

insertational Achilles tendinitis.¹ In a September 29, 2000 decision, the Office rescinded acceptance of the claim; however, that decision was vacated by an Office hearing representative and compensation was reinstated. Appellant was placed on the periodic rolls for disability compensation beginning July 22, 2000.

Appellant has been under the care of Dr. Ewald R. Mendeszoon, Jr., a podiatrist, since July 1999. He has maintained that appellant is totally disabled due to her ongoing leg, foot and ankle conditions. In a May 16, 2002 report, Dr. Mendeszoon opined that appellant was totally disabled due to chronic pain syndrome, chronic calcaneal spur, chronic plantar fasciitis, Achilles tendinitis, an acute developing hallux limitus and painful submetatarsal five callus.

On August 27, 2002 appellant underwent an examination with Dr. Richard Manolian, a podiatrist and Office referral physician, who diagnosed mild tendinitis. Dr. Manolian found that there were no objective findings to support continuing residuals due to appellant's work injury. He opined that appellant had reached maximum medical improvement and was no longer disabled due to her work injury.

In order to resolve the conflict in the medical record between Dr. Mendeszoon and Dr. Manolian, the Office sent appellant for an impartial medical evaluation with Dr. Mordechai Kamel, a Board-certified orthopedic surgeon, on October 15, 2002. Dr. Kamel discussed the medical record and noted physical findings. He stated that there was a discrepancy between appellant's subjective complaints of pain and the physical findings obtained during his examination. He felt that appellant's work injury, consisting of a contusion and Achilles tendinitis, would have resolved within several months of the date of injury. Dr. Kamel opined that appellant was exaggerating her symptoms and stated that she could return to work. He concluded that appellant had no continuing residuals due to her February 23, 2000 work injury.

On October 30, 2002 the Office issued a notice of proposed termination of compensation and medical benefits, finding that the opinion of the impartial medical specialist established that appellant was no longer disabled and had no continuing residuals due to her accepted work injury. Appellant was given 30 days to submit additional evidence or argument if she disagreed with the proposed action. The Office next received a November 24, 2002 report from Dr. Mendeszoon, addressing the opinions of Drs. Manolian and Kamel. He disagreed that appellant's February 23, 2000 work injury had resolved as suggested by Dr. Kamel, noting that it was his opinion that appellant had never fully recovered from her original work injury of June 4, 1993. He opined that appellant suffered from residuals of plantar fasciitis and Achilles tendinitis, which precluded her from returning to work.

In a decision dated December 9, 2002, the Office terminated appellant's wage-loss compensation and medical benefits effective December 1, 2002. Appellant subsequently requested a hearing, which was held on June 24, 2003. Prior to the hearing appellant submitted a November 26, 2002 report from Dr. R. Amos Zeidman, a Board-certified psychiatrist, who

¹ Appellant sustained a prior work-related foot injury on June 4, 1993, which was accepted by the Office for left foot plantar fasciitis under case file number 01-310934. The Office later terminated appellant's compensation in a January 18, 2002 decision and that decision was affirmed by an Office hearing representative on June 7, 2002. The Office has combined appellant's claims under master file number 01-373105.

indicated that appellant had been under his care for depression. He opined that appellant was unable to return to work due to her emotional condition. She also submitted a February 6, 2003 report from Dr. Reza Ghorbani, a Board-certified anesthesiologist, who discussed her ongoing treatment for “chronic left foot pain, neuropathic pain.”

Subsequent to the hearing, appellant submitted additional evidence including handwritten progress notes dated intermittently from July 19, 1999 to February 14, 2003, consultation reports pertaining to her enrollment in a pain management program, periodic work evaluation reports signed by Dr. Mendeszoon, which stated that appellant was totally disabled for work, work restriction forms and reports from Dr. Mendeszoon dated September 1 and August 11, 1999, April 19, 2000, April 17 and November 24, 2002, February 12 and August 14, 2003.

In his report of February 12, 2003, Dr. Mendeszoon noted that appellant had fallen at home in July 2002 and sustained a fracture to her left fifth metatarsal shaft. He opined that appellant was totally disabled and should not return to work for fear of future injury. On August 14, 2003 Dr. Mendeszoon discussed appellant’s long history of foot pain, noting once again that appellant’s February 23, 2000 work injury had complicated her post-traumatic foot injury originating with plantar fasciitis on June 4, 1993. He opined that appellant was unable to work since she had been on crutches for over 10 years and complained of constant foot and ankle pain.

