

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

BRENDA ROSA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buffalo, NY, Employer**

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**Docket No. 04-1910
Issued: April 14, 2005**

Appearances:
Brenda Rosa, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 26, 2004 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated March 8 and July 2, 2004, which terminated her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective March 21, 2004; and (2) whether appellant met her burden of proof to establish that she had any disability after March 21, 2004 causally related to her March 4, 1994 employment injury. On appeal, appellant contends that it was inappropriate for the Office not to have sent her for an impartial medical examination as previously directed by the Board.

FACTUAL HISTORY

This case has previously been on appeal. The Office accepted appellant's claim for a right ankle sprain when she slipped and fell on a wet surface on March 4, 1994.¹ Following a period of disability, appellant, then a 35-year-old letter sorting machine (LSM) clerk, returned to limited duty for four hours a day, five days a week on February 4, 1995. The Office subsequently accepted a back sprain/strain for an August 12, 1995 work injury in file number 020701217.

By decision dated May 16, 2000, the Board reversed an August 31, 1998 Office decision terminating appellant's compensation benefits effective June 21, 1997.² The Board found that the reports of appellant's treating physician, Dr. Joel R. Hass, a Board-certified internist and those of the Office's referral physician, Dr. Austin R. Leve, a Board-certified orthopedist, provided conflicting medical opinions as to whether she continued to have residuals of her accepted right ankle strain. The history of the case is contained in the prior decision and is incorporated herein by reference.

Appellant stopped work on February 25, 1997 and filed a claim for total disability alleging that the employing establishment had changed her limited-duty position. The record reflects that appellant there after resigned from the employing establishment on January 23, 1998. The Office developed the claim. On January 10, 2003 an Office hearing representative vacated a September 19, 2001 decision which denied the claimed recurrence of disability. The Office hearing representative noted that it had prematurely issued its decision as the Board had found a conflict of medical opinion concerning appellant's ongoing physical restrictions and the issue of a recurrence for total disability created an additional conflict concerning appellant's work limitations. Accordingly, the Office hearing representative remanded the case for further medical development and a *de novo* decision. By decision dated February 11, 2003, the Office accepted appellant's recurrence of February 27, 1997, for the period February 27 to June 21, 1997.³ The Office subsequently determined that appellant was totally disabled as of February 27, 1997 and paid appropriate compensation.

In a March 23, 2003 report, Dr. Hass advised that appellant had been seen for her work-related right ankle injury. He advised that on her last visit of March 3, 2003, she continued to experience swelling over the right lateral malleolus with pain on manipulation and pain with prolonged standing or walking over 30 minutes. He opined that appellant had a chronic, permanent, mild partial disability with respect to her ankle causally related to the March 4, 1994 work injury. He further opined that appellant was able to work for four hours daily in a sitting only position and set forth her limitations in an accompanying March 26, 2003 work-capacity evaluation.

¹ Although appellant had also indicated that she had hurt her back on March 4, 1994 the Office did not accept a back condition in connection with the March 4, 1994 work injury.

² Docket No. 99-679 (issued May 16, 2000).

³ The Office additionally noted that although this case was accepted for an ankle condition, appellant's work-related back conditions should also have been considered.

On June 4, 2003 the employing establishment offered appellant a modified mail processing clerk position based on the work restrictions of Dr. Hass, which the Office deemed suitable employment on June 6, 2003. The Office, however, subsequently found that the offered position was unsuitable based on a June 17, 2001 report from Dr. Hass, which noted that appellant was unable to perform the offered position due to complications from the nonwork-related condition of severe Type II diabetes mellitus. He noted that appellant's right ankle was at a static level of permanent partial disability as of March 3, 2003, but opined that appellant's work injuries to her back and ankle coupled with her medical problems and their complications made appellant an unsuitable candidate for employment.

In order to determine whether appellant still had residuals of her work-related injury and whether she was capable of returning to full-time employment, the Office referred her, together with her medical record, a statement of accepted facts and a list of questions for second opinion examinations, to Dr. Paul Cherkasky, a Board-certified internist and Dr. Reuben Washington, a Board-certified orthopedic surgeon.

