

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

D.C., Appellant)	
)	
and)	Docket No. 24-0417
)	Issued: June 24, 2024
U.S. POSTAL SERVICE, HICKMAN MILLS)	
POST OFFICE, Kansas City, MO, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 11, 2024 appellant, through counsel, filed a timely appeal from a February 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective September 27, 2023, as she no longer had disability causally

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

related to her accepted March 16, 2022 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability on or after September 27, 2023 causally related to her accepted March 16, 2022 injury on or after September 27, 2023.

FACTUAL HISTORY

On March 18, 2022 appellant, then a 44-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right ankle when she stepped into a pothole while delivering mail in the performance of duty. She did not immediately stop work. OWCP accepted appellant's claim for contusion of the right ankle, contusion of the right foot, and contusion of the right lesser toe without damage to the nail. It subsequently expanded its acceptance of the claim to include strain of the muscle and tendons of the peroneal, right ankle impingement, and peroneus brevis split tendon tear at the inframalleolar region. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective May 3, 2022, and on the periodic rolls, effective August 14, 2022.

On July 20, 2022 Dr. Aakash Shah, a Board-certified orthopedic surgeon, performed a right ankle arthroscopy with extensive debridement, arthroscopy with partial synovectomy, open peroneus longus and brevis tenosynovectomy, and open peroneus brevis tendon repair. He diagnosed right ankle peroneus brevis tendon tear, impingement syndrome, synovitis, and peroneus longus and brevis tenosynovitis.

In a work status report dated August 9, 2022, Dr. Shah diagnosed partial tear of ligament of lateral aspect of ankle and soft tissue swelling of ankle joint. He returned appellant to full-time modified duty lifting up to five pounds constantly, sitting 75 percent of the time, no squatting, kneeling, or climbing ladders, and must wear a brace. Dr. Shah treated appellant on September 20, November 1, and December 13, 2022 in follow up and diagnosed partial tear of ligament of lateral aspect of ankle, status post repair of ligament of ankle. He prescribed an ankle stabilizer brace and continued full-time modified duty. On November 1, 2022 Dr. Shah continued appellant's restrictions, and noted that she could lift up to 20 pounds constantly and was not required to sit during her shift. On December 13, 2022 he increased her lifting limit to 30 pounds.

On February 7, 2023 Dr. Shah reported treating appellant status post right ankle arthroscopy with debridement, peroneus brevis repair, peroneus longus, and brevis tenosynovectomy. His examination of the right ankle revealed a well-healed surgical incision, improved tingling and paresthesias, and no signs of infection, pain to palpation, instability, or laxity. Dr. Shah opined that appellant was looking well, and recommended that she transition back to work on a full-time basis and continue physical therapy. In a work status report of even date, he diagnosed partial tear of ligament of lateral aspect of the right ankle and status post repair of ligament of the ankle and returned appellant to full-time regular duty without restrictions.

In a report of work status (Form CA-3) dated February 22, 2023, OWCP indicated that appellant returned to work without restrictions on February 8, 2023.

On April 4, 2023 Dr. Shah treated appellant status post right ankle arthroscopy with debridement, peroneus brevis repair, peroneus longus, and brevis tenosynovectomy. His examination of the right ankle revealed a well-healed surgical incision, improved tingling and

paresthesias, intact neurovascular examination, and no signs of infection, or pain to palpation. Dr. Shah placed appellant at maximum medical improvement (MMI) and released her to full duty.

In a notice dated April 26, 2023, OWCP proposed to terminate appellant's wage-loss compensation as she no longer had disability causally related to her accepted March 16, 2022 employment injury. It found that the weight of the medical opinion evidence rested with the February 7 and April 4, 2023 opinions of her treating physician, Dr. Shah. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

On April 29, 2023 appellant disagreed with the proposed termination of wage-loss compensation benefits. She indicated that she sustained a traumatic injury at work on March 16, 2022, and continued to have disabling residuals due to this injury including right foot and ankle pain, tendinitis, inflammation, numbness, and tingling. Appellant noted that physical therapy ceased due to significant pain and inflammation of her right ankle. She reported that she regularly experienced muscular weakness when walking short distances.

By decision dated September 27, 2023, OWCP finalized the notice of proposed termination of appellant's wage-loss compensation, effective that same date. It found that the weight of the medical opinion evidence rested with the February 7 and April 4, 2023 opinions of Dr. Shah. OWCP noted that the claim remained open for medical benefits.

OWCP received additional evidence. Appellant submitted an August 22, 2023 report wherein Dr. Stephanie Jameson, a podiatrist, treated appellant for right ankle pain with a reported onset of more than one year ago. Physical examination revealed weakness with eversion and dorsiflexion on the right, pain along the entire peroneal post and inferior lateral malleolus, hyperesthesia and allodynia, pain at the incisions of the medial and lateral anterior ankle gutters, significant edema of the inferior right lateral malleolus, and cicatrix of the right medial and lateral anterior ankle gutters. Dr. Jameson diagnosed peroneal tendinitis of the right leg, localized edema, pain in the right ankle and joints of the right foot, contracture of the right ankle, neuralgia, bursitis of the right ankle and foot, hypertrophic scar, and effusion of the right ankle. She prescribed an ankle brace and ordered diagnostic testing.

