

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY A. SARMAGA and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Royal Oak, MI

*Docket No. 00-1252; Submitted on the Record;
Issued April 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on March 10, 1999.

On March 19, 1993 appellant, then a 39-year-old mail sorter, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained degenerative arthritis with peri-articular fibrocitis as a result of her federal employment. She noted that she became aware that this condition was related to her employment on May 28, 1992.

In a medical report dated August 14, 1992, Dr. James W. McCarty, a podiatrist and appellant's treating physician, stated that appellant had an inflamed heel spurt in her left heel. He noted that appellant was totally disabled due to this condition until further notice. In a report dated September 11, 1992, Dr. McCarty stated that appellant was being treated for degenerative arthritis and that at the present time she should only work eight hours per day for the next four weeks. On November 3, 1992 he released appellant to work with restrictions of working 8 hours a day for a 40-hour work week (no overtime) and restrictions of limited lifting of up to 15 pounds, light carrying of up to 15 pounds, limited walking and standing. Dr. McCarty continued these restrictions on several occasions. In a medical report dated February 18, 1993, he diagnosed appellant as suffering from degenerative arthritis with severe plantar fasciitis, sub calcaneal bursitis and dorsal periarticular fibrositis. Dr. McCarty noted that appellant's condition was correlated to the length of time she stands on a concrete floor at work, as this aggravated her degenerative arthritis change and her plantar fasciitis. He further noted that appellant's work limitations appear to have helped.

On April 13, 1993 the Office accepted appellant's claim for aggravation of degenerative arthritis and plantar fasciitis, left foot. By letter to Dr. McCarty of the same date, the Office requested further information.

In a letter dated April 26, 1993, Dr. McCarty summarized appellant's condition as plantar fasciitis with subcalcaneal bursitis, as well as a lateral dorsal periarticular fibrositis. He noted that her condition was aggravated by standing and lifting excessive weight over long periods of

time and that she had shown a gradual decrease in her symptoms, but that she has never been pain free. Dr. McCarty continued to complete duty status reports, limiting appellant to a sit down job, with limited standing and walking, and a 40-hour work week maximum. In a medical report dated September 1, 1993, he noted that appellant's pain and disability had decreased over the past six months with therapy, that she was still in a moderate amount of pain in the lateral tarsus as well as the subcalcaneal area, but that this has been decreasing monthly. Dr. McCarty believed that over a period of time, appellant may be free of pain and recommended that conservative therapy be continued for four to six weeks.

By letter dated October 28, 1993, the Office referred appellant to Dr. Edward J. Drogowski, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated December 6, 1993, Dr. Drogowski stated that it was his opinion that appellant suffered from degenerative joint disease of the left foot and a soft tissue inflammation which could be described as a plantar fasciitis. He further noted:

“I feel that her previous requirement of standing on cement floors 8 to 10 hours has aggravated the preexisting condition. I feel that this aggravation is temporary and should resolve with continued podiatric treatment but she should not be returned to her occupation in a standing position for 8 to 10 hours a day on cement floors. I cannot state that that will cause a recurrence but it is reasonable to assume so. I do not feel that there is permanent aggravation.”

Dr. Drogowski stated that he did not know when the condition would cease, but with treatment and weight loss appellant could eventually return to her previous occupation. He completed a work restriction evaluation and determined that appellant could walk and stand, intermittently, one hour a day, lift and bend intermittently, and could not climb, kneel, twist or stand. Dr. Drogowski limited her lifting to 10 to 20 pounds and stated that she could work 8 hours a day.

In a medical report dated January 14, 1994, Dr. McCarty indicated that appellant was much better. He noted that her symptoms had stabilized and that as long as she maintains her same work status, she should continue to improve.

On March 4, 1994 the Office forwarded Dr. Drogowski's report to Dr. McCarty for review and comment. Dr. McCarty did not respond and on February 24, 1995 the Office again asked Dr. McCarty for comments. In a medical report dated March 8, 1995, he stated that he felt that appellant's condition was permanent and may worsen. Dr. McCarty advised her to continue guarded weight bearing and to be careful on concrete surfaces over extensive periods of time. He noted that standing, lifting and pushing of objects weighing greater than 50 pounds can certainly increase the aggravation to the mid tarus area. Dr. McCarty did conclude, however, that she could continue to do her job without restriction. He appeared to advise against increasing appellants duties.

In order to resolve the conflict between the opinions of Drs. McCarty and Drogowski as to the permanence of appellant's injury-related condition on December 8, 1995 the Office referred appellant to Dr. Michael Holda, a Board-certified surgeon, for an independent medical examination. In a medical report dated December 20, 1995, Dr. Holda opined that appellant does have evidence of a degenerative arthritic involvement of the left mid foot area, that was not

present on the right foot. He noted that there was no clinical evidence of plantar fasciitis at the time of the examination. Dr. Holda stated:

“Based on the examination of today, I recommend that she be restricted from prolonged standing or walking on the left foot. I do not feel that the degenerative arthritis in the left foot is work related. It is most likely due to some prior injury. I feel that any walking she does, either at work or home would temporarily aggravate the underlying degenerative arthritis only.

In response to a letter from the Office dated February 18, 1997, Dr. Holda opined in a medical report dated February 27, 1997:

“It is my opinion that the work-related aggravation of her foot condition has ceased. It is also my opinion that this ceased in October 1992 when she was assigned a sit-down type job with no standing and little walking.”

