work on April 1, 2019. OWCP accepted the claim for plantar fascial fibromatosis and paid her intermittent wage-loss compensation on the supplemental rolls from April 8, 2019 to January 1, 2021.

In an October 19, 2020 report, Dr. Michael R. Cook, a podiatrist Board-certified in foot surgery, noted that appellant presented for follow-up care secondary to pain in both feet associated with plantar fasciitis. He related that she was suffering from plantar fasciitis and continued to work, but was not at 100 percent, and was unable to carry or push a cart of more than 10 pounds or climb stairs. Dr. Cook noted that appellant was on her feet “quite a bit” and was wearing her orthotics, which had worn out, as well as supportive shoes, but that she complained of continued pain in both feet. He examined her and noted findings, which included remaining tenderness upon palpation of both plantar fascial insertions, *pes cavus* deformities bilaterally, intractable plantar keratosis underneath both fifth metatarsal heads, and tenderness upon palpation of the third interspace of the right foot with a positive Mulder’s sign. Dr. Cook also noted that appellant’s range of motion (ROM) of the subtalar, ankle, and metatarsal phalangeal joints were adequate, without pain or crepitation. He advised that previous x-rays confirmed accessory navicular bones, increase in calcaneal inclination angles bilateral, and heel spurs bilateral. Dr. Cook diagnosed plantar fasciitis, bilateral, as a result of working at the employing establishment; *pes cavus* deformities, bilateral; and intractable plantar keratosis bilateral, with third interspace neuritis of the right foot. He advised that appellant was capable of working full time with restrictions of no carrying or pushing a cart of more than 10 pounds and no stair climbing. Dr. Cook also completed a duty status report (Form CA-17) on October 19, 2020, advising no work.

Appellant had various periods of intermittent work and work stoppage and remained off work as of February 5, 2021.

On February 22, 2021 OWCP referred appellant along with a statement of accepted facts (SOAF) for a second opinion evaluation with Dr. Clinton G. Bush, a Board-certified orthopedic surgeon, to determine the status of her accepted employment-related conditions. OWCP provided a SOAF indicating that it had accepted the claim for plantar fascial fibromatosis.

In a February 24, 2021 Form CA-17, Dr. Cook noted that appellant could perform limited duty with restrictions that included walking or standing for no more than 1 hour per day, lifting or carrying up to 10 pounds, pushing or pulling up to 10 pounds for 1 hour, no climbing, 25 minutes of kneeling or stooping, no more than 2 hours of twisting, no more than 7 hours of simple grasping and 3 hours of fine manipulation, 1 hour of reaching, and 4 hours driving a vehicle.

In a March 15, 2021 report, Dr. Bush noted appellant's history of injury and medical treatment. He examined appellant and found that she ambulated slowly, but without any specific abnormal gait pattern and that she did not use any supportive devices. Dr. Bush examined appellant's feet and ankles and found that there was no evident abnormality in either ankle and there was full motion without crepitus or instability, the feet were symmetrical bilaterally, the arches revealed mild *pes cavus*, ROM in the hindfoot, midfoot, and forefoot joints was full and painless, there was mild prominence of the fifth metatarsal head laterally consistent with developmental bunionette deformities, but without any associated inflammatory changes, and no tenderness to palpation over the lateral aspect of the fifth metatarsal heads. He found moderate callus formation on the plantar surface of both fifth metatarsal heads and mild tenderness to palpation in these areas, no tenderness to palpation over the right third web space, no tenderness to palpation over the origin of the plantar fascia bilaterally, no evidence of swelling, warmth, discoloration, or other observable defect, the vascular supply was intact to all 10 toes, sensory function was intact and motor strength was 5/5 in all major muscle groups of the lower extremities, deep tendon reflexes were 2+ and symmetrical at the knees and ankles, and the radiographically evident traction osteophytes on the calcaneal tuberosities at the origin of the plantar fascia were post-morbid artifacts and not contributory to potential symptoms.

