

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

L.M., Appellant)	
)	
and)	
)	
DEPARTMENT OF JUSTICE, FEDERAL)	Docket No. 21-0636
BUREAU OF PRISONS, FEDERAL)	Issued: September 28, 2023
CORRECTIONAL INSTITUTION)	
WILLIAMSBURG, Salters, SC, 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 March 15, 2021 appellant filed a timely appeal from a March 9, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the March 9, 2021 decision, OWCP received additional evidence. 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 medical benefits, effective June 17, 2020, as she no longer had residuals causally related to her accepted December 19, 2017 employment injury; and (2) whether appellant has met her burden of proof to establish continuing residuals due to the accepted employment injury.

FACTUAL HISTORY

OWCP accepted that on December 19, 2017 appellant, then a 32-year-old unit secretary, sustained unspecified sprains of the right index finger and left foot while in the performance of duty. She explained that she attempted to conduct a pat search of an inmate who ran while she had a grip on him and turned the wrong way with his body. Appellant stopped work on the date of injury and returned to full-time work on November 29, 2018.

In an October 1, 2019 progress note, Dr. Christopher E. Gross, an attending Board-certified orthopedic surgeon, noted a history of appellant's left foot injury and discussed findings on physical and diagnostic examination. He reported that she had a sprain of the Lisfranc ligament of the left foot that may have resulted in a mild arthritis. Dr. Gross advised that appellant could perform full-duty work with restrictions.

On February 2, 2020 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Seth L. Jaffe, an osteopath Board-certified in orthopedic surgery, for a second opinion to determine the status of her accepted conditions and work capacity. OWCP specifically asked Dr. Jaffe to list all current diagnoses causally connected to the employment injury and opine on whether the work-related conditions had resolved.

In a March 24, 2020 progress note, Dr. Jaffe described the December 19, 2017 employment injury. He reviewed the medical record and discussed examination findings. Dr. Jaffe provided assessments of sprain of the interphalangeal joint of the right index finger and sprain of the left foot. He noted that appellant's examination was normal outside of congenital issues, including flatfoot deformity and posterior tibial tendon insufficiency with heel valgus noted on both feet. Dr. Jaffe further noted that there were no objective findings to correlate to her subjective complaints. He opined that the accepted conditions of sprain of the right index finger and sprain of the left foot had resolved and there was no need for further treatment. Dr. Jaffe also opined that appellant's continued complaints were not related to her work injury. He determined that she had reached maximum medical improvement. Dr. Jaffe concluded that appellant could return to her date-of-injury unit secretary position as outlined in an accompanying work capacity evaluation (Form OWCP-5c). In the March 24, 2020 Form OWCP-5c, he indicated that appellant could perform her usual job with no restrictions, eight hours per day.

By notice dated April 28, 2020, OWCP advised appellant that it proposed to terminate her medical benefits based on Dr. Jaffe's opinion that the December 19, 2017 accepted conditions had ceased without residuals. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In a May 29, 2020 duty status report (Form CA-17), Dr. Gross diagnosed mid-foot arthritis due to an injury. He advised that appellant could resume work with restrictions as of October 30, 2018.

By decision dated June 16, 2020, OWCP terminated appellant's medical benefits, effective June 17, 2020, finding that the weight of the medical evidence rested with the March 24, 2020 report of Dr. Jaffe.

Dr. Gross, in additional progress notes dated May 21 and June 9, 2020, reexamined appellant and provided an assessment of possible second tarsometatarsal (TMT) joint arthritis/sprain. He advised that her accepted sprain of the Lisfranc ligament of the left foot had resolved and that she now had second TMT joint pain. In a December 28, 2020 report, Dr. Gross related that appellant had been under his care for two years for mid-foot sprain and mild foot arthritis. He opined that she was disabled from work. Dr. Gross concluded that appellant could perform full-duty work without restrictions.

In a May 26, 2020 left foot magnetic resonance imaging (MRI) scan, Dr. Steven B. Glassman, a Board-certified diagnostic radiologist, provided an impression of some active degenerative changes seen at the second TMT joint with some marrow edema seen along the inferior anterior aspect of the second cuneiform and at the base of the second metatarsal. He advised that this may be secondary to a prior trauma, however, there was no evidence of acute injury.

Dr. Emmanuel Willis, a podiatrist, noted in a December 8, 2020 report, appellant's history of injury and findings on physical examination. He provided an assessment of tenosynovitis, mid-tarsal joint area secondary to Lisfranc injury, left foot. Additionally, Dr. Willis diagnosed other synovitis and tenosynovitis, left ankle and foot; difficulty in walking, not elsewhere classified; and unspecified injury of the left foot. In a January 20, 2021 return-to-work note, he advised that appellant could return to work with restrictions on January 21, 2021.

In notes dated August 25 and September 11, 2020, Dr. Ugo Okereke, an internist, reported that appellant had chronic and protracted left ankle and foot pain. He provided work restrictions from February 21, 2020 through January 1, 2021. Dr. Okereke, in an October 14, 2020 note, advised that appellant was unable to work as of that day. Appellant could return to work with restrictions on October 15, 2020.

By decision dated March 9, 2021, denied modification of its June 16, 2020 termination decision.

LEGAL PRECEDENT -- ISSUE 1

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

³ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits, effective June 17, 2020.

In an October 1, 2019 progress note, Dr. Gross noted a history of appellant's left foot injury and discussed findings on physical and diagnostic examination. He reported that she had a sprain of the Lisfranc ligament of the left foot that may have resulted in a mild arthritis.

On February 2, 2020 OWCP referred appellant, together with a SOAF, the medical record, and a series of questions, to Dr. Jaffe for a second opinion to determine the status of her accepted conditions and work capacity. It specifically asked Dr. Jaffe to list all current diagnoses causally connected to the employment injury and opine on whether the work-related conditions had resolved.

In his March 24, 2020 report, Dr. Jaffe noted examination findings and opined that the residuals of appellant's accepted employment-related conditions of right index finger sprain and left foot sprain had resolved and there was no need for further treatment. He noted that while appellant's examination was essentially normal with the exception of congenital issues, including flatfoot deformity and posterior tibial tendon insufficiency with heel valgus noted on both feet, there were no objective findings to correlate to her subjective complaints. Dr. Jaffe explained that her continued complaints were not due to her work-related injury. However, he never acknowledged appellant's diagnosed arthritis or addressed whether it was work related. Therefore, while OWCP undertook development of the medical record to determine whether the acceptance of appellant's claim should be expanded to include additional conditions, it did not complete that development prior to terminating appellant's medical benefits.

As the issue of expansion was not in posture for decision at the time of the termination of medical benefits, the Board finds that OWCP failed to establish that appellant no longer had residuals due to the accepted employment injury.⁶ Consequently, the Board finds that OWCP failed to meet its burden of proof.⁷

⁴ *R.V.*, Docket No. 20-0005 (issued December 8, 2020); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁵ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁶ *See M.B.*, Docket No. 22-1180 (issued August 17, 2023); *C.S.*, Docket No. 20-0621 (issued December 22, 2020).

⁷ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits, effective June 17, 2020, as she no longer had residuals causally related to her accepted December 19, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 28, 2023
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