

² 5 U.S.C. § 8101 *et seq.*

his accepted January 23, 2016 employment injury; and (2) whether appellant has met his burden of proof to establish continuing disability on or after April 9, 2024, causally related to his accepted January 23, 2016 employment injury.

FACTUAL HISTORY

On April 7, 2016 appellant, then a 41-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a right foot condition due to factors of his federal employment, including prolonged walking on uneven surfaces with weight for eight hours per day. He noted that he first became aware of his condition on January 23, 2016 and realized its relation to his federal employment on April 5, 2016. Appellant stopped work on March 10, 2016. On April 20, 2016 OWCP accepted the claim for other specified congenital deformities of feet and other synovitis and tenosynovitis of the right ankle and foot. It paid appellant wage-loss compensation on the supplemental rolls, effective April 16, 2016, and on the periodic rolls, effective September 18, 2016.

On September 9, 2016 appellant underwent OWCP-authorized subtalar joint arthrodesis and talonavicular exostectomy surgery to his right foot and ankle by Dr. Michael Troiano, a Board-certified reconstructive ankle and foot. The pre and postoperative diagnosis was right talocalcaneal coalition.

In an April 11, 2023 medical report, Dr. Troiano performed a physical examination and documented rigid subtalar joint motion and decreased range of motion (ROM) of the transverse tarsal joint. He obtained x-rays, which revealed consolidation of the subtalar fusion with ongoing advancement of arthritis in the transverse tarsal joint, most pronounced at the talonavicular joint.

On June 5, 2023 OWCP prepared a statement of accepted facts (SOAF), which noted the accepted conditions. It described appellant's duties as a letter carrier as lifting and carrying up to 35 pounds continuously and up to 70 pounds intermittently for six hours per day; standing and walking intermittently for eight hours per day; climbing, bending, stooping, and twisting intermittently for six hours per day; kneeling, pushing, and pulling intermittently for two hours per day; and driving a vehicle intermittently for six hours per day.

On June 12, 2023 OWCP referred appellant, along with the case record, the SOAF, and a series of questions, to Dr. Noubar Didizian, a Board-certified orthopedic surgeon, for a second opinion examination regarding the status of appellant's accepted conditions.

In a July 20, 2023 report, Dr. Didizian discussed the January 23, 2016 employment injury and noted that appellant complained of right ankle pain, has a limp favoring the right ankle, and buckling but was able to walk around the supermarket with a cart and walk around his block. On physical examination, he observed soreness over the talonavicular and calcaneocuboid joints, reduced extension and plantar flexion, no inversion or eversion, and atrophy on the right calf. Dr. Didizian diagnosed congenital deformity of the right foot with tarsal coalition between the talus and the calcaneus, status post fusion. He opined that appellant's work-related injuries had not resolved and that he was not capable of returning to his "physically demanding" preinjury job due to objective findings of limited extension, plantar flexion, inversion, and eversion of the right ankle. Dr. Didizian also opined that he would require a triple arthrodesis in the future. In a work

capacity evaluation (Form OWCP-5c) of even date, he released appellant to return to work with restrictions of walking and standing up to two hours per day, pushing and pulling up to 20 pounds for up to two hours per day, lifting up to 20 pounds for four hours per day, and one hour of climbing.

In a July 27, 2023 medical report, Dr. Troiano documented physical examination findings including rigid subtalar joint ROM, decreased ROM of the transverse tarsal joint, and development of subtle audible popping and clicking. He opined that appellant had progressive osteoarthritis secondary to fusion of his rearfoot complex and recommended immobilization, proper shoe gear, orthotic devices, and activity modifications.

On September 29, 2023 OWCP provided an Office of Inspector General (OIG)-obtained surveillance video to Dr. Didizian for his review and comment.³

In an addendum report dated October 4, 2023, Dr. Didizian indicated that he reviewed the OIG surveillance video of appellant, which he claimed showed him walking normally without shoe inserts and playing basketball. He noted that appellant was not limping and had a normal gait. He opined that “based on the review of the surveillance, it is my medical opinion that there is no reason why [appellant] cannot go back to full gainful employment with no restrictions.” Dr. Didizian completed a Form OWCP-5c releasing appellant to return to full-duty work with no restrictions.

On December 19, 2023, OWCP advised appellant of its proposed termination of his wage-loss compensation benefits, as the evidence of record established that he no longer had employment-related disability causally related to his accepted January 23, 2016 employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

By letter dated December 29, 2023, appellant, through counsel, opposed the proposed termination of his wage-loss compensation benefits. He indicated that the OIG surveillance video did not show appellant exceeding any of the restrictions that Dr. Didizian placed upon appellant during the July 20, 2023 second opinion evaluation, and therefore, Dr. Didizian’s opinion that appellant was capable of performing full-duty work without restrictions was not entitled to the weight of the medical evidence.

In a narrative medical report dated January 14, 2024, Dr. Troiano noted his review of the July 20 and October 4, 2023 reports of Dr. Didizian and the OIG surveillance video. He indicated that the OIG surveillance video showed appellant performing activities within his medical restrictions, including walking his dog around the block and standing flatfooted while shooting a basketball in his driveway. Dr. Troiano opined that “there is nothing to suggest that [appellant] is functioning outside the restrictions set forth in the activity modifications and limitations

³ On August 31, 2023 OWCP received an investigative report by the employing establishment’s OIG, which claimed that appellant was observed walking at different locations and in his yard while wearing slipper-style shoes and playing basketball in his driveway.

documentation completed by myself.” He also opined that appellant was not capable of returning to his date of injury position without restrictions, but could return to sedentary-duty work.

