

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE MAE WILSON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Hartford, CT

*Docket No. 99-2197; Submitted on the Record;
Issued October 19, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has established that she sustained a right foot injury related to an accepted May 27, 1997 slip and fall incident; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits as of June 3, 1999, on the grounds that her disability, related to accepted right shin and left knee contusions sustained in the May 27, 1997 incident, had ceased as of that date.

The Office accepted that on May 27, 1997, appellant, then a 57-year-old clerk, slipped on a plastic mat and fell over a wastebasket to the floor, sustaining contusions to her left knee and right shin.¹ In her June 10, 1997 claim form, appellant alleged that she also injured her "back, knees, right leg and right foot, both arms." Appellant was off work on May 29, 30, June 2, 5 and 6, 1997 with a total of nine hours' additional absence from June 13 to July 18, 1997 due to medical appointments. In an August 8, 1997 report of termination of disability and/or payment (Form CA-3), appellant's supervisor stated that appellant used "injury leave" to cover her work absences. The supervisor did not indicate whether appellant used annual, sick or other leave and left blank the section of the form regarding continuation of pay.

Appellant first sought treatment on May 28, 1997 from Dr. Karin Adelman, a physician specializing in emergency medicine. In May 28, 1997 report, Dr. Adelman noted appellant's account of tripping over a wastebasket and landing on her knees at work, with complaints of left knee and right shin pain. She noted that appellant walked "without limp in low heels." Dr. Adelman diagnosed contusions of the left knee and right shin, and prescribed medication, ice

¹ The record demonstrates that appellant had a prior claim (Claim No. #010314928) accepted for a November 10, 1993 right foot contusion, processed as a "no time lost" claim. This claim is not before the Board on the present appeal. The record indicates that appellant had nonoccupational, concurrent conditions of hypertension and diabetes, a 1984 back injury, various injuries sustained in a 1987 motor vehicle accident and July 31, 1996 right shoulder surgery.

and elevation. She released appellant to work as of May 29, 1997, with instructions to use ice on her legs and stretch as needed. Dr. Adelman did not mention a right foot injury in her reports.

In a June 5, 1997 report, Dr. Todd A. Bell, an attending podiatrist, held appellant off work for two days due to “foot and back pain after a fall.”

Appellant submitted periodic reports from Dr. Todd W. Maily, an attending Board-certified orthopedic surgeon. In a June 6, 1997 report, Dr. Maily related appellant’s account of the May 27, 1997 slip and fall, noting that she “banged her knees and shins,” but had since developed “back stiffness,” neck pain, and “some discomfort and swelling and numbness over the dorsum of the right foot.” On examination, he found appellant able to toe and heel walk, “some swelling across the dorsum of the right foot, some mild tenderness to the Lisfranc joint.” He noted that June 5, 1997 x-rays of the right foot failed “to show definite abnormality.”² Dr. Maily prescribed a patella resting brace for appellant’s left knee.³ In reports from June 17, 1997 to May 6, 1998, he noted appellant’s continuing complaints of right foot pain, with significant improvement beginning January 5, 1998 with the use of a prescribed orthotic shoe insert.⁴

In a June 3, 1998 report, Dr. Maily noted that appellant no longer had discomfort in the dorsum of the right foot, but complained of plantar fascia and heel pain, with a positive Windlass test. He diagnosed “plantar fascial discomfort” and held appellant off work June 3 and 4, 1998. In a June 9, 1998 note, Dr. Maily opined that appellant’s complaints of right foot pain could be due to diabetic neuropathy. In a June 10, 1998 report, he recommended that appellant use a cane and restricted her from walking at work.⁵ In a July 3, 1998 slip, Dr. Maily diagnosed “arthritis of right foot, neuropathy DM [diabetes mellitus].” In a September 2, 1998 report, he opined that appellant’s symptoms had significantly resolved with use of a prescribed orthotic shoe insert.⁶ On examination Dr. Maily noted “minimal discomfort over the plantar fascia, some discomfort to deep palpation of the basilar joint of the tarsometatarsal joint of the foot.” He noted that

² A June 13, 1997 computerized tomography scan showed “mild joint space narrowing at the first metatarsal phalangeal joints of both feet,” without “significant bone pathology.”

³ In a June 16, 1997 slip, Dr. Jack Schmetterling, a physician specializing in emergency medicine, stated that appellant was “off duty May 29 and May 30 [, 1997] due to foot swelling.” He did not mention the May 27, 1997 incident in this report.

