

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

L.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Corona, CA, Employer**

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**Docket No. 13-664
Issued: January 28, 2014**

Appearances:
Toby Rubenstein, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2013 appellant, through her representative, filed a timely appeal from an August 8, 2012 decision of the Office of Workers' Compensation Programs (OWCP) affirming the denial of wage-loss compensation. 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.

ISSUES

The issues are: (1) whether appellant sustained right tarsal tunnel syndrome, right plantar median motor nerve entrapment and left plantar fasciitis causally related to accepted right plantar fasciitis; and (2) whether OWCP properly denied wage-loss compensation on and after November 18, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, appellant's representative asserts that the job offer was not suitable work. He also contends that OWCP ignored repeated requests from appellant and his physicians to adjudicate the issue of whether he sustained consequential bilateral foot conditions.

FACTUAL HISTORY

OWCP accepted that on or before December 1, 2008 appellant, then a 38-year-old letter carrier, sustained right plantar fasciitis. Dr. Edward Mittleman, an attending Board-certified family practitioner, submitted reports dated July 23 to September 25, 2009. He diagnosed right plantar fasciitis and heel spurs caused by prolonged walking and standing at work. Dr. Mittleman noted work restrictions. Dr. Dominic Signorelli, an attending podiatrist, followed appellant beginning on July 23, 2009.² He submitted reports through February 2010 diagnosing right plantar fasciitis, tenosynovitis of the right foot, a right calcaneal bone cyst and a painful gait.

Appellant received wage-loss compensation from November 13 to 19, 2009 and January 2 to March 12, 2010. He again stopped work on March 25, 2010. On March 26, 2010 Dr. Signorelli performed a right plantar fascial release. He held appellant off work through July 2010. In reports from May 27 through October 15, 2010, Dr. Signorelli opined that electromyography (EMG) and nerve conduction velocity (NCV) testing showed right tarsal tunnel syndrome with medial plantar nerve entrapment.

OWCP paid appellant wage-loss compensation from March 13 to November 17, 2010. In reports from August 5 to October 15, 2010 report, Dr. Signorelli requested that OWCP accept bilateral tarsal tunnel syndrome, authorize the right plantar fascial release and authorize a planned left plantar fascia release.

On August 19, 2010 OWCP obtained a second opinion from Dr. Bunsri Sophon, a Board-certified orthopedic surgeon, who diagnosed plantar fasciitis and medial plantar neuropathy of the right foot, both directly caused by prolonged standing and walking at work. Dr. Sophon advised that appellant could perform full-time light duty, with walking and standing up to two hours and lifting limited to no more than 20 pounds for four hours a day.

On October 1, 2010 the employing establishment offered appellant a full-time position as a modified carrier, with standing and walking up to two hours, carrying mail for up to six hours, driving for up to five hours and lifting up to 20 pounds for no more than four hours a day. Appellant accepted the job offer "under protest" on November 18, 2010. He advised the employing establishment that he could not report for duty as his physicians still found him totally disabled for work. Appellant claimed compensation for the period commencing November 18, 2010.

In a November 18, 2010 report, Dr. Signorelli agreed with Dr. Sophon's work restrictions, but opined that appellant would be better able to work if he underwent a right tarsal tunnel release.

² A July 28, 2009 magnetic resonance imaging (MRI) scan of the right foot showed posterior and plantar calcaneal spurs, and fluid at the anterior tibiotalar joint without a definite tear.

In a December 8, 2010 letter, OWCP advised appellant of the evidence needed to establish his claim for total disability beginning November 18, 2010. It afforded him 30 days to submit additional evidence. In response, appellant submitted reports from Dr. Signorelli dated from November 2 to 18, 2010, finding him totally disabled for work due to right plantar medial nerve entrapment and tarsal tunnel syndrome. Dr. Signorelli noted that appellant could not perform any walking at work.

By decision dated January 12, 2011, OWCP denied appellant's claim for wage-loss compensation commencing November 18, 2010. It found that compensation was no longer payable after the employing establishment offered limited duty.

On June 8, 2011 appellant requested reconsideration. He submitted reports from Dr. Hosea Brown III, an attending Board-certified internist, limiting standing and walking to two hours, climbing to 30 minutes and prohibiting driving other than commuting to and from work. Dr. Steven Herberts, an attending Board-certified family practitioner, agreed with these restrictions on April 12, 2011.

By decision dated June 30, 2011, OWCP denied modification of the January 12, 2011 decision. It found that there was no medical evidence to establish that the October 1, 2010 light-duty job offer exceeded the work limitations set by Dr. Sophon.

In a September 26, 2011 letter, appellant requested reconsideration. He submitted reports from Dr. Brown affirming prior work restrictions from July 13 to October 26, 2011.

By decision dated December 5, 2011, OWCP denied modification on the grounds that the additional evidence submitted did not establish that appellant was medically unable to perform the position offered to him on October 1, 2010.