In an October 17, 2003 report, Dr. Cherkasky reviewed the medical evidence and provided his findings on examination. Dr. Cherkasky opined that appellant had Type I diabetes mellitus which, according to Dr. Haas, was first diagnosed in 1988. Dr. Cherkasky opined that appellant was capable of returning to the work environment and was not disabled on the basis of her diabetes. Based on his conversation with appellant, Dr. Cherkasky opined that appellant's decision not to return to the work environment was more of a psychological issue rather than a physical one. He noted that appellant was only 45 years old and that the vast majority of diabetes in this country, who had sugar numbers very similar to appellant's, were actively working in spite of their disease process. He stated that appellant was very opposed to returning to work and that stress of this nature aggravated diabetes. Dr. Cherkasky also noted that appellant was capable of manipulating her blood sugars to make them better or worse. He stated that appellant should not work the C shift (either 3 a.m. to 7:30 a.m. or 11:30 p.m. to 3 a.m.) due to her medication and erratic sleep pattern. Dr. Cherkasky also found no evidence of any musculoskeletal abnormalities, which would require restriction. He stated that both appellant's back examination and right ankle examination revealed no objective evidence of any abnormalities. He noted that appellant had a bilateral fat pad just anterior to the lateral malleolus on both ankles, with the right one larger than the one on the left and stated that it was strictly adipose tissue. He further opined that appellant had no edema in either lower extremity. In a November 6, 2003 addendum report, Dr. Cherkasky changed his diagnosis of Type I diabetes to Type II diabetes as the testing revealed the presence of positive C-peptides. He stated that this diagnosis did not alter his original impressions or conclusions contained in his October 17, 2003 report.

In a November 18, 2003 report, Dr. Washington opined that appellant's mild to moderate ankle strain had resolved with no residual disability and that she could return to work without any restrictions. He noted that appellant had been examined by several orthopedic surgeons who had not found any objective findings of significant right ankle injury or disability and had typically recommended a return to full-time regular work. Dr. Washington's evaluation of appellant revealed no objective findings. Appellant had a normal examination of the ankle as well as x-rays of the right ankle. Dr. Washington stated that no swelling was observed and the

area of appellant's anterolateral ankle, which appellant thought was chronic swelling, was in fact a normal fat pad.

On January 30, 2004 the Office notified appellant that it proposed to terminate her compensation benefits for her March 4, 1994 injury as she had no continuing disability causally related to her accepted employment injury. The weight of the medical evidence was accorded to the reports of Dr. Cherkasky and Dr. Washington. The Office allowed appellant 30 days in which to submit any additional evidence or argument.

In a February 10, 2004 letter, addressed to her Congressional representative, appellant requested to be sent to an impartial medical specialist before the Office finalized its decision to terminate her benefits. On February 26, 2004 the Office advised that appellant was provided with an opportunity to submit additional medical evidence from her treating physician.

In a February 11, 2004 letter, appellant's counsel contended that detailed medical reports were being obtained and that terminating appellant's benefits on the grounds that her injury-related disability had ceased would be unjust, unwarranted and procedurally improper.

By decision dated March 8, 2004, the Office terminated appellant's compensation benefits effective March 21, 2004.

In a March 3, 2004 report, Dr. Hass advised that he last examined appellant on February 17, 2004 and that she continued to demonstrate an asymmetrical, fusiform, doughy swelling over the right lateral malleolus with objective findings of fusiform swelling over the ankle. He further stated that there was no other deformity other than the large significant difference between the two ankles. Dr. Hass advised that although there were few objective findings, it was not uncommon to see chronic, even permanent, soft tissue pain around an articulation after a significant injury and that a lot of the chronic overuse pain syndrome, which he had seen also have had minimal other objective findings. He noted that appellant's reports regarding her pain had been constant all along. He thus opined that appellant had chronic pain in her right ankle as a result of the injury of March 4, 1994, which limited her daily activities and, therefore, caused disability. Dr. Hass further opined that the degree of asymmetry over appellant's right ankle, as compared to the left ankle, was also the result of the work injury. While Dr. Hass advised that he agreed that there was a degree of normal adipose deposition over the ankle, he could only account for the significant difference between the two ankles through the result of the injury. He further opined that given the duration of appellant's complaints of 10 years that she reached maximum medical improvement and her injury was permanent.

In a March 31, 2004 letter, appellant's counsel requested reconsideration. By decision dated July 2, 2004, the Office denied modification of the March 8, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability

⁴ *Paul L. Stewart*, 54 ECAB ___ (Docket No. 03-1107, issued September 23, 2003).

causally related to his federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.⁶

ANALYSIS -- ISSUE 1

Initially, the Board notes that in its May 16, 2000 decision, it found a conflict in medical opinion and reversed an Office decision terminating appellant's compensation benefits effective June 21, 1997. A review of the record reveals that subsequent to the Board's May 16, 2000 decision, the Office accepted appellant's claims and she received compensation benefits as of February 27, 1997 for total disability. Since the Office accepted her claim and paid compensation for the time period at issue in the prior appeal, the Board noted that the matter for which the prior conflict was found was rendered moot. The issue in the present appeal is appellant's disability as of March 21, 2004, the date it terminated her benefits. Contrary to appellant's argument on appeal, the Office was not obligated to refer her to an impartial medical specialist prior to rendering the termination decision in 2004. At the time of the Office's March 8, 2004 termination decision, the Board finds that the weight of the medical evidence was represented by the Office referral physicians, Dr. Cherkasky and Dr. Washington, who submitted well-rationalized opinions based on a complete and accurate factual and medical history.