In a medical report dated February 24, 1998, Dr. McCarty stated that appellant continued to have pain in the dorsal aspect of both lower extremities, left greater than right, radiating up into the anterior lateral aspect of her ankle. He noted that after increased work duties throughout the day she tends to have increased symptoms secondary to a lateral tenosynovitis secondary to foot position. Dr. McCarty noted that she has done well in a sitting job over the past year and he believed that these restrictions should be maintained and appellant should have to stand no more than one hour a day.

By decision dated April 6, 1999, the Office issued a notice of proposed termination of medical benefits. The Office found that the weight of the medical evidence of file rested with Drs. Drogowski and Holda who have provided thorough and well-reasoned opinions that appellant suffered only a temporary aggravation of her preexisting degenerative arthritis left foot condition which was resolved with no remaining residuals. The Office further noted that the evidence clearly indicates that appellant’s present complaints are due solely to her preexisting left-foot degenerative arthritis condition.

In response, appellant submitted an April 7, 1999 duty status report (Form CA-17) by Dr. McCarty wherein he indicated that appellant should remain in a sit down job, with light standing and walking.

In a decision dated May 7, 1999, the Office terminated appellant’s benefits effective immediately. The Office was not persuaded by the duty status report from April 7, 1999, as it failed to constitute a rationalized medical opinion that appellant’s present left foot complaints are related to the May 28, 1992 work injury.

By letter dated May 24, 1999, appellant requested an oral hearing.

In further support of her claim, appellant submitted a May 10, 1999 medical report by Dr. McCarty wherein he indicated that appellant has done well with her restriction in work duties over the past four to five years and recommended that they continue. He noted that “It appears that her work aggravates the tarsal region and for whatever reason, she has developed a degenerative arthritis change.”

Appellant also submitted a transcript of a statement taken by Dr. McCarty on October 25, 1999. Dr. McCarty testified that he began treating appellant on July 11, 1989, and last saw her on October 14, 1999. He stated that appellant has a chronic degenerative arthritis in the mid-foot, which is the talar-navicular joint and the metatarsal-cuneiform joint. Dr. McCarty noted that his findings showed the degeneration in the middle part of appellant's foot. He opined that appellant's condition was permanent, and that if she is not in restricted duties, it could be aggravated. Dr. McCarty noted that appellant's pain was correlated with increased work and standing and decreased after she was in limited duties to where she could sit and have less time standing during the day.

At the hearing held on October 25, 1999, appellant testified that she began working for the employing establishment in November 1985 as a mailhandler, that she moved to sorting mail in a few months, that in February 1988 she became a mail processor and that on all these jobs she worked on a concrete floor standing and walking 8 to 10 hours a day. She further testified that she never had any problems with her left foot prior to working for the employing establishment, that she first began to have problems with her left foot in May 1992 for which she saw Dr. McCarty, that in 1993 Dr. McCarty placed restrictions on appellant stating that she should be seated while working, that in October 1992 she started limited duty where there was very little walking involved, that for the last four years she has been making labels for trays which is also a sedentary job. Appellant testified that she still has pain in her left foot every day, that she is taking medication for it, that the pain is much better now that she is not walking so much, but that if she stands greater than two to three hours the pain gets greater. She explained that in the employing establishment there is a distinction between limited and light duty. Limited duty is when due to an injury, the employing establishment has to give her work, but light duty is when you get hurt off the job and they do not have to provide you work.

In a decision dated January 11, 2000, the hearing representative found that appellant's employment-related disability had ceased by May 10, 1999 and accordingly, he affirmed the Office's decision.

The Board finds that the Office met its burden of proof when it terminated appellant's benefits on March 10, 1999.

It is well established that once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment. Thus, the burden of proof is on the Office rather than the employee with respect to the period subsequent to the date when compensation is terminated or modified.¹

In the instant case, as there existed a conflict between appellant's treating physician, Dr. McCarty, who found appellant's aggravation permanent and the physician giving the second opinion for the Office, Dr. Drogowski, who opined that the aggravation of appellant's underlying condition was temporary, the Office referred appellant to Dr. Holda for the purpose of resolving the conflict. When a case is referred to an impartial medical specialist for the purpose of

¹ *Eddie Franklin*, 51 ECAB ____ (Docket No. 98-1240, issued December 14, 1999); *Craig M. Crenshaw, Jr.*, 40 ECAB 910, 922 (1989); *Edwin L. Lester*, 34 ECAB 1807 (1983).

resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.²

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Holda. After reviewing appellant's complaints, reviewing her medical history and testing, and conducting a physical examination, Dr. Holda opined that appellant did not have evidence of degenerative arthritic involvement of the left mid foot area. More importantly, in his supplemental report, Dr. Holda opined that appellant's work-related aggravation of her foot condition had ceased. As Dr. Holda's opinion is based upon an accurate factual background and his opinion that appellant had recovered from the work-related injury was supported by substantial evidence, it was entitled to special weight and the Office met its burden in terminating compensation benefits.

The decision of the Office of Workers' Compensation programs dated January 11, 2000 is hereby affirmed.

Dated, Washington, DC
April 24, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Charles E. Burke*, 47 ECAB 185, 191 (1995).