

OWCP accepted the claim for left plantar fibromatosis, left tarsal tunnel syndrome and a left calcaneal spur. Appellant sustained intermittent periods of partial and total disability until June 14, 2010 when he stopped work and did not return. OWCP paid him compensation for total disability. On March 4, 2011 Dr. Steven I. Subotnick, a podiatrist, performed an excision of a heel spur, a medial plantar release and fenestration of the medial plantar condyle of the left heel.²

On August 23, 2011 Dr. Subotnick diagnosed status post medial plantar release and partial osteotomy of the medial plantar condyle of the heel, proximal and distal tarsal tunnel syndrome with Baxter's neuritis, an antalgic gait guarding the medial plantar aspect of the left heel, left calf atrophy and a sensitive scar on the left heel. He advised that x-rays showed possible bone edema and radiolucency of the medial plantar condyle of the left heel. Dr. Subotnick related that appellant's condition did not improve following surgery and that he had "tarsal tunnel syndrome proximally and distally and Baxter's neuritis with involvement of the first branch of the lateral plantar nerve which causes radiating nerve pain to the fifth toe at the plantar aspect." He found that appellant could work at a semi-sedentary level and provided work restrictions. Dr. Subotnick attributed the limitations to appellant's employment injury.

On October 5, 2011 Dr. Juon-Kin K. Fong, a Board-certified orthopedic surgeon and OWCP referral physician, listed work restrictions for the next three to six months. On October 28, 2011, after reviewing a magnetic resonance imaging (MRI) scan study of the left ankle, he found that appellant had not fully healed from surgery and that his pain should resolve by the end of the year.

In a report dated November 10, 2011, Dr. Subotnick diagnosed plantar fasciitis resulting in an antalgic gait and distal tarsal tunnel with medial calcaneal neuritis. He related that he was uncomfortable with the amount of pain medication that appellant wanted and transferred his care to Dr. H. Darien Behravan, an osteopath, for pain management and a determination of work restrictions. Dr. Subotnick stated, "I have done all I can for him and he is still not functioning well."

In a report dated January 9, 2012, Dr. Behravan discussed appellant's complaints of continued heel pain. On examination, he found no loss of motion but tenderness over the plantar fascia talofibular ligament with a negative anterior drawer sign. Dr. Behravan diagnosed a plantar nerve lesion, muscle spasm and pain in the ankle and foot joint. He reviewed the October 18, 2011 MRI scan study, which he found showed "[p]ostoperative changes in the posteromedial heel with thickening and increased signal intensity within the medial aspect of the central cord of the plantar fascia compatible with [a] partial tear and/or postoperative changes, [t]endinosis of the posterior tibial tendon at the insertion [and] [a]ttenuation of the anterior talofibular ligament, probably the result of prior injury." Dr. Behravan questioned the need for the requested pain medication and opined that appellant had reached maximum medical improvement and should return to work.

² By decision dated August 27, 2010, OWCP denied appellant's claim for compensation from October 24 to 26 and 30, 2009 to January 7, 2010. On November 9, 2010 an OWCP hearing representative reversed the August 27, 2010 decision and instructed OWCP to pay all periods claimed between October 24, 2009 and January 7, 2010.

On February 1, 2012 OWCP referred appellant for vocational rehabilitation based on Dr. Fong's finding that he could return to work with restrictions.

On February 21, 2012 Dr. Behravan noted that appellant was undergoing vocational rehabilitation. He stated that appellant "has been collecting disability since 2010 and it is now time for him to return to gainful employment." On examination, Dr. Behravan found "some positive nonorganic signs of pain however he has been rated fairly by Dr. Subotnick and I do believe it is time for [him] to return to work."

In a report dated March 20, 2012, Dr. Behravan related that when he asked appellant for a urine sample for a toxicology screen he left and did not return. He released him to return to work with no restrictions.

On October 18, 2012 OWCP authorized appellant's request to change treating physicians to Dr. Jay I. Glasser, a podiatrist.

On December 6, 2012 OWCP advised appellant that it proposed the termination of his compensation based on Dr. Behravan's opinion that he had no further employment-related disability.

In a form report dated November 28, 2012, Dr. Glasser diagnosed left tarsal tunnel syndrome. On examination, he found left heel tenderness and a positive Tinel's sign. Dr. Glasser noted that a physician had performed a permanent and stationary rating and found that appellant could perform sedentary work duties.³

By decision dated May 3, 2013, OWCP terminated appellant's wage-loss compensation effective May 4, 2013. It found that Dr. Behravan's opinion represented the weight of the evidence and established that he had no disability due to his work injury.

