United States Department of Labor
Employees' Compensation Appeals Board

CHERYL GILBERT, Appellant	)	
and	)	**Docket No. 05-1252**
	)	**Issued: August 12, 2005**
DEPARTMENT OF JUSTICE, FEDERAL PRISON SYSTEMS, PENITENTIARY, Leavenworth, KS, Employer	)	

Appearances:
Cheryl Gilbert, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 18, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 14, 2005, finding that she failed to establish left ankle avascular necrosis due to her July 6, 2004 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that her diagnosed condition of left ankle avascular necrosis is due to her July 6, 2004 employment injury.

FACTUAL HISTORY

On July 12, 2004 appellant, then a 38-year-old food service supervisor, filed a traumatic injury claim alleging that on July 6, 2004 she injured her left ankle running to respond to an alarm. Dr. Seth M. Sullivan, a Board-certified family practitioner, completed a report on

July 12, 2004 and noted that appellant reported pain and swelling in the left ankle. He diagnosed ankle sprain and reviewed her x-ray which failed to demonstrate a fracture or dislocation and plantar and posterior calcaneal spurs were noted.

Dr. Julie Jones, a podiatrist, submitted her treatment notes and on September 3, 2004 stated that appellant reported the inability to walk due to chronic ankle sprains since an injury several years ago. She did not mention appellant's July 6, 2004 ankle sprain until October 8, 2004.

In a report dated October 15, 2004, Dr. Jones noted examining appellant on September 3, 2004 due to unrelenting pain of the left ankle secondary to a sprain that she sustained on July 6, 2004. She stated that appellant had a previous injury to her ankle, but that the July 6, 2004 sprain seemed to have caused a significant worsening of her symptms. Dr. Jones stated that a magnetic resonance imaging (MRI) scan demonstrated avascular necrosis of the talus. The MRI scan report dated October 1, 2004 listed findings of evidence of a prominent bone bruise on the talus that appeared to have arisen from the subtalar joint as well as some foci of osteonecrosis, a small effusion in the anterior subtalar joint and signs of old ligamentous injury to the lateral ligamentous complex. On October 19, 2004 Dr. Jones stated that appellant had a nonintra-articular linear fracture that had not healed and was showing signs of avascular necrosis.

On a form report dated October 25, 2004, Dr. Jones stated, "[Patient] had injury to talus at work. It has progressed to avascular necrosis -- dead bone with talar dome lesion. This is limb threatening…."

Dr. Paul O. Garby, a podiatrist, examined appellant on November 1, 2004 and stated that she initially injured her left ankle about six years prior and reinjured her ankle in July. She reported no improvement in her symptoms since July. Dr. Garby reviewed appellant's MRI scan and diagnosed suspected avascular necrosis talus secondary to multiple ankle sprains.

The Office accepted appellant's claim for left ankle sprain on November 17, 2004.

An Office medical adviser reviewed the medical evidence on December 6, 2004 and recommended obtaining all records regarding appellant's ankle injuries which predated the July 6, 2004 employment incident in order to determine whether the pathology shown on the MRI scan was a consequence of the Jul 6, 2004 employment injury. He noted that the MRI scan indicated evidence of a prominent bone bruise in the talus, which in his opinion might not be equivalent with the concept of avascular necrosis and that the MRI scan indicated that there were signs of an old ligamentous injury to the lateral ligamentous complex.

By letters dated December 15, 2004 and January 28, 2005, the Office requested all medical records pertaining to appellant's left ankle injuries.

In notes dated March 20, 2000, appellant reported a left knee, ankle and hip injury. She stated that she did not seek treatment from July 12 to October 1, 2004. Appellant submitted an x-ray dated February 24, 2000 which demonstrated a small plantar calcaneal spur in the left ankle with no fracture or dislocation. A March 28, 2000 bone scan demonstrated mild degenerative spurring suggesting of a stress or repeated injury.

Dr. Jones completed reports on February 2 and 15, 2005 opining that appellant's July 2004 injury was the cause of the avascular necrosis of the talus. She stated that her previous injuries never resulted in pain over a two-week duration.

Appellant underwent an MRI scan on February 22, 2005 which demonstrated decrease in talar mid-body edema since September 27, 2004. The report stated that there was no evidence of volume loss or new irregularity within the talus to suggest avascular necrosis and that the finding suggested a slow healing of the previous talar contusion without evidence of superimposed significant osteonecrosis.

By decision dated March 14, 2005, the Office denied appellant's claim for avascular necrosis of the left talus. The Office found that the medical evidence was not sufficient to support this condition as causally related to the July 6, 2004 injury.

LEGAL PRECEDENT

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship. A person who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim.[2] Part of a claimant's burden of proof includes the submission of rationalized medical opinion evidence based on a complete factual and medical background, showing causal relation.[3] 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, 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.[4]

ANALYSIS

Appellant sprained her left ankle on July 6, 2004 and the Office accepted her claim for this injury. Appellant then submitted a series of notes and reports from Dr. Jones, a podiatrist, diagnosing avascular necrosis of the talus. Although she noted that she described chronic ankle sprains since an injury several years prior, Dr. Jones attributed the avascular necrosis to appellant's July 6, 2004 ankle sprain. Dr. Jones stated that appellant's previous ankle injuries had not resulted in pain for more than two weeks' duration. She did not address whether she had examined medical records regarding appellant's previous ankle injuries and did not offer any detailed medical reasoning in support of her conclusion that appellant's current condition was

[1] 5 U.S.C. §§ 8101-8193.

[2] *William S. Wright*, 45 ECAB 498, 502 (1994).

[3] *Richard O'Brien*, 53 ECAB 234, 244 (2001).

[4] *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

caused or contributed to by the July 6, 2004 employment injury. Dr. Jones' reports are not sufficient to meet appellant's burden of proof.

Dr. Garby, a podiatrist, examined appellant on November 1, 2004 and described an ankle injury occurring in approximately 1998 as well as the accepted July 6, 2004 ankle sprain. He diagnosed suspected avascular necrosis talus secondary to multiple ankle sprains. Dr. Garby also failed to provide the factual and medical basis for his opinions regarding the causal relationship between appellant's diagnosed condition and her accepted employment injury. His report lacks the necessary medical reasoning to meet appellant's burden of proof and establish her claim.

CONCLUSION

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence based on a complete factual background to establish a causal relationship between her diagnosed avascular necrosis of the talus and her accepted July 6, 2004 ankle sprain.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board