United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 11-1439**
	)	**Issued: February 15, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 1, 2011 appellant, through her representative, filed a timely appeal from the April 26, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed the termination of her compensation and denied a consequential injury. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation; and (2) whether the August 7, 1996 work injury caused a consequential back or hip injury.

FACTUAL HISTORY

On August 7, 1996 appellant, then a 35-year-old letter carrier, sustained an injury in the performance of duty when she stepped down onto a loose step and felt a sharp pain. She

[1] 5 U.S.C. § 8101 *et seq.*

described the nature of her injury as "left ankle, lower middle back and shoulder." OWCP accepted appellant's claim for left ankle tendinitis. Appellant did not stop work. Beginning October 24, 2009, the employing establishment reduced her hours under the National Reassessment Process.

On March 11, 2008 Dr. Michael J. Geoghegan, an orthopedic surgeon and OWCP second-opinion physician, found that appellant's left ankle condition had resolved. Appellant's clinical examination showed no findings of left ankle tendinitis. Based on Dr. Geoghegan's findings and record review, her left foot symptoms were secondary to left hip arthritis. On April 16, 2010 Dr. Michael E. Holda, another orthopedic surgeon and OWCP second-opinion physician, agreed. There was no evidence of ongoing tendinitis in the left ankle. Appellant's examination was normal. Dr. Holda found that the degenerative condition of her left hip was unrelated to the 1996 work injury.

Dr. Laran Lerner, appellant's attending physiatrist, found that objective medical testing showed that appellant had an "ongoing injury and problems relating to her left ankle." On examination, she found tenderness to palpation over the left ankle and pain and tenderness to the end ranges of left ankle motion. A May 20, 2010 magnetic resonance imaging (MRI) scan showed objective abnormality and ongoing injury to the left ankle, sequelae of a sprain of the lateral/collateral complex. It also showed severe bilateral hip osteoarthritis. Dr. Lerner found that appellant's chronic left ankle injury and resulting altered gait either caused or aggravated her left hip pathology, as well as a lumbosacral radiculopathy presenting as intermittent low back pain.

To resolve this conflict, OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon. On September 16, 2010 Dr. Obianwu reviewed the statement of accepted facts and appellant's medical history. He described what happened on August 7, 1996, the treatment she received and her current complaints. Dr. Obianwu reviewed the reports of Drs. Geoghegan, Holda and Lerner and the MRI scans of the left ankle and hips. He noted that the May 20, 2010 MRI scan of the left ankle showed mild insertional Achilles tendinitis without tear, mild plantar surface calcaneal spurring and reactive stress edema. There was mild posterior tibialis and peroneus longus tendinosis and mild thickening of the calcaneofibular ligament. The MRI scan of the hips showed severe bilateral hip osteoarthritis.

On physical examination, Dr. Obianwu found no swelling around the left ankle. There was no lateral instability. The anterior drawer test was negative. The circumference was the same on both sides with equal range of motion in both ankles. Gross movements were identical on both sides, though appellant complained of pain on passive motion on the left. She was able to walk on her heels without difficulty and walk on her toes with minimal difficulty on the left. The distal pulses were adequate. Appellant had good strength of eversion and inversion in the left foot and ankle. There was no tenderness elicited over the intact Achilles tendon. There were no sensory abnormalities in the foot, ankle or lower extremity.

Dr. Obianwu diagnosed: resolved soft-tissue injury of the left ankle; MRI scan findings of tendinitis of all the tendons in the left ankle; severe degenerative arthritis in the left hip and mild age-related lumbar disc disease.

Dr. Obianwu concluded that the condition of left ankle tendinosis clinically did not remain and had resolved. This was consistent, he noted, with the findings of Dr. Geoghegan in 2008 and Dr. Holda in 2010, and it would be reasonable to state that the condition no longer existed at the time of Dr. Holda's examination. Dr. Obianwu found that the low back and left hip problems were not related to the August 7, 1996 work incident. A careful review of the medical records, especially those of Dr. Lerner, showed no complaint of low back pain until about 2000. The left hip pathology was typically degenerative. Dr. Obianwu noted degenerative changes on the right side as well, an age-related and genetically programmed condition. He could not identify any active injuries from the August 7, 1996 accident, and as he could not find any residuals of that accident, he could not attribute any of her problems to it.

On September 28, 2010 OWCP terminated appellant's compensation for the August 7, 1996 work injury.

Appellant's representative questioned Dr. Obianwu's competence and submitted two online patient ratings. He argued that the actual examination was not thorough and that the Dr. Obianwu's report was very poorly rationalized.

In a decision dated April 26, 2011, OWCP's hearing representative affirmed the termination of compensation for the accepted medical condition. The hearing representative found that Dr. Obianwu provided a probative and sufficiently rationalized opinion based on his examination findings.

On appeal, counsel argues that Dr. Obianwu's opinion is not entitled to special weight. He cites a major contradiction between the MRI scan showing tendinitis of all tendons in the left ankle and the doctor's conclusion that appellant did not have a left heel tendinitis diagnosis. Counsel cited as precedent *James R. Driscoll*.[2]

LEGAL PRECEDENT -- ISSUE 1

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[4] After it has determined that a claimant has disability causally related to federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5]

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall

[2] 50 ECAB 146 (1998).

