

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IXTLA CCIHUATL and INTERNATIONAL BOUNDARY & WATER
COMMISSION, El Paso, Tex.

*Docket No. 95-2895; Submitted on the Record;
Issued March 25, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to rescind acceptance of appellant's claim for a right ankle strain.

On November 28, 1994 appellant, then a 44-year-old clerk, submitted a claim alleging injury to her right ankle on May 10, 1993 while in the performance of duty. On the reverse of the claim form, appellant's supervisor noted that the claim was submitted outside the period for continuation of pay but noted he had no reason to dispute the claim. Appellant attributed her delay in filing the claim to the recent settlement of a discrimination complaint she had entered with the agency. She explained that she filed her claim because she had continuing right ankle pain.

By letter dated December 22, 1994, the Office advised appellant that she needed to submit medical evidence in support of her claim for compensation. In response, appellant submitted a CA-20 attending physician's report from Dr. Jaime M. Castelltort, an orthopedic surgeon. Dr. Castelltort listed the date of injury as May 10, 1993 and indicated his most recent examination of appellant was on December 22, 1994. He indicated with a check mark that appellant's condition was due to the injury, for which compensation was claimed and stated a diagnosis of bursitis of the dorso-lateral tibial band. Dr. Castelltort advised that appellant was not disabled from work and could resume her regular duties as of January 4, 1995.

Appellant also submitted the results of an x-ray examination of her right ankle which took place on December 16, 1994. No evidence of a fracture or dislocation or other bony abnormality was reported.

By letter dated May 9, 1995, an Office claims examiner advised appellant that her claim was accepted for the condition of right ankle sprain. The Office noted that authorization for additional medical treatment would expire after 90 days unless she provided medical evidence from her physician explaining why her condition had failed to resolve.

By decision dated May 26, 1995, the same claims examiner found that appellant's claim for compensation should be rejected on the grounds that fact of injury was not established. In an attached memorandum, the claims examiner stated that he accepted appellant's account of the May 10, 1993 employment incident; however, he found that a medical condition resulting from the accepted trauma was not supported by the medical evidence of file. He noted that appellant also failed to provide any medical records relating to the 18-month period between the May 10, 1993 incident and her medical examinations of December 1994.

By letter dated July 26, 1995, appellant requested a hearing before an Office hearing representative. By decision dated August 14, 1995, the Office's Branch of Hearings and Review Board denied appellant's request as untimely filed.¹

The Board finds that the Office did not meet its burden of proof to rescind acceptance of appellant's claim for a right ankle sprain.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion, under section 8128(a) of the Federal Employees' Compensation Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.² The Board has noted, however, that the power to annul an award of compensation is not an arbitrary one and that an award of compensation can only be set aside in the manner provided by the compensation statute.³ It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it erroneously accepted the claim. To justify rescission of acceptance of a claim, the Office must show that it based its decision on new evidence, legal argument and/or rationale.⁴

In the present case, the Office accepted that appellant sustained a right ankle sprain on May 10, 1993 when she struck her foot on a metal bar of a typists chair. The Office thereafter rescinded the acceptance of the claim for the condition of right ankle sprain. The explanation provided by the Office was, although it accepted the May 10, 1993 incident, as occurring in the time, place and manner alleged, appellant "failed to provide medical evidence supporting her claim that she sustained a compensable injury on May 10, 1993."

In the present case, the record does not establish that the Office obtained any new medical or factual evidence on which it based its decision to rescind acceptance of the claim.⁵ Rather, it appears that the claims examiner based his decision to rescind on the basis that the

¹ Following the May 26, 1995 Office decision, appellant submitted additional evidence to the record. As the Office did not consider this evidence in its final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Sheila A. Johnson*, 46 ECAB 323 (1994); *Eli Jacobs*, 32 ECAB 1147 (1981).

³ *Shelby J. Rycroft*, 44 ECAB 795 (1993).

⁴ *Laura H. Hoexter (Nicholas P. Hoexter)*, 44 ECAB 987 (1993); *Billie C. Rae*, 43 ECAB 192 (1991).

⁵ It also appears that appellant was not provided any pretermination notice pertaining to the rescission decision.

medical evidence submitted by appellant was of no probative value, thus finding that she had failed to submit medical evidence supporting she sustained a compensable injury on May 10, 1993.

The evidence in this case consists primarily of the January 4, 1995 report, of Dr. Castelltort, an orthopedic surgeon, who examined appellant on or about December 22, 1994 and diagnosed bursitis of the dorsal-lateral tibial band. On the report, Dr. Castelltort noted the date of injury as May 10, 1993 and provided, by check mark, an opinion relating appellant's condition to the employment injury claimed. He found no disability for work.

While it is generally true that when a physician's opinion on causal relationship merely consists of checking "yes" to a form question, such medical opinion may be found insufficient to establish causal relationship,⁶ the Board has not held that such an opinion is of no probative value. Rather, the Board has stated that such an opinion is of diminished probative value when compared with a rationalized explanation from a physician, which includes a complete factual and medical background, findings on examination, a firm diagnosis and an opinion on causation explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

The Board finds that while the medical evidence of record considered by the Office is of diminished probative value, the Board is unable to conclude from the record that the medical evidence is so insubstantial as to be of no probative value.⁸ In this regard, the Board must conclude that the Office claims examiner merely engaged in a reweighing of the medical evidence submitted by appellant, which was before him at the time of the acceptance of the claim. The Office has provided insufficient rationale for its decision to rescind acceptance of appellant's claim for a right ankle strain.⁹

⁶ See *Ruth S. Johnson*, 46 ECAB 237 (1994); *Debra S. King*, 44 ECAB 203 (1992).

⁷ See *O. Paul Gregg*, 46 ECAB 624 (1995).

⁸ See *Billie C. Rae*, *supra* note 4 at 205.

⁹ As the Office failed to sustain its burden of proof in rescinding appellant's claim, the issue of whether appellant's request for a hearing was properly denied is rendered moot.

The May 26, 1995 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.
March 25, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member