

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

S.M., Appellant)	
)	
and)	Docket No. 20-1024
)	Issued: January 20, 2022
U.S. POSTAL SERVICE, RUGBY STATION)	
POST OFFICE, Brooklyn, NY, Employer)	

Appearances:
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 13, 2020 appellant, through counsel, filed a timely appeal from a March 4, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence following the March 4, 2020 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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 31, 2019, finding that she no longer had disability or residuals causally related to her accepted bilateral plantar fibromatosis; and (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals on or after March 31, 2019.

FACTUAL HISTORY

On March 6, 2001 appellant, then a 27-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed severe bilateral plantar fasciitis due to factors of her federal employment. She noted that she first became aware of her condition on July 20, 2000, and realized its relation to her federal employment on July 24, 2000. Appellant stopped work on February 10, 2001. She underwent a left foot plantar fasciotomy on March 9, 2001.

On June 6, 2001 OWCP accepted the claim for plantar fasciitis of the left foot. It paid appellant wage-loss compensation on the periodic rolls effective December 29, 2002. On July 20, 2003 OWCP expanded the acceptance of the claim to include bilateral plantar fasciitis.

On October 23, 2018 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. James Schwartz, an orthopedic surgeon, for a second opinion evaluation to obtain an assessment of appellant's work-related condition, any related disability, and appropriate treatment. It explained that the accepted conditions were listed as "plantar fibromatosis, left; plantar fibromatosis, right."

In a November 2, 2018 report, Dr. Schwartz noted appellant's history of injury and medical treatment. He noted that the accepted condition was bilateral plantar fasciitis. Dr. Schwartz also diagnosed nonphysiologic pain behavior, unrelated to her employment as a letter carrier. He opined: "to consider this plantar fasciitis related to two to three months as letter carrier is absurd. At the present time, [appellant's] exam[ination] and history taking is completely nonphysiologic both by exam[ination] and history taking. I see no evidence of fibromatosis, but I also cannot get close enough to examine her feet for plantar fibromatosis. Regardless, the diagnosis of fibromatosis would in no way be related to an occupational disease." Dr. Schwartz indicated that the area of pain and the area operated on was not related to plantar fasciitis, that appellant did not have plantar fascial origin pain or tenderness, but rather had global pain, particularly on the left lower extremity. He further opined, "very succinctly, in my opinion, not only does she not have plantar fasciitis, she cannot possibly have plantar fasciitis as an occupational disease after what appears to be two to three months on the job and indeed started within five days of working. The findings now are so global as to be totally unrelated to plantar fasciitis. I find no evidence of any disease process related to her work as a letter carrier." Dr. Schwartz noted that appellant's surgery incision was along the arch of her left foot and was two inches away from the plantar fascial origin. He diagnosed plantar fasciitis accepted as related to an occupational disease and marked nonphysiologic pain behavior, unrelated to employment as a letter carrier. In response to whether appellant continued to suffer residuals of a work-related condition, Dr. Schwartz opined "I find that there was no work injury." In response to the period of total disability due to the work-related condition and whether appellant had any physical limitations, he responded "I find no work-related

condition.” Dr. Schwartz opined “[o]rthopedically, she has no work-related injury.” He further noted “I find no identifiable work injury.”

In a December 17, 2018 report, Dr. Beth Winke, Board-certified in physical medicine and rehabilitation, noted that appellant ambulated with a cane. She related that appellant’s feet continued to swell and that she was able to ambulate, care for herself, and perform activities of daily living by using the medication Norco. Dr. Winke diagnosed left foot pain, plantar fasciitis, and long-term drug therapy. She noted that compression stockings were ordered.

On January 18, 2019 OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits because her accepted employment condition had resolved with no disabling residuals.⁴ It found that the weight of medical evidence rested with the report of Dr. Schwartz, who found that appellant had no residuals or continuing disability from work. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

In a letter dated January 31, 2019, appellant disagreed with the proposed termination and the findings of the second opinion physician. She argued that she continued to suffer from her work-related conditions.

OWCP received additional evidence. In January 29, 2019 report, Dr. Michael A. Caines, an orthopedist, diagnosed plantar fascia syndrome and foot pain. In a March 18, 2019 report Dr. Winke, noted her continued treatment of appellant for left foot pain and plantar fasciitis.

By decision dated March 20, 2019, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective March 31, 2019. The weight of the medical evidence was accorded to the opinion of the second opinion physician, Dr. Schwartz.

OWCP continued to receive medical evidence from appellant’s treating physicians. On January 20, 2020 appellant, through counsel, requested reconsideration. He submitted arguments and an undated report from a psychiatrist and requested expansion of appellant’s claim.

By decision dated March 4, 2020, OWCP denied modification of its March 20, 2019 termination decision. It found that the evidence of record was insufficient to establish that appellant had continuing disability due to the accepted employment-related conditions.⁵

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.⁶ It may not terminate compensation without establishing

⁴ The proposal to terminate indicated that the accepted conditions were plantar fibromatosis on the left and right.

⁵ The decision noted that the accepted conditions were plantar fibromatosis on the left and right.

⁶ *R.P.*, Docket No. 17-1133(issued January 18, 2018); *D.W.*, Docket No. 18-0123(issued October 4, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

either that the disability has ceased or that it is no longer related to the employment.⁷ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 31, 2019.

In his November 2, 2018 second opinion report, Dr. Schwartz noted that the accepted condition was plantar fasciitis and opined that appellant, "cannot possibly have plantar fasciitis as an occupational disease after what appears to be two to three months on the job and indeed started within five days of working." He further opined that, "the diagnosis of fibromatosis would in no way be related to an occupational disease." However, OWCP had accepted appellant's occupational disease claim for bilateral plantar fasciitis. The accepted condition was included in the SOAF that was provided to Dr. Schwartz. As his opinion disregarded that appellant's conditions were accepted by OWCP. OWCP procedures⁹ provide that, when a physician selected by OWCP 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. As Dr. Schwartz did not give due regard to the conditions as accepted by OWCP, his opinion was not based on a proper factual background and is therefore insufficient to constitute the weight of the medical opinion evidence. Thus the Board finds that OWCP failed to meet its burden of proof to establish that appellant no longer had employment-related disability or residuals

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation benefits, effective March 31, 2019.¹⁰

⁷ A.G., Docket No. 19-0220 (issued August 1, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁸ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361,364 (1990).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Case/Disability Management, Developing and Evaluating Medical Evidence*, Chapter 2.810.11 (September 2010).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 20, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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