U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY S. LARSON and U.S. DEPARTMENT OF AGRICULTURE, FARMER'S HOME ADMINISTRATION, RURAL HOUSING SERVICE, Portland, OR

Docket No. 01-303; Submitted on the Record;
Issued October 18, 2001

DECISION and ORDER

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

The issue is whether appellant sustained a ruptured tendon, causally related to a work-related right ankle contusion.

The Office of Workers' Compensation Programs accepted that on August 26, 1998 appellant, then a 38-year-old loan technician, sustained a lumbar sprain, with contusions of the left knee and right ankle, when she tripped and fell over a printer cable, landing on her right foot and left knee. Appellant returned to work on September 1, 1998. She received continuation of pay and used leave for intermittent absences through May 1999.[1]

In an August 26, 1998 report, Dr. R. Thornton, an emergency room physician, provided a history of injury of tripping "over cord under desk, fell on right foot and left knee," noted appellant's symptoms of low back, right foot and left knee pain and diagnosed a left knee contusion. He recommended work restrictions through September 15, 1998.

The record demonstrates that appellant was involved in a motor vehicle accident on September 5, 1998. An unsigned October 5, 1998 chart note diagnosed exacerbation of a lumbar strain and cervical and thoracic sprains attributable to that accident.

In a February 16, 1999 report, Dr. Timothy L. Keenen, an attending Board-certified neurologist, noted appellant's history of neck and back pain after five motor vehicle accidents beginning in 1985, with burning lumbar pain into the buttocks, down the right leg and "into the

[1] The record contains a June 11, 1999 decision denying appellant's claim for continuation of pay from April 21 to May 26, 1999. 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. Because appellant filed her appeal with the Board on October 19, 2000, the June 11, 1999 decision is not before the Board on this appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2)

lateral border of the foot." Dr. Keenen related significant accidents in November 1996 and September 1998 and "a fall at work sometime just before the September 1998 motor vehicle accident. These have all significantly contributed to her pain to some extent." He noted that appellant had neuromas excised from her feet in June 1996 and June 1998 and a lipoma removed in November 1997. Dr. Keenen noted that an October 20, 1998 magnetic resonance imaging (MRI) scan showed degenerative disc disease from L4-S1, with "no focal impingement on nerve roots or central elements of the spine." He diagnosed chronic post-traumatic cervical pain and "[l]umbar disc disease, post-traumatic, symptomatic."

A March 19, 1999 MRI scan of the right ankle showed a "complete rupture of the peroneus longus tendon with some retraction," a large fluid sac around the tendon, significant scar tissue of the peroneus brevis tendon and a small to medium ankle joint effusion.

In an April 12, 1999 letter, Jory Jensen, an employing establishment manager, stated that in mid March 1998, she overheard a conversation in which appellant stated that she twisted her ankle and fell at home.

On April 23, 1999 Dr. T. Scott Woll, an attending Board-certified orthopedic surgeon, performed "[r]ight peroneal tendon debridement and brevis longus tenodesis" to repair a complete rupture of the right peroneus longus "with partial longitudinal tendon tears of the peroneus brevis and severe synovitis of the peroneal tendon sheath." He submitted progress notes through July 7, 1999, noting improvements in right ankle strength and stability.

In a July 7, 1999 report, Dr. Woll noted that appellant's rupture was "long-standing." He added: "In terms of the etiology of it, I am not aware of any direct relationship to her previous injury other than her history she related on March 10, 1999. She reportedly tripped on a cord and fell with her foot underneath her. Other than that, I do not have any injury reports or knowledge of other injuries. Because she first reported this problem on March 10, 1999, I believe [the August 26, 1998] injury probably had nothing to do with the peroneal rupture and tendinitis." Dr. Woll submitted periodic progress notes through September 1999, noting that appellant was walking well and was able to travel to Amsterdam.

In an October 13, 1999 letter to the employing establishment, appellant admitted that she fell at home shortly before the accepted fall at work, but did not injure her ankle. Appellant asserted that she injured her back, but not her right foot or ankle, in the September 5, 1998 motor vehicle accident.

By decision dated November 8, 1999, the Office denied appellant's claim for a ruptured right ankle tendon on the grounds that she submitted insufficient rationalized medical evidence to establish causal relationship. The Office noted that, in his July 7, 1999 report, Dr. Woll asserted that appellant first reported the August 26, 1998 work injury to him on March 10, 1999, nearly seven months later. Also, Dr. Woll attributed appellant's right ankle tendon rupture to a history of multiple motor vehicle accidents and Dr. Keenen attributed appellant's right foot pain to degenerative joint disease and "multiple injuries."

