

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 22, 2021, as she no longer had disability or residuals causally related to her accepted January 16, 2020 employment injury.

FACTUAL HISTORY

On February 3, 2020 appellant, then a 31-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2020 she injured her right ankle when she fell downstairs while in the performance of duty. She worked intermittently thereafter. OWCP accepted appellant's claim for right ankle sprain and right ankle strain. It paid her wage-loss compensation on the supplemental rolls commencing March 16, 2020, on the periodic rolls commencing June 21, 2020, and pursuant to a loss of wage-earning capacity determination from March 9 through September 21, 2021.

A magnetic resonance imaging (MRI) scan of the right ankle dated August 13, 2020 revealed moderate sprains of the anterior talofibular and calcaneofibular ligaments, mild deltoid sprain with mild effusion, and anterolateral synovitis.

On September 29, 2020 Dr. David Zaret, a Board-certified orthopedist, performed a right ankle arthroscopy, extensive debridement, and administered a right ankle joint injection. He diagnosed right ankle synovitis. In duty status reports (Form CA-17) dated October 16 and December 22, 2020, Dr. Zaret diagnosed synovitis of the right ankle and advised that appellant was totally disabled. On December 16, 2020 he diagnosed right ankle injury and noted that she could return to modified-duty work on December 21, 2020. In a medical update request form and a progress note, both dated January 20, 2021, Dr. Zaret diagnosed peroneal tendinitis of the right leg and noted that appellant was disabled from work.

On February 10, 2021 OWCP referred appellant, the medical record along with a statement of accepted facts (SOAF) and a series of questions, to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion examination to determine the status of her disability and residuals due to her accepted January 16, 2020 employment injury.

OWCP received a February 17, 2021 report from Dr. Zaret who treated appellant in follow up for a work-related right ankle injury. Dr. Zaret advised that she underwent arthroscopic surgery on October 6, 2020 and subsequently developed peroneal tendinitis. He noted tenderness over the peroneal tendons and pain with circumduction. Dr. Zaret diagnosed peroneal tendinitis of the right leg. In a return-to-work slip of even date, he treated appellant for peroneal tendinitis of the right leg and continued modified-duty work. In a Form CA-17 dated February 22, 2021, Dr. Zaret diagnosed peroneal tendinitis of the right leg and continued modified-duty work. In a medical update form dated February 23, 2021, he treated appellant for right ankle peroneal tendinitis and administered a steroid injection. Dr. Zaret cleared her to return to work in a full-time sedentary duty.

In a March 2, 2021 medical report, Dr. Sultan noted appellant's history of injury on January 16, 2020 and his review of the SOAF and medical evidence of record. On physical

examination of the right ankle, he found two well-healed anterior arthroscopic puncture wound scars with no complaints on palpation over the right ankle or right foot. Dr. Sultan reported no residual right ankle swelling or right and left calf muscle atrophy. He noted intact neurological testing of the right ankle and foot. Dr. Sultan recorded right ankle range of motion measurements of 20 degrees dorsiflexion, 45 degrees of plantar flexion, 20 degrees of inversion, and 20 degrees of eversion with equal motion findings on the left side. Appellant demonstrated normal sensation in her right ankle and right foot. Dr. Sultan advised that she sustained a trauma to the right ankle resulting in right ankle synovitis for which she underwent successful right ankle arthroscopy. He opined that the work injury sustained on January 16, 2020 no longer contributed to appellant's right ankle disability noting that her right ankle examination was unremarkable. Dr. Sultan indicated that his orthopedic examination confirmed that she was medically capable of returning to her date-of-injury job as a city carrier associate without restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, he noted that appellant reached maximum medical improvement (MMI) and could resume her usual job without restrictions.

On March 4, 2021 the employing establishment offered appellant a full-time modified carrier assistant position, effective March 6, 2021. Appellant accepted the position on March 8, 2021 and returned to work.

On March 9, 2021 OWCP requested that appellant provide Dr. Sultan's March 2, 2021 report and the SOAF to her treating physician for an opinion as to whether he concurred or disagreed with his findings, and to provide a detailed response addressing any points of disagreement.

OWCP received additional evidence. On April 12, 2021 Dr. Zaret reevaluated appellant for a right ankle injury. He noted that she underwent arthroscopy surgery October 6, 2020 and subsequently developed peroneal tendinitis. Dr. Zaret noted minimal swelling of the lateral ankle, tenderness over the peroneal tendons, and pain with circumduction. He diagnosed peroneal tendinitis of the right leg, synovitis of the right ankle, and continued modified-duty work.