⁴ Dr. Maily obtained September 4, 1997 x-rays showing “some degenerative changes at the MTP [metatarsal phalangeal] joint” with loss of motion, but without “obvious arthritis at the Lisfranc joints.” In a January 27, 1998 report, Dr. Maily noted that appellant did not report pain at the site of the MTP arthritis. In a January 5, 1998 report, he commented that appellant had “a 3 percent permanent partial disability of the right foot because of the need for orthotics.” Dr. Maily did not refer to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in his report.

⁵ On June 18, 1998 Dr. Maily obtained x-rays showing “calcification laterally to the cuboid” without correlating tenderness on clinical examination.

⁶ In a November 2, 1998 Office telephone memorandum, a claims examiner noted informing appellant that the Office would not pay for the prescribed orthotics as plantar fascitis had not been accepted as a work-related condition.

appellant continued in regular duty status and limited walking and standing based on her level of discomfort.⁷

The Office then referred appellant, the medical record and a statement of accepted facts to Dr. Alan H. Goodman, a Board-certified orthopedic surgeon, for a second opinion examination. In a February 10, 1999 report, Dr. Goodman noted “localized tenderness at the proximal end of the third metatarsal bone,” a “bizarre limp” of the right lower extremity without “abnormal callouses” of the right foot, “no tenderness on the plantar surface of the foot” or heel, no swelling and full range of motion. He stated that there was “[n]o specific diagnosis ... available to explain [appellant’s] complaints of right foot pain,” and no “significant structural abnormality present in the right foot.” Dr. Goodman opined that the May 27, 1997 incident did not cause a permanent right foot injury or impairment. In an attached work capacity evaluation, he found appellant able to work eight hours per day with no restrictions.

By notice dated March 19, 1999, the Office advised appellant that it proposed to terminate her compensation benefits as the record indicated that any disability related to the May 27, 1997 injuries had ceased, based on Dr. Goodman’s February 10, 1999 report. The Office also noted that a right foot injury or condition related to the May 27, 1997 incident had not been accepted. The Office afforded appellant 30 days to submit additional evidence establishing a work-related total disability, noting that “[i]f no response [was] received within 30 days, [the Office would] proceed with the termination of [appellant’s] compensation.” The record indicates that appellant did not submit additional evidence.

By decision dated June 3, 1999, the Office terminated appellant’s compensation benefits effective that date on the grounds that the claimed right foot condition was not related to the accepted May 27, 1997 incident, and that any disability related to the accepted May 27, 1997 left knee and right shin contusions had ceased. The Office found that Dr. Goodman represented the weight of the medical evidence.

Regarding the first issue, the Board finds appellant that appellant has not established that she sustained a right foot injury related to the May 27, 1997 incident.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the new condition and any related period of disability are causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.⁸

⁷ In a September 2, 1998 work capacity evaluation, Dr. Mailly indicated that appellant could work eight hours per day, as long as walking and standing were not “excessive.”

⁸ See *Armando Colon*, 41 ECAB 563 (1990).

As applied to this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed right foot condition and the May 27, 1997 incident.⁹

Causal relationship is a medical issue.¹⁰ The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,¹¹ of reasonable medical certainty,¹² supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ In other words, appellant must submit a report from her physician explaining how and why the May 27, 1997 incident caused specific physical pathology resulting in a right foot injury or condition. An award of compensation may not be made on the basis of surmise, conjecture, speculation or appellant's belief of causal relation unsupported by the medical record.¹⁴

A threshold difficulty in establishing the causal relationship of appellant's right foot condition to the May 27, 1997 incident is that the reports most contemporaneous to that incident do not mention a right foot injury.¹⁵ Dr. Adelman examined appellant on May 28, 1997, the day after the incident, but did not mention a right foot injury. She noted that appellant was able to walk without a limp.