Appellant requested an oral hearing, which was held on April 26, 2000. At the hearing, appellant stated that Dr. Woll excised neuromas from both her feet approximately six weeks

prior to the August 26, 1998 fall and that July 1998 preoperative x-rays did not show a severed tendon. The hearing representative advised appellant to obtain and submit 1998 test results and preoperative reports from Dr. Woll.

In a May 3, 2000 note, Dr. Jay L. Crary, an attending Board-certified orthopedic surgeon, noted that a Marcaine injection of the sural nerve in appellant's right foot improved her pain symptoms, particularly those relating to her neuroma.

In a June 1, 2000 report, Dr. Crary diagnosed right ankle instability, a neuroma of the right foot and post surgical pain.

By decision dated August 28, 2000, the Office hearing representative affirmed the Office's November 8, 1999 decision, finding that appellant had submitted insufficient rationalized medical evidence to establish a causal relationship between her right ankle tendon rupture and the accepted August 26, 1998 fall.

The Board finds that appellant has not established that she sustained a ruptured peroneus longus tendon in her right ankle, causally related to an accepted August 26, 1998 right ankle contusion.

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 newly alleged 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.[2]

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 ankle tendon ruptures August 26, 1998 fall.[3] Causal relationship is a medical issue.[4] The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,[5] of reasonable medical certainty,[6] supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7] An award of compensation may not be made on the basis of surmise,

[2] *See Armando Colon*, 41 ECAB 563 (1990).

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

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *See Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.[8]

In this case, there is a lack of medical evidence establishing a ruptured ankle tendon contemporaneous to the August 26, 1998 fall. Dr. Thornton, an emergency room physician who examined appellant after the August 26, 1998 fall, diagnosed a right ankle contusion, but did not mention a ruptured tendon. While physical therapy notes dated from late August 1998 to November 1999 mentioned right foot pain, these notes were not written or reviewed by a physician and thus do not constitute probative medical evidence.[9] Nor do these notes discuss a possible ruptured ankle tendon. Dr. Keenen, an attending Board-certified neurologist, mentioned appellant's right foot pain in his February 16, 1999 report, but did not provide any diagnosis for this pain. The first medical evidence of record mentioning the ruptured peroneus longus tendon was the March 19, 1999 MRI scan, performed more than six months after the accepted incident.

Further, the only medical report of record addressing causal relationship is the July 7, 1999 report of Dr. Woll, an attending Board-certified orthopedic surgeon, who performed reconstructive surgery on appellant's right ankle on April 23, 1999. He noted that appellant did not report symptoms indicative of a tendon rupture until March 10, 1999, nearly seven months after the August 26, 1998 fall. Dr. Woll emphasized that because appellant "first reported this problem on March 10, 1999," the August 26, 1998 injury "probably had nothing to do with the peroneal rupture and tendinitis." Thus, he negated causal relationship.

The Board notes at the April 26, 2000 hearing, appellant asserted that Dr. Woll obtain right foot and ankle x-rays in July 1998, approximately one month prior to the prior to the August 26, 1998 fall, which showed no evidence of a ruptured tendon. The hearing representative advised appellant to obtain and submit these x-rays and other pertinent records from Dr. Woll. However, appellant did not submit such evidence.

A third problem in establishing causal relationship in this case is the multitude of injuries appellant sustained multiple injuries both before and after the accepted August 26, 1998 incident. Appellant was involved in five motor vehicle accidents, two of them serious, from 1985 through September 5,1998. She admitted falling down the stairs at home in March 1998, but was equivocal on whether she injured her right ankle at that time. Appellant underwent various foot surgeries in June 1996, November 1997 and June 1998. Considering the complicated nature of appellant's medical history, it is particularly critical to obtain unequivocal medical opinion evidence explaining a causal relationship between the August 26, 1998 fall and the ruptured tendon. However, the only medical opinion of record regarding causal relationship is Dr. Woll's July 7, 1999 report negating any pathophysiologic connection between the August 26, 1998 fall and the ruptured tendon. Therefore, appellant failed to submit sufficient rationalized medical evidence establishing a causal relationship between the accepted August 26, 1998 right ankle contusion and her ruptured tendon.

[8] *Ausberto Guzman*, 25 ECAB 362 (1974).

[9] *Merton J. Sills*, 39 ECAB 572 (1988).

The August 28, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 18, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member