In a decision dated September 12, 2003, an Office hearing representative affirmed the Office’s December 9, 2002 decision.

LEGAL PRECEDENT -- ISSUE 1

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it is determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition or injury that requires further medical treatment.⁴ The Office must support its termination findings with reasoned medical evidence. A reasoned medical opinion is explained by medical rationale and is based on an accurate medical and factual background of the claimant.⁵

² *John W. Graves*, 52 ECAB 160 (2000).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Manuel Gill*, 52 ECAB 282 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁵ *See generally, James H. Botts*, 50 ECAB 265 (1999).

ANALYSIS -- ISSUE 1

In this case, the Office accepted that appellant sustained a work injury when she fell on February 23, 2000. The Board finds that the Office properly determined that a conflict existed in the record between appellant's treating physician, Dr. Mendeszoon and the Office referral physician, Dr. Manolian, as to whether appellant remained totally disabled for work and whether she had any residuals due to her accepted contusion or Achilles tendinitis.⁶ Based on the conflict, the Office properly referred appellant to an impartial medical specialist, Dr. Kamel, who specifically opined that her work injury had resolved and that she was no longer disabled for work. Because Dr. Kamel's opinion is based on a thorough review of the medical record and a proper factual and medical background, the Board finds that his opinion is entitled to special weight. Based on the rationalized opinion from Dr. Kamel, the Office met its burden of proof in terminating appellant's compensation on the grounds that she was no longer disabled and had no continuing disability due to her June 4, 1993 work injury.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant.⁷ Given that the Board has found that the Office properly relied upon the opinion of the impartial medical specialist in terminating appellant's compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.⁸ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background support such a causal relationship.

ANALYSIS -- ISSUE 2

The Board finds that none of the evidence submitted subsequent to the Office's termination decision dated December 9, 2002, is sufficient to overcome the special weight accorded to the opinion of the impartial medical specialist. Although appellant provided a medical report stating that she was totally disabled for work due to depression, the Board notes that an emotional condition has neither been alleged nor approved by the Office with respect to this claim. Appellant has submitted numerous reports from Dr. Mendeszoon, who maintains appellant's disability for work due in part to complications from her original work injury of June 4, 1993. The Board, however, does not credit Dr. Mendeszoon's opinion on appellant's continued disability since the Office determined, in January 2000, that the weight of medical

⁶ Section 8123(a)⁶ provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination to resolve that conflict. 5 U.S.C. § 8123(a). When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. See *James R. Driscoll*, 50 ECAB 146 (1998).

⁷ *Manuel Gill*, *supra* note 4.

⁸ *Id.*

opinion evidence established that appellant's February 23, 2000 work injury had resolved. Dr. Mendeszoon has not provided any rationale to explain why appellant's work injury of February 23, 2000, consisting of a contusion and Achilles tendonitis, was not resolved in the time frame explained by Dr. Kamel. Moreover, Dr. Mendeszoon attributes appellant's continuing disability to conditions that have not been accepted by the Office as work related.⁹ He has also not distinguished between disability attributable to appellant's work injury as opposed to her nonwork-related fall in 2000.¹⁰

Consequently, the Board finds that the opinion of the impartial medical specialist is entitled to special weight and that his opinion established that appellant has no further disability and/or residuals due to the February 23, 2000 work injury. The Board, therefore, concludes that the Office properly terminated appellant's compensation and medical benefits.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective December 1, 2002 and that appellant failed to establish that she had any continuing disability after that date causally related to the February 23, 2000 work injury.

⁹ The Board notes that Dr. Mendeszoon expressed his concern that appellant would sustain a future injury but fear of future injury does not establish her disability for work. *See Mary A. Geary*, 43 ECAB 300, 309 (1991).

¹⁰ Dr. Mendeszoon's opinion created the original conflict in the record and it has not changed over time.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 12, 2003 and December 9, 2002 are affirmed.

Issued: April 14, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member