On May 8, 2013 appellant requested an oral hearing before an OWCP hearing representative.⁴ In a report dated June 20, 2013, Dr. Glenn Michael Weinraub, a podiatrist, found that appellant could perform modified employment.

At the telephone hearing, held on October 29, 2013, appellant asserted that Dr. Behravan never examined his foot.

By decision dated January 15, 2014, an OWCP hearing representative affirmed the May 3, 2013 decision.

³ In an undated report received on December 17, 2012, Dr. Glasser diagnosed plantar fasciitis of the left heel and chronic pain syndrome. In an undated report received April 1, 2013, he recommended a second opinion examination. On April 25, 2013 Dr. Glasser stated, "[Appellant] continues to complain of significant residual disabilities postsurgery to his heel for plantar fascia release." He noted that appellant disagreed with a release to work without restrictions from his prior physician. Dr. Glasser told appellant to request a second opinion examination.

⁴ In a report dated May 23, 2013, Dr. Glasser again noted that appellant could request a second opinion examination. He noted that the orthotic inserts were doing well.

On appeal, appellant related that Dr. Subotnick found that he had work-related disability. He asserted that Dr. Behravan's report was not professional and that Dr. Glasser found that he had continuing disability.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

OWCP accepted that appellant sustained left plantar fibromatosis, left tarsal tunnel syndrome and a left calcaneal spur causally related to factors of his federal employment. On March 11, 2011 Dr. Subotnick performed a heel spur excision, a medial plantar release and fenestration of the left heel medial plantar condyle. OWCP paid appellant compensation for total disability. It terminated his wage-loss compensation effective May 4, 2013. OWCP found that the March 20, 2012 opinion of Dr. Behravan, appellant's attending physician, represented the weight of the evidence and established that he had no further employment-related disability.

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's compensation benefits as Dr. Behravan's March 20, 2012 report is insufficiently rationalized to support that he had no further disability due to his accepted employment injury. On August 23, 2011 appellant's prior attending physician, Dr. Subotnick, diagnosed tarsal tunnel syndrome with Baxter's neuritis, an antalgic gait, left calf atrophy and a sensitive scar on the left heel. He determined that appellant could perform modified work at a semi-sedentary level and found that the partial disability resulted from his employment injury. On November 10, 2011 Dr. Subotnick diagnosed plantar fasciitis and distal tarsal tunnel syndrome. He referred appellant to Dr. Behravan for further treatment, noting that he was not comfortable prescribing the requested amount of pain medication.

On January 8, 2012 Dr. Behravan diagnosed a plantar nerve lesion and ankle and foot muscle spasm. He found that the October 18, 2011 MRI scan study showed increased signal in the central cord of the plantar fascia consistent with a partial tear or postoperative changes, posterior tibial tendinosis and attenuation of the anterior talofibular ligament. Dr. Behravan advised that appellant could return to work. On February 21, 2012 he discussed his vocational rehabilitation and found that he should resume employment. On examination, Dr. Behravan found nonorganic pain and determined that appellant had been "fairly rated" by Dr. Subotnick. He opined that appellant could return to work.

⁵ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

On March 20, 2012 Dr. Behravan related that appellant left his office when asked for a urine sample for a toxicology screen. He released him to return to work without restrictions. Dr. Behravan, however, did not provide medical reasoning in support of his determination that appellant had no further employment-related disability.⁷ He did not reference any findings on examination in support of his opinion or otherwise explain his conclusion. Such rationale is necessary given that Dr. Behravan determined that appellant had abnormal findings on MRI scan study. Further, he indicated in a February 21, 2012 report that he concurred with the work assessment of Dr. Subotnick, who found that appellant could perform at a semi-sedentary level.⁸ Dr. Behravan provided no explanation for the apparent discrepancy in his findings regarding appellant's work abilities.⁹ As he did not sufficiently explain why appellant had no further disability due to his left plantar fibromatosis, left tarsal tunnel syndrome and a left calcaneal spur, his opinion is insufficient to meet OWCP's burden of proof.¹⁰

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation effective May 4, 2013 on the grounds that he had no further disability due to his accepted employment injury.

⁷ See *Elaine Sneed*, 56 ECAB 373 (2005).

⁸ Dr. Behravan also noted that Dr. Kathryn E. Raphael, a Board-certified internist, released appellant for full duty. However, as Dr. Raphael evaluated appellant on January 12, 2010, before his 2011 surgery, her opinion is not probative on the issue of whether he has any disability after May 4, 2013.

⁹ The Board has held that a medical opinion not fortified by rationale is of little probative value. See *Brenda L. DuBuque*, 55 ECAB 212 (2004).

¹⁰ See *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2014 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 11, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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