

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA D. McCASKILL and U.S. POSTAL SERVICE,
ST. LOUIS PRIORITY ANNEX, Hazelwood, Mo.

*Docket No. 96-1310; Submitted on the Record;
Issued June 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that her recurrence of disability was causally related to the accepted work injury.

The Board has carefully reviewed the case record and finds that this case is not in posture for decision and must be remanded for further evidentiary development.

Under the Federal Employees Compensation Act,¹ an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,³ and supports that conclusion with sound medical reasoning.⁴

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's

¹ 5 U.S.C. §§ 8101-8193 (1974).

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.⁵

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁶ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁷ Further, neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.⁸

In this case, appellant, then a 34-year-old mail handler, filed a notice of traumatic injury on December 18, 1995, claiming that her right foot was injured after being caught under a piece of equipment. Appellant was treated at a hospital emergency room, and the claim was accepted for a right ankle sprain.

Appellant returned to limited duty on December 29, 1995 and was released for full duty on January 4, 1996. On January 21, 1996 appellant filed a notice of recurrence of disability, claiming that her original injury was not treated effectively, that her foot was swollen, causing much pain, and that her condition had become progressively worse.

On January 24, 1996 the Office of Workers' Compensation Programs informed appellant that the medical evidence did not support disability after January 4, 1996, when appellant's treating physician, Dr. Arthur Lee, a family practitioner, stated that her ankle sprain had resolved. The Office advised appellant that her physician would have to explain how any objective findings on January 10, 1996 when she stopped work resulted from the December 18, 1995 injury.

On February 1, 1996 the Office requested that appellant provide factual and medical information to support a recurrence of disability, including a narrative medical report explaining how her current foot condition was related to the accepted work injury. Appellant responded with a written statement that her condition had not improved since the initial injury and that Dr. Lee had taken no x-rays of her foot and had prescribed no medication.

Appellant also submitted a handwritten report dated January 30, 1996 and treatment notes from Dr. Victor L. Horsley, a podiatrist. Dr. Horsley saw appellant on January 10 and 17, 1996 for complaints of pain and swelling and diagnosed contusions and sprain of the right ankle, neuritis, and tendinitis and prescribed physical therapy. He related a complete history of the initial injury and noted decreased range of motion and muscle strength. On January 23, 1996 Dr. Horsley again saw appellant who continued to complain of pain and "a little swelling" in her

⁵ 20 C.F.R. § 10.121(b).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); cf. *Richard McBride*, 37 ECAB 748, 753 (1986).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

right foot. Dr. Horsley stated that appellant should not return to work for two to three weeks and should start rehabilitative physical therapy.

In his January 30, 1996 report, Dr. Horsley reiterated appellant's statements that Dr. Lee's treatment was inadequate, that she was never free from pain, that her symptoms were exacerbated upon her return to work, and that the swelling in her ankle "never stopped." Dr. Horsley questioned whether Dr. Lee's treatment was adequate because he prescribed no medication, nerve blocks for pain, or walking aids. Dr. Horsley also noted that appellant denied that her ankle injury had in fact resolved by January 4, 1996 and referred to his own clinical findings when he treated appellant on January 10, 1996, adding that with the proper treatment, appellant was beginning to show signs of improvement.

On March 5, 1996 the Office denied the claim on the grounds that the medical evidence was insufficient to establish that the recurrence of disability was causally related to the December 18, 1995 work injury.

The Board finds that while Dr. Horsley's report fails to establish the requisite causal relationship between appellant's foot condition on January 10, 1996 and the December 18, 1995 work injury, the podiatrist indicated that appellant came to see him because her symptoms were exacerbated upon returning to work, where she had to stand six hours a day while handling mail. Further, Dr. Horsley agreed with appellant that Dr. Lee's treatment of appellant's ankle was less than adequate and ordered that appellant remain off work while undergoing physical therapy.

Proceedings under the Act are not adversarial in nature, and the Office is not a disinterested arbiter.⁹ While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰

In this case, appellant has provided an uncontradicted description of her treatment by Dr. Lee, which is corroborated by Dr. Horsley's findings, and a factual statement of how her ankle swelled over her shoe after an eight-hour shift on January 4, 1996. Under these circumstances, a substantial question is raised as to whether appellant's accepted ankle sprain had indeed resolved by January 4, 1996 or whether her return to work, which required standing for six hours, aggravated her work injury. Therefore, the Board will remand this case for further evidentiary development.¹¹

On remand, the Office shall determine through further development of the medical evidence whether in fact appellant did receive the proper medical treatment for the accepted right ankle strain, whether her return to work on an inadequately treated sprain aggravated her ankle

⁹ *Richard Kendall*, 43 ECAB 790, 799 (1992) and cases cited therein.

¹⁰ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹¹ *See John J. Carlone*, 41 ECAB 354, 358 (1989) (finding that medical evidence submitted by appellant is sufficient, absent any opposing medical evidence, to require further development of the record); *see generally Horace Langhorne*, 29 ECAB 820 (1978); *see also Delores C. Ellyett*, 41 ECAB 992, 995 (1990) (finding that the Office may not completely disregard medical opinions of diminished probative value but rather must further develop the record).

injury to the point of requiring treatment by Dr. Horsley and necessitating appellant's absence from work, and whether appellant's ankle sprain had healed without residuals. After such development as the Office deems necessary, a *de novo* decision shall be issued.¹²

The March 5, 1996 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
June 22, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² See *Raymond H. VanNett*, 44 ECAB 480, 483 (1993) (finding that the Office failed to complete evidentiary development in accord with its own procedures and Board precedent).