On August 30, 2023 Dr. Jeffrey Foster, an osteopath, treated appellant on August 29, 2023 for right foot pain, right ankle joint pain, complex regional pain syndrome of the lower limb, and pain in the lower limb. On January 3, 2024 he treated appellant for chronic right ankle and foot pain radiating into her right lower leg status post right ankle trauma and surgery. Dr. Foster diagnosed pain in the right foot and ankle joint, complex regional pain syndrome (CRPS) of the lower limb, and pain in the lower limb.

On September 18, 2023 Dr. Jason Anderson, a podiatrist, treated appellant for chronic right lateral ankle pain. Appellant reported that approximately a year ago she stepped into a pothole and injured her right ankle. A May 2022 magnetic resonance imaging (MRI) scan of the right ankle revealed an inter-substance peroneal tendon tear. Dr. Anderson reported her surgical and symptom history. He diagnosed pain in the right ankle and joints of the right foot, peroneal tendinitis of the right leg, bursitis of the right ankle and foot, edema, and mononeuropathy of the right lower limb. Dr. Anderson performed an intra-articular steroid injection into the subtalar joint.

On December 12, 2023 he performed a repair of subluxation of peroneal tendons of the right ankle, repair of peroneal tendon/brevis of the right ankle, decompression of nerve entrapment of the right ankle, and revisional surgery. Dr. Anderson diagnosed peroneal tendon tear, peroneal instability, and sural nerve entrapment. On December 29, 2023 he treated appellant postoperatively and noted that she was progressing well, and the radiating nerve pain had resolved. Dr. Anderson diagnosed unspecified mononeuropathy of the right lower limb, contracture of the right ankle, and peroneal tendinitis of the right leg.

Dr. Rebecca Burfeind, a Board-certified anesthesiologist, treated appellant on October 5, 2023 for CRPS of the right ankle foot, and leg. Appellant reported that her symptoms began after she stepped into a pothole and injured her right foot and ankle at work. She noted that an MRI scan of the right ankle dated August 29, 2023 revealed postsurgical changes, mild tenosynovitis of the peroneus brevis and peroneus longus tendons without tendon tear, and mild chronic plantar fasciitis. Dr. Burfeind diagnosed CRPS, type 1 of the right lower extremity, right foot and ankle pain, and right foot and ankle surgery. She performed an intra-articular injection. In a return-to-work note dated October 19, 2023 Dr. Burfeind returned appellant to light-duty work with a five-pound lifting restriction.

On October 20, 2023 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 3, 2024.³

By decision dated February 5, 2024, an OWCP hearing representative affirmed the September 27, 2023 termination decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ After it has been determined that an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective September 27, 2023.

³ On February 2, 2024 appellant requested that OWCP expand the acceptance of her claim to include CRPS of the lower limb.

⁴ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *See R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *See R.P., id.*; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

OWCP based its termination of appellant's wage-loss compensation on the February 7 and April 4, 2023 reports of Dr. Shah, appellant's treating physician. In his February 7, 2023 report, Dr. Shah discussed appellant's history of medical treatment, and reported her continuing symptoms of tingling and paresthesias in the right ankle. He detailed the physical examination findings, and diagnosed status post right ankle arthroscopy with debridement, peroneus brevis repair, and peroneus longus and brevis tenosynovectomy. Dr. Shah continued physical therapy and recommended that appellant transition back to work on a full-time basis. In a work status report of even date, he diagnosed partial tear of ligament of lateral aspect of the right ankle and status post repair of ligament of the ankle and returned appellant to full-time regular duty without restrictions. Similarly, in an April 4, 2023 report, Dr. Shah diagnosed status post right ankle arthroscopy with debridement, peroneus brevis repair, and peroneus longus and brevis tenosynovectomy. He noted improved tingling and paresthesias of the right ankle and placed appellant at MMI and released her to full duty.

The Board finds that Dr. Shah failed to provide adequate medical rationale for the opinions expressed in his February 7 and April 4, 2023 reports that appellant could return to full duty.⁷ Dr. Shah did not explain with rationale why appellant was capable of returning to work as of September 27, 2023. Therefore, his report is of diminished probative value.⁸

As the medical evidence of record is insufficient to establish that appellant no longer had disability causally related to her accepted employment injury, the Board finds that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective September 27, 2023.⁹

⁷ See *T.F.*, Docket No. 11-763 (issued November 7, 2011); *Leon Harris Ford*, 31 ECAB 514, 518 (1980).

⁸ *M.R.*, Docket No. 20-0707 (issued November 30, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 24, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board