Dr. Bush noted that appellant had slightly high arches described by the podiatrist as *pes cavus* and explained that this phenomenon was developmental and not work related. He also noted that she had mild bunionette deformities bilaterally, not mentioned by the podiatrist, with lateral prominence of the fifth metatarsal head, and opined that this was developmental and not work-related. Dr. Bush indicated that no additional diagnostic testing was performed, and the only imaging studies reported were plain radiographic studies of both feet revealed to be normal except for calcaneal osteophytes consistent with traction at the origin of the plantar fascia. He advised that the most significant finding on physical examination was the objectively noted callosities on the plantar surface of the fifth metatarsal heads, which correlates with the descriptions in the various podiatry notes reviewed for his report. Dr. Bush noted that he found some tenderness to palpation associated with these callosities; however, no tenderness whatsoever on firm palpation of the origin of the plantar fascia and no symptoms elicited in the third web space of the right foot related to the alleged interdigital neuroma diagnosed by the podiatrist. He indicated there were no other significant findings on physical examination of appellant's feet.

Dr. Bush opined there was no evidence of any plantar fibromas. He noted that, in the podiatry clinic notes, there was no mention of plantar fibromas, and the podiatrist had not diagnosed plantar fibromatosis. Dr. Bush explained that there appeared to be confusion with the diagnosis by the podiatrist of plantar fasciitis. He opined that the diagnoses of plantar fasciitis and interdigital neuroma were not active and were either resolved or possibly misdiagnosed. Dr. Bush explained that plantar keratoses, bunionette, and *pes cavus* were developmental issues and not work related. He opined that appellant was capable of returning to her date-of-injury job as a city carrier assistant, completed a work capacity evaluation (Form OWCP-5c), and indicated that appellant could perform her usual duties without restrictions.

On April 15, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period January 2 through April 9, 2021.

In a development letter dated April 22, 2021, OWCP indicated that it was in receipt of appellant's Form CA-7, that it appeared that she was claiming disability due to a material change or worsening of her accepted work-related conditions, and that she stopped work on January 2, 2021, and had not returned. It explained that the October 19, 2020 report from her treating physician, Dr. Cook, did not support disability from work and his October 19, 2020 work restriction was not supported by a narrative report. OWCP also noted that the second opinion physician, Dr. Bush, found that she was able to perform full-duty work. It advised appellant of the type of evidence required to establish her claim and afforded her 30 days to provide the necessary evidence.

Appellant continued to file CA-7 forms claiming disability from work through May 14, 2021.

In a May 11, 2021 report, Dr. Cook noted that appellant had experienced pain in both feet for more than two years associated with chronic plantar fasciitis. He explained that, when she attempted to return to work, she had continued pain in both feet, she was on her feet quite a bit as a postal worker, and she had been wearing her prescription orthotics, although they had since worn out, and also wearing her supportive shoes. Dr. Cook opined that "standing or walking for more than one hour creates disability." He noted that appellant's objective findings demonstrated remaining tenderness and effusion upon palpation of both plantar fascial insertions, and that previous x-rays revealed bilateral heel spurs. Dr. Cook recommended new prescription orthotics, since her old orthotics had worn out and were medically necessary. He opined that appellant was able to work with restrictions including no extensive walking or standing, no carrying or pushing a cart of more than 10 pounds, and no stair climbing. Dr. Cook reiterated his opinion that appellant's bilateral foot pain was due to extensive walking and standing and her condition was the result of her work at the employing establishment. He further opined that, short of surgical intervention, her condition was chronic and not expected to improve, and that a sedentary position would be more suitable to accommodate her foot problems. Dr. Cook completed a Form OWCP-5c advising that appellant could not perform her usual duties, but could work with restrictions to include only one hour of walking, one hour of standing, and eight hours of sitting.