By notice dated May 6, 2021, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Sultan's opinion that the January 16, 2020 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received a return to work note dated April 12, 2021 from Dr. Zaret who diagnosed peroneal tendinitis of the right leg and synovitis of the right ankle. Dr. Zaret continued modified-duty work. In a Form CA-17 dated April 13, 2021, he diagnosed peroneal tendinitis of the right leg and synovitis of the right ankle and continued light-duty work. On May 14, 2021 Dr. Zaret noted persistent posterolateral symptoms and diagnosed peroneal tendinitis of the right leg. He recommended an updated MRI scan of the right ankle.

An MRI scan of the right ankle dated June 3, 2021 revealed mild chronic sprains of the anterior talofibular, calcaneofibular and deltoid ligaments, mild surrounding synovitis, mild soft tissue swelling surrounded the ankle greatest posteromedially, and no evidence of a peroneal tendon tear.

On June 25, 2021 Dr. Zaret reviewed the MRI scan of June 3, 2021 and diagnosed peroneal tendinitis of the right leg. He noted that appellant was currently stable and declined another steroid injection. Dr. Zaret recommended an ankle compression sleeve. On July 23, 2021 he reevaluated appellant for a right ankle injury and peroneal tendinitis. Dr. Zaret noted the MRI scan of the right ankle showed no sign of peroneal tendon pathology. He diagnosed peroneal tendinitis of the right leg, stable, and recommended physical therapy. In a Form CA-17 of even date, Dr. Zaret diagnosed tendinitis and continued modified duty. In a July 23, 2021 return to work note, he diagnosed peroneal tendinitis and continued sedentary duty.

By decision dated September 21, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective September 22, 2021. It found that the weight of the medical evidence was represented by the report of Dr. Sultan.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 22, 2021, as she no longer had disability or residuals causally related to the accepted January 16, 2020 employment injury.

³ See *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ See *D.G.*, *id.*; *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *K.W.*, *supra* note 5; see *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

OWCP referred appellant to Dr. Sultan for a second opinion evaluation to determine the status of her accepted right ankle conditions and her work capacity. In a March 2, 2021 report, Dr. Sultan opined that she had no disability or residuals related to her accepted right ankle sprain and right ankle strain, and no further medical treatment was needed. He noted his review of the SOAF and medical records and examined appellant. On physical examination, Dr. Sultan reported essentially normal findings with two well-healed anterior arthroscopic puncture wound scars, no complaints on palpation over the right ankle or right foot, no residual right ankle swelling or right and left calf muscle atrophy, intact neurological testing of the right ankle and foot, normal range of motion, and intact sensation in the right ankle and right foot. He opined that appellant sustained a trauma to the right ankle resulting in right ankle synovitis for which she underwent successful right ankle arthroscopy. Dr. Sultan indicated that her unremarkable orthopedic examination confirmed that she was medically capable of returning to full-duty work with no right ankle restrictions and no further medical treatment was necessary. In a Form OWCP-5c, he indicated that appellant reached MMI and could resume her usual job without restrictions.

Dr. Sultan based his opinion on a proper factual and medical history. He provided physical examination findings and a well-rationalized opinion based on the medical evidence regarding the accepted conditions causally related to appellant's January 16, 2020 employment injury. Accordingly, the Board finds that OWCP properly relied on Dr. Sultan's second opinion report in terminating her wage-loss compensation and medical benefits.⁸

Appellant submitted a series of reports from Dr. Zaret dated April 12 through July 23, 2021, which provided findings regarding her right ankle, diagnosed peroneal tendinitis of the right leg and synovitis of the right ankle, and opined that she could work in a sedentary position, with work restrictions, and that continued medical treatment was needed. The Board notes that OWCP did not accept diagnosis of peroneal tendinitis or synovitis of the right leg. Accordingly, these reports are insufficient to overcome the weight of the medical evidence accorded to Dr. Sultan, or to create a conflict in medical opinion as to whether appellant's accepted conditions had resolved.⁹

As the weight of the medical evidence establishes that appellant had no further employment-related disability or residuals due to the accepted medical conditions, the Board finds that OWCP has met its burden of proof to terminate her wage-loss compensation and medical benefits, effective September 22, 2021.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective September 22, 2021.

⁸ *R.P.*, Docket No. 20-0891 (issued September 20, 2021); *K.W.*, *supra* note 5; *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2023
Washington, DC

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

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

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