Appellant's treating physician, Dr. Haas, opined that appellant had a chronic, permanent mild partial disability with respect to her ankle causally related to her March 4, 1994 work injury and that she could only work four hours a day in a sitting position. Although Dr. Haas noted that appellant continued to experience swelling over the right lateral malleolus and had pain on manipulation and with walking or standing over 30 minutes, he failed to provide any rationale explaining how appellant's current disability was due to her accepted employment injury or explain the effect her diabetic condition had on her condition. The Board has held that medical reports not containing rationale on causal relation are of diminished probative value.⁷ Dr. Haas' reports are of diminished probative value because he did not explain why appellant continued to have residuals of her injury.

Dr. Cherkasky performed a complete examination, reviewed the record and opined that appellant had no evidence of any musculoskeletal abnormalities which would require restrictions, noting that both appellant's back examination and right ankle examination revealed

⁵ *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

⁶ *Jennifer Atkerson*, 55 ECAB ____ (Docket No. 04-158, issued February 13, 2004); *Jean Cullition*, 47 ECAB 728 (1996).

⁷ *See Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

no objective evidence of any abnormalities. He also stated that appellant's bilateral fat pads on both ankles, the right one being larger than the left, were strictly adipose tissue and that her lower extremities contained no evidence of edema. He further stated that appellant's diabetic condition was not of a disabling nature and opined, based on his October 17, 2003 conversation with appellant, that her decision not to return to work was more of a psychological issue than a physical one. He noted that the vast majority of diabetes in this country, with similar sugar numbers to appellant, were activity working in spite of their disease process. He recommended that appellant perform employment on a day shift given the problems with her medical and erratic sleep pattern.

Dr. Washington also performed a complete examination, reviewed the record and opined that appellant had no residuals from her accepted ankle strain and she could return to work with no restrictions. He found no objective findings, noting that she had a normal examination and x-rays of the right ankle. He further observed no swelling in the lower extremities and opined that the area of appellant's anterolateral ankle was in fact a normal fat pad.

The Board finds that at the time the Office terminated appellant's compensation benefits, the weight of the medical evidence rested with the reports of Dr. Cherkasky and Dr. Washington, who submitted thorough medical opinions based on a complete and accurate factual and medical history. Both physicians performed a complete examination, reviewed the record and advised that appellant had no continued disability from her accepted employment injury, she was capable of performing her usual employment, with Dr. Cherkasky recommending day shift work and that further medical treatment for the accepted condition was unnecessary. Thus, the Board finds that these reports established that appellant ceased to have any disability or condition causally related to employment, thereby justifying the Office's March 8, 2004 termination of benefits, including medical benefits.⁸

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had disability causally related to her accepted injury.⁹ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and

⁸ See *Joe Bowers*, 44 ECAB 423 (1993).

⁹ See *Manuel Gill*, 52 ECAB 282 (2001).

¹⁰ *Id.*

¹¹ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS -- ISSUE 2

Following the termination of her compensation benefits effective March 21, 2004, appellant submitted the March 3, 2004 report from Dr. Haas, who attributed appellant's ongoing disability to a chronic overuse pain syndrome which limited her daily activities. He noted few objective findings; stating it was not uncommon to see chronic, even permanent, soft tissue pain around an articulation after a significant injury and that appellant's pain reports had been constant. He further opined that the degree of asymmetry over her right ankle was the result of the employment injury. Dr. Haas noted that while he agreed that there was a degree of normal adipose deposition over the ankle, he could only account for the significant difference of the asymmetrical, fusiform doughy swelling over the right ankle as compared to the left ankle as a result of the employment injury.

Where Dr. Haas found swelling, the Board notes that both Dr. Cherkasky, a Board-certified internist and Dr. Washington, a Board-certified orthopedic surgeon, found that appellant had no edema or swelling in her lower extremities. Moreover, the area to which Dr. Haas referred to as having asymmetrical, fusiform doughy swelling, was found by Dr. Washington to be a normal fat pad. The Board has held that the opinion of a physician who has specialized training in a particular field of medicine has greater probative value on issues involving that particular field than opinions of other physicians.¹³ Moreover, while Dr. Haas diagnosed appellant with chronic overuse pain syndrome on the basis that her reports of pain were constant for approximately 10 years, his report is vague and unrationalized with respect to the causal relationship between appellant's overuse pain syndrome and the accepted employment injury of a right ankle strain, which Dr. Washington indicated had resolved with no residual disabilities.¹⁴ The Board finds that Dr. Haas' March 3, 2004 report is insufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective March 21, 2004 and appellant failed to establish that she continued to be disabled after that date.

¹² *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *See generally Effie Davenport (James O. Davenport)*, 8 ECAB 136 (1955).

¹⁴ *See Jimmie H. Duckett*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 2 and March 8, 2004 are affirmed.

Issued: April 14, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member