By decision dated June 15, 2021, OWCP denied appellant's claim for disability for the period from January 2 through May 14, 2021. It found that the evidence did not establish that appellant was disabled from work due to the accepted work-related condition as she had not established that her wage loss was due to her inability to perform her regular job duties, or limited-duty assignment, or due to the employing establishment's inability to accommodate her work restrictions.

On June 28, 2021 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, as the evidence of record established that she no longer had employment-related residuals or disability due to her accepted work-related conditions. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination of benefits.

No additional evidence was received.

By decision dated August 4, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 4, 2021. It found that the weight of the medical evidence

rested with the second opinion physician, Dr. Bush, and established that appellant no longer had any disability or residuals of the medical condition resulting from the work injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical opinion evidence.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁷

The term "disability" is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁰

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

³ *Supra* note 1.

⁴ *See M.T.*, Docket No. 21-0783 (December 27, 2021); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁶ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁸ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹¹ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work from January 2 through May 14, 2021, causally related to her accepted employment injury.

Dr. Cook provided a Form CA-17, dated February 24, 2021, with limited-duty restrictions, and, in a May 11, 2021 report, Dr. Cook opined that the pain in both feet was due to extensive walking and standing, and was the result of working for the employing establishment. However, the Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.¹² A medical report lacking a firm diagnosis is of no probative value.¹³ While Dr. Cook noted that appellant had suffered for more than two years from pain in both feet associated with chronic plantar fasciitis, her accepted condition was plantar fascial fibromatosis. The Board, therefore, finds that appellant has not met her burden to establish that she was disabled from work during the claimed period as a result of the accepted employment condition.

Because appellant has not submitted rationalized medical opinion evidence to establish employment-related disability from January 2, 2021, as a result of her accepted plantar fascial fibromatosis, the Board finds that she has not met her burden of proof to establish her claim.

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.

LEGAL PRECEDENT-- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.¹⁴ It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁷ To terminate authorization for medical treatment,

¹² See *A.T.*, Docket No. 21-0985 (issued April 27, 2022); *C.S.*, *supra* note 8; *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

¹³ *A.T.*, *id.*; *C.S.*, *id.*; *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁴ *J.T.*, Docket No. 20-1470 (issued October 8, 2021); *C.C.*, Docket No. 19-1062 (issued February 5, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁵ See *T.M.*, Docket No. 19-1058 (issued March 30, 2021); *G.T.*, *supra* note 10; *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *Elsie L. Price*, 54 ECAB 734 (2003).

¹⁶ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

¹⁷ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 4, 2021.

OWCP referred appellant for a second opinion examination with Dr. Bush. It provided a SOAF indicating that it had accepted the claim for plantar fascial fibromatosis. In a March 15, 2021 report, Dr. Bush noted that appellant's claim was accepted for plantar fascial fibromatosis and opined that this diagnosis was incorrect, as there was no evidence of plantar fibromas, and the prior diagnosis seemed to be a confusion with plantar fasciitis.

However, Dr. Bush's opinion is inconsistent with the SOAF. OWCP accepted that appellant sustained plantar fascial fibromatosis due to the accepted employment injury. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on the accepted conditions.¹⁹ OWCP procedures and Board precedent dictate that, when an OWCP medical adviser, second opinion specialist, or impartial medical specialist renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.²⁰

In this case, Dr. Bush did not rely on the SOAF as a framework in reaching his opinion. The Board, thus, finds that Dr. Bush's report is of diminished probative value.²¹ Accordingly, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 4, 2021.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability, commencing January 2, 2021, causally related to her accepted employment injury. The Board further finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 4, 2021.

¹⁸ See *T.M.*, *supra* note 16; *A.M.*, Docket No. 18-1243 (issued October 7, 2019); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹⁹ See *D.T.*, Docket No. 21-1168 (issued April 6, 2022) *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

²⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). See also *D.C.*, Docket No. 21-0780 (issued December 22, 2021); *Paul King*, 54 ECAB 356 (2003).

²¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed. The August 4, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 5, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board