In a May 23, 2012 letter, appellant requested reconsideration. He submitted reports from Dr. Signorelli dated November 10, 2011 to April 19, 2012. Appellant requested that OWCP accept the diagnoses of left plantar fasciitis, right tarsal tunnel syndrome and tenosynovitis as work related. Dr. Signorelli noted on May 30, 2012 that appellant's left foot symptoms worsened after he stopped work due to overcompensation as his right foot remained symptomatic. Appellant also provided reports from Dr. Brown renewing prior work restrictions through April 30, 2012 and finding that appellant needed right tarsal tunnel surgery.³

On June 5, 2012 OWCP obtained a second opinion from Dr. Steven M. Ma, a Board-certified orthopedic surgeon. In a June 5, 2012 report, Dr. Ma diagnosed plantar fasciitis of the right foot related to walking and standing during appellant's federal employment. He opined that appellant's right tarsal tunnel syndrome and left plantar fasciitis were not work related as they developed after appellant stopped work. Dr. Ma found that appellant could perform full-time light duty.

³ Appellant also submitted a September 2, 2011 report from Dr. Serge Obulkoff, an attending Board-certified neurosurgeon, opining that appellant's bilateral foot paresthesias were not due to compressive lumbar neuropathy.

By decision dated August 8, 2012, OWCP denied modification of the prior decisions on the grounds that the medical evidence was insufficient to outweigh Dr. Sophon's opinion. It found that the medical evidence was insufficient to establish the additional bilateral foot conditions diagnosed by Dr. Signorelli. OWCP did not address Dr. Ma's opinion.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴ A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁵ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

Section 8123 of FECA provides that, 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 make an examination.¹¹ In situations where 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.¹²

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *See Katherine J. Friday*, 47 ECAB 591 (1996).

⁶ *John W. Montoya*, 54 ECAB 306 (2003).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Supra* note 6.

¹⁰ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹¹ 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).

¹² *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

ANALYSIS -- ISSUE 1

OWCP accepted that on or before December 1, 2008 appellant, then a 38-year-old letter carrier, sustained right plantar fasciitis. Dr. Signorelli, an attending podiatrist, first diagnosed tenosynovitis of the right foot in July 2009. He opined that appellant had right tarsal tunnel syndrome and plantar median nerve entrapment by EMG and NCV studies in May 2010. In August 2010, Dr. Signorelli opined that appellant sustained left plantar fasciitis due to overcompensation for the right foot. He requested in several reports through April 19, 2012 that OWCP expand the claim to accept left plantar fasciitis, right tarsal tunnel syndrome and tenosynovitis as work related. Dr. Signorelli explained on May 30, 2012 that appellant's left foot symptoms worsened even after he stopped work due to gait disturbances caused by the right foot surgery and right tarsal tunnel syndrome.

Dr. Sophon, a Board-certified orthopedic surgeon and second opinion physician, opined on August 19, 2010 that appellant did have medial plantar neuropathy of the right foot directly caused by walking and standing at work. OWCP obtained an updated second opinion on June 5, 2012 from Dr. Ma, a Board-certified orthopedic surgeon, who opined that appellant's right tarsal tunnel syndrome and left plantar fasciitis were not work related, as lessened physical activity while appellant was off work was insufficient to cause the additional conditions. In its August 8, 2012 decision, it denied appellant's claim for left plantar fasciitis, right tarsal tunnel syndrome and right plantar median nerve entrapment, based on Dr. Sophon's opinion.

The Board finds that there is a conflict of medical opinion between Dr. Signorelli, for appellant, and Drs. Sophon and Ma, for the government, regarding whether appellant sustained right tarsal tunnel syndrome, right plantar median nerve entrapment and left plantar fasciitis causally related to accepted right plantar fasciitis. Both physicians accepted the presence of the conditions, but disagreed on causation. The case will be returned to OWCP for referral to an impartial medical specialist to resolve the conflict of opinion.¹³ After such development as OWCP deems necessary, it will issue a *de novo* decision in the case.

ANALYSIS -- ISSUE 2

The Board finds that the issue of whether appellant is entitled to wage-loss compensation commencing November 18, 2010 is not in posture for a decision due to the conflict of medical opinion regarding whether the claimed right plantar median nerve entrapment and left plantar fasciitis are causally related to the accepted right foot plantar fasciitis.

CONCLUSION

The Board finds that the case is not in posture for a decision regarding whether appellant sustained right tarsal tunnel syndrome, right plantar median motor nerve entrapment and left plantar fasciitis causally related to accepted right plantar fasciitis. The Board further finds that the case is not in posture for a decision on the issue of denial of compensation on and after November 18, 2010.

¹³ 5 U.S.C. § 8123; *see Charles S. Hamilton, supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to OWCP for further development consistent with this decision.

Issued: January 28, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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