OWCP declared a conflict in medical opinion between Dr. Troiano, appellant’s treating surgeon, and Dr. Didizian, the second opinion physician, regarding the extent of any employment-related disability.

On February 1, 2024, OWCP referred appellant, along with the case record, and a series of questions to Dr. Paul Teja, an osteopath Board-certified in orthopedic surgery, for an impartial medical examination to resolve the conflict in medical opinion.

In a report dated March 22, 2024, Dr. Teja, serving as the impartial medical examiner (IME), reviewed appellant’s history of injury, the SOAF, and medical record. He performed a physical examination of the right foot and ankle, which revealed a flatfoot deformity, tenderness along the anterior aspect of the ankle, reduced plantar flexion, and zero dorsiflexion, ankle inversion, and ankle eversion. Dr. Teja noted that appellant’s work duties included lifting or carrying 50 pounds, pushing and pulling 20 pounds, standing and walking for eight hours per day, and kneeling and crouching. He opined that he was capable of returning to full-duty work without restrictions based upon his review of the OIG surveillance video.

By decision dated April 9, 2024, OWCP terminated appellant’s wage-loss compensation benefits, effective that date. It found that the opinion of Dr. Teja, the IME, represented the special weight of the evidence and established that appellant no longer had disability due to his accepted employment injury. OWCP further advised appellant that his medical benefits remained open.

On April 10, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

OWCP thereafter received an April 4, 2024 medical report by Dr. Troiano, who noted rigid subtalar joint ROM, decreased ROM of the transverse tarsal joint, worsening audible popping and clicking, an abnormal limping gait, and increased swelling across the transverse tarsal joint. Dr. Troiano opined that the arthritic changes had progressed across the midfoot. He indicated that appellant’s treatment options included long-term bracing, injection therapy, or completion of triple arthrodesis.

In an April 13, 2024 attending physician’s report (Form CA-20), Dr. Troiano diagnosed coalition status post subtalar fusion aggravated by walking at work. He opined that appellant was totally disabled from his date of injury position.

In a follow-up report dated May 9, 2024, Dr. Troiano noted restriction in the right ankle and transverse tarsal joints.

A hearing was held on July 11, 2024, during which appellant testified that he reviewed the surveillance video footage, which showed appellant taking walks around the block in his neighborhood, bending over to pick up dog waste, walking through a local casino for approximately 15 minutes, picking up a gallon of milk at the store, and dribbling a basketball in his driveway while chatting with family members for approximately 15 minutes. He indicated that his job duties required him to walk for eight hours and lift heavy weights, which he could not do

and did not do during the surveillance. Appellant also related that his activities did not exceed his physician's medical restrictions.

In a September 4, 2024 medical report, Dr. Troiano noted that appellant related complaints of a pulling sensation at the outside of his right leg. He performed a physical examination, which revealed pain throughout the peroneal muscle and anterior lateral syndesmosis and restricted ROM in dorsiflexion of the right ankle. Dr. Troiano obtained x-rays, which revealed progression in tibiotalar joint osteoarthritis with lateral gutter decrease in space consistent with developing arthritic change.

By decision dated September 24, 2024, OWCP's hearing representative affirmed the April 9, 2024 decision.

LEGAL PRECEDENT -- ISSUE 1

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 determined that an employee has disability causally related to his or her 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 Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.⁷ For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective April 9, 2024.

OWCP properly determined that a conflict in medical opinion existed between Dr. Troiano, appellant's treating physician, who opined that appellant continued to have disability due to his

⁴ *K.T.*, Docket No. 22-1038 (issued June 22, 2023); *M.M.*, Docket No. 17-1264 (issued December 3, 2018); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *T.N.*, Docket No. 22-0721 (issued September 14, 2022); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *T.N.*, *id.*; *R.L.*, Docket No. 20-1611 (issued September 30, 2022); *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ 5 U.S.C. § 8123(a); *R.H.*, Docket No. 20-1442 (issued February 9, 2022); *Q.S.*, Docket No. 20-0701 (issued November 10, 2021).

⁸ *R.H.*, *id.*; *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts*, 30 ECAB 1010 (1980).

accepted January 8, 2013 employment injury, and Dr. Didizian, OWCP's second opinion physician, who found that appellant no longer suffered disability due to his accepted employment injury. In order to resolve the conflict, it properly referred him to Dr. Teja for an impartial medical examination, pursuant to section 8123(a) of FECA, to resolve the conflict in medical opinion.⁹

In a March 22, 2024 report, Dr. Teja indicated that he had reviewed the case record, including the OIG surveillance video. He noted right ankle and foot examination findings of a flatfoot deformity, tenderness along the anterior aspect of the ankle, reduced plantar flexion, and zero dorsiflexion, ankle inversion, and ankle eversion. Dr. Teja further noted that appellant's work duties included lifting or carrying up to 50 pounds and pushing and pulling up to 20 pounds. He opined that appellant was capable of performing his date of injury position based upon the OIG surveillance video. However, Dr. Teja did not provide any medical reasoning or explanation for why appellant's work-related disability had ceased. He merely relied on the surveillance video, and did not reference any specific examination findings or medical rationale in support of his opinion that appellant ceased to have employment-related disability.¹⁰ Dr. Teja's report is, therefore, of diminished probative value and is insufficient to be accorded the special weight of the medical evidence.¹¹

As the medical evidence of record is insufficient to establish that appellant no longer had disability as of April 9, 2024 causally related to the accepted employment injury, the Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits, effective April 9 2022.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits, effective April 9, 2024.¹²

⁹ *Supra* note 7.

¹⁰ *Supra* note 6.

¹¹ *See A.C.*, Docket No. 19-1522 (issued July 27, 2020); *Willa M. Frazier*, 55 ECAB 379 (2004).

¹² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 27, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board