[3] 5 U.S.C. § 8102(a).

[4] *Harold S. McGough*, 36 ECAB 332 (1984).

[5] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

make an examination.[6] When there exist 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.[7]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's compensation for the accepted condition of left ankle tendinitis. Having properly referred appellant to an impartial medical specialist to resolve a conflict in the matter, pursuant to 5 U.S.C. § 8123(a), the issue becomes whether the opinion of Dr. Obianwu, the Board-certified orthopedic surgeon selected to resolve the conflict, is entitled to special weight.

OWCP provided Dr. Obianwu with a statement of accepted facts and appellant's medical record so he could base his opinion on a proper factual and medical history. Dr. Obianwu reviewed both. He noted that the May 20, 2010 MRI scan of the left ankle showed mild insertional Achilles tendinitis without tear and mild posterior tibialis and peroneus longus tendinosis. Dr. Obianwu's clinical examination of appellant, however, was quite benign. Of particular note, there was no tenderness over the Achilles tendon, and appellant had good strength on inversion and eversion of the left ankle. Also, she was able to walk on her heels without difficulty, and she was able to walk on her toes with only minimal difficulty on the left. There was no swelling or instability and gross movements were identical on both sides.

Dr. Obianwu concluded that the soft-tissue injury appellant sustained on August 7, 1996 had resolved on a clinical basis. This is entirely consistent with his findings on physical examination. Although the MRI scan showed mild insertional Achilles tendinitis, there was no tenderness over the Achilles tendon. Although the MRI scan showed mild posterior tibialis and peroneus longus tendinosis, inversion and eversion of the left ankle were strong. What Dr. Obianwu observed was that any detection of tendinitis on the imaging study was not manifesting itself in any meaningful way on physical examination. The Board finds no contradiction in his diagnosis of tendinitis from the 2010 MRI scan and his conclusion that the soft-tissue injury sustained in 1996 had resolved.

The Board finds that Dr. Obianwu's opinion is based on a proper factual and medical history and is sufficiently well rationalized that it must be accorded special weight in resolving the conflict that arose between the attending physician and OWCP's second-opinion physicians on the issue of termination. As Dr. Obianwu's opinion constitutes the special weight of the medical evidence, the Board finds that OWCP has met its burden of proof to justify the termination of compensation for appellant's 1996 left ankle tendinitis. The Board will affirm the April 26, 2011 decision on the issue of termination.

[6] 5 U.S.C. § 8123(a).

[7] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.[8]

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment.[9]

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, OWCP must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[10] Unless this procedure is carried out by OWCP, the intent of section 8123(a) of the will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[11]

ANALYSIS -- ISSUE 2

A conflict also arose on whether appellant's 1996 left ankle tendinitis caused or aggravated a low back or left hip pathology. Dr. Obianwu found that her low back problems were unrelated to the August 7, 1996 incident. His review of the medical records, especially those of Dr. Lerner, the attending physiatrist, showed no complaint of low back pain until about 2000. Dr. Obianwu noted limitation in flexion of the thoracolumbar spine with normal lateral bending. There was no paraspinous muscle spasm elicited or atrophy in any of the muscle groups of the lumbar spine. He noted that diagnostic testing revealed severe bilateral hip osteoarthritis.

Dr. Obianwu found that appellant's hip problems were not related to the August 7, 1996 employment injury because the pathology was typically degenerative in nature and unrelated to the accepted injury. Appellant also had degenerative changes on the right, an age-related and

[8] *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

[9] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[10] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[11] *Harold Travis*, 30 ECAB 1071 (1979).

genetically programmed condition. The Board finds that the opinion of Dr. Obianwu, the impartial specialist, is entitled to special weight as it is based on a thorough examination of appellant and the medical records.

On appeal, appellant's representative cites *James R. Driscoll*, in which the Board found that the opinion of an impartial medical specialist was not entitled to special weight because he did not base his opinion on a complete and accurate factual background. The impartial medical specialist in that case had misstated that memory problems began around May 1991. In fact, the memory problem was noted in records from June and July 1989. The impartial medical specialist thus failed to explain the employee's job performance problems prior to 1991. This is not analogous to the present case. Dr. Obianwu did not misstate the facts; he properly noted the findings of tendinitis from the May 20, 2010 MRI scan.

The impartial medical specialist in *Driscoll* also relied on certain statements made by another physician but did not explain the discrepancy between his conclusion and that reached by the other physician. Here, Dr. Obianwu noted the findings of the second-opinion physicians, and his conclusion was the same. *Driscoll* is distinguishable and not applicable to the present case. It does not support a different result. As for the argument that Dr. Obianwu was incompetent, online patient ratings and lay opinion are not probative. He is a Board-certified orthopedic surgeon in good standing, who, conducted a thorough examination of both appellant and her record.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation. The Board also finds that appellant did not establish a consequential back injury.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board