The June 5, 1997 slip report from Dr. Bell, an attending podiatrist, noted that appellant had "foot and back pain after a fall," but did not specifically mention the May 27, 1997 slip and fall incident or provide a specific diagnosis of a foot injury. Dr. Bell's report is, therefore, of little probative value in establishing causal relationship in this case.¹⁶

Appellant also submitted numerous reports from Dr. Mailly, an attending Board-certified orthopedic surgeon. He began treating appellant on June 6, 1997, 10 days after the May 27, 1997 slip and fall. On June 6, 1997 Dr. Mailly noted that appellant had developed right foot discomfort some time after the May 27, 1997 incident, but failed to diagnose a specific condition

⁹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹¹ *Gary R. Sieber*, 46 ECAB 215, 224 (1994); *Melvina Jackson*, 38 ECAB 449-50 (1987); see *Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

¹² See *William S. Wright*, 45 ECAB 498 (1994) (a physician's statement that appellant's medication "could very well have been" the cause of his condition was equivocal and speculative); see *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹³ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹⁴ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁵ Appellant first mentioned a right foot injury in her claim form, dated June 10, 1997, 14 days after the May 27, 1997 incident.

¹⁶ *Lucrecia M. Nielsen*, *supra* note 13.

until June 3, 1998, when he found arthritis of the right foot with diabetic neuropathy. However, Dr. Mailly did not provide medical rationale explaining how and why the May 27, 1997 slip and fall incident was causally related to either arthritis or diabetic neuropathy, or whether the arthritis and neuropathy were present on May 27, 1997. Thus, Dr. Mailly's reports are also of little probative value in establishing causal relationship in this case.¹⁷

Dr. Goodman, a Board-certified orthopedic surgeon and second opinion physician, stated in his February 10, 1999 report that the May 27, 1997 incident did not cause a permanent injury or impairment of the right foot.

Thus, appellant has not established that she sustained a right foot injury causally related to factors of her federal employment, as she submitted insufficient rationalized medical evidence.

Regarding the second issue, the Board finds that the Office properly terminated appellant's compensation benefits as of June 3, 1999 on the grounds that her disability had ceased as of that date.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹⁸

In this case, the Office accepted that appellant sustained left knee and right shin contusions when she slipped over a wastebasket and fell on May 27, 1997. The issue is whether these accepted contusions or their sequelae caused appellant any disability for work or necessitated continuing medical care as of June 3, 1999 when the Office terminated her compensation benefits. The record indicates that appellant did not receive continuation of pay or other wage-loss compensation, but that the Office did provide medical benefits to cover unspecified expenses from June 3, 1998 to February 1, 1999.¹⁹

The first medical reports of record regarding treatment of the accepted May 27, 1997 injuries are Dr. Adelman's May 28, 1997 reports. Dr. Adelman diagnosed left knee and right shin contusions and recommended ice and stretching. In his June 6, 1997 report, Dr. Mailly prescribed a brace for appellant's left knee, but did not mention appellant's right shin or left knee contusions in his subsequent reports. Although he held appellant off work on June 3 and 4, 1998, and noted work limitations on June 10 and September 2, 1998, Dr. Mailly attributed these restrictions to a right foot condition which has not been accepted by the Office. Thus,

¹⁷ *Arlonia B. Taylor*, 44 ECAB 591 (1993) (the Board held that medical reports not containing rationale on causal relation are entitled to little probative value).

¹⁸ *Curtis Hall*, 45 ECAB 316 (1994).

¹⁹ The Board notes that it is not apparent from the record if these prescriptions and services were for the accepted left knee and right shin contusions, or for a right foot injury. See *Carolyn F. Allen*, 47 ECAB 240, 245 (1995) (finding that payment of expenses for medical treatment does not constitute acceptance of a claim).

appellant's physicians did not find appellant disabled for work or in need of treatment for the accepted left knee and right shin contusions after June 1997, approximately two years prior to the Office's June 3, 1999 termination of her compensation benefits.

Dr. Goodman, the second opinion physician, submitted a February 10, 1999 report noting no abnormalities of the left knee or right shin and finding appellant able to work a full eight-hour day with no restrictions. The Board finds that Dr. Goodman's report is well rationalized and based upon a complete and accurate medical history as well as the statement of accepted facts.²⁰ The Board notes that Dr. Goodman's finding that appellant was able to perform full duty was in agreement with that of Dr. Mailly, appellant's attending physician. Thus, the Board finds that the Office properly terminated appellant's compensation benefits as of June 3, 1999 on the grounds that the medical record demonstrated that any work-related disability had ceased by that date.

The decision of the Office of Workers' Compensation Programs dated June 3, 1999 is hereby affirmed.

Dated, Washington, DC
October 19, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

²⁰ See *Samuel Theriault*, 45 ECAB 586, 590 (1994).