

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARVEY E. DuPERRY and U.S. POSTAL SERVICE,
POST OFFICE, Providence, R.I.

*Docket No. 97-623; Submitted on the Record;
Issued April 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his left leg on September 6, 1995 that was causally related to factors of his federal employment.

On September 6, 1995 appellant, then a 47-year-old letter carrier, filed a claim, alleging that he injured his left knee and ankle while in the performance of duty. Appellant stopped work. He returned to work on September 18, 1995 but stopped work again on September 18, 1995. The employing establishment controverted this claim. In a decision dated November 4, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence did not establish that the diagnosed medical condition was causally related to factors of appellant's federal employment. In merit decisions dated February 12 and September 23, 1996, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has established that he sustained an injury to his left leg that was causally related to factors of his federal employment.¹

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.² The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on November 18, 1996, the only decisions before the Board are the Office's February 12 and September 23, 1996 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

relationship between the condition and the employment.³ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated his condition is sufficient to establish causal relationship.⁴ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁵ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁶

In the present case, appellant has submitted sufficient medical evidence to establish that his diagnosed conditions are causally related to factors of his federal employment. On his notice of traumatic injury form, appellant noted that he had been doing "mark-ups" and that when he got up he felt something in his left leg pop. In form reports dated September 6, 8 and 22, 1995, his personal physician, Dr. Dana Sparhawk, who is Board-certified in preventive medicine, initially diagnosed appellant with a torn calf muscle and checked boxes indicating that this was an on-the-job injury and was causally related to the history of injury provided. In his narrative report dated September 6, 1995, Dr. Sparhawk provided the following history of injury:

"The patient is a letter carrier and was at work this morning working at a case and he states when he got up to walk, he turned to his right and once he put his left foot down he felt a burning and popping occur about his left calf muscle. He states at the time he did [not] think anything of it and kept working, but noted the development of swelling in calf muscle. Subsequent increasing pain with walking and even pain when sitting -- he is unable to find a comfortable position. Essentially pain starting from behind the knee, radiating down to the ankle, posterior aspect...."

Dr. Sparhawk diagnosed "possible gastrocnemius muscle tear, left calf." He recorded measurements of 10 centimeters distal to inferior pole of the patella with a circumference of 45.5 centimeters on the left versus 42 centimeters on the right. In a follow-up report dated September 8, 1995, he provided the following information in pertinent part:

"PHYSICAL EXAMINATION: The left calf revealed diffuse swelling with tenderness along the posterior calf, with most of the tenderness being in the mid one-third of the calf. There was no discoloration. Thompson's test was negative. There was no tenderness to palpitation of the Achilles tendon. There was full range of motion of the foot with complaints of pain with plantar flexion against

³ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁴ *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁶ *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

resistance. The mid calf circumference at 25 cm. [centimeters] proximal to the medial malleolus was 41.5 cm. on the left versus 39 cm. on the right.

“ASSESSMENT: Partial tear of the calf muscle, left leg.

“PLAN: He is to keep this iced and elevated as much as possible.... I do not feel he should do any type of work until he follows up with me in five days, as he needs to remain off the leg.”

In subsequent follow-up reports dated September 13 and 22, 1995, Dr. Sparhawk reiterated that appellant was being treated for a tear of the left calf muscle. In the September 13, 1995 report, he noted that appellant arrived on crutches and provided the following physical findings:

“He is able to ambulate, but does have a definite limp as he walks. The left calf reveals no discoloration. There is very mild swelling noted over the calf region and there continues to be tenderness in the mid calf muscle region. The circumference at 25 cm. proximal to the medial malleolus has decreased to 40.5 cm. on the left versus 39.5 cm. on the right. Thompson’s test is negative. There is full range of motion of the foot with complaints of discomfort with plantar flexion.”

Dr. Sparhawk noted that appellant’s tear of the left calf muscle was improving. In his September 22, 1995 report, Dr. Sparhawk indicated that appellant had no complaints at this point. With respect to the physical examination, he noted: “The patient was in no apparent distress. He walked with a normal nonantalgic gait. The left calf revealed no tenderness or swelling. There was full range of motion at the foot without complaints of pain. The mid calf circumference was symmetrical today.” Dr. Sparhawk concluded that appellant’s calf muscle tear was healing well and returned appellant to work without restrictions. However, in a report dated September 28, 1995, Dr. Sparhawk noted that appellant had spontaneous swelling on walking with a mild aching especially in the popliteal region. He reported a thrombosis of the popliteal vein as demonstrated by ultrasound.

The three reports by Dr. Sparhawk dated September 6, 13 and 22, 1995 are contemporaneous with the claimed injury and uncontradicted by other medical evidence. As there is no contrary medical evidence to refute Dr. Sparhawk’s conclusion that appellant sustained a tear of the left calf muscle on September 6, 1995 the Board finds that the injury occurred as alleged based on the contemporaneous rationalized medical reports of appellant’s treating physician. Moreover, the September 28, 1995 report, by Dr. Sparhawk provided contemporaneous evidence of the spontaneous recurrence of disability related to the established employment injury. Appellant has met his burden of proof in establishing that he sustained an injury on September 6, 1995 that was causally related to factors of his federal employment. Consequently, this case must be remanded for payment of all periods of disability for the accepted injury and any sequelae resulting from the employment injury of a torn left calf muscle.

The decisions of the Office of Workers' Compensation Programs dated September 23 and February 12, 1996 are hereby reversed and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 6, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member