

On June 19, 2003 appellant, then a 46-year-old rural carrier, filed a traumatic injury claim alleging that on June 18, 2003 she sustained an injury to her right leg when someone shot her with a BB gun. The Office accepted her claim for a puncture wound in the right calf. After initially performing light-duty work, she returned to regular work without restrictions on September 22, 2003.

On July 14, 2003 appellant underwent the surgical removal of the BB pellet from her leg.

In an October 7, 2003 report, Dr. John P. Zisko, an attending orthopedic surgeon, provided findings on physical examination and diagnosed “reactive” right plantar fasciitis and peroneal tendinitis¹ as a result of the BB gun injury. He stated that following surgery she had continued pain in her calf and developed problems with her ankle and heel on the right side. Dr. Zisko opined that appellant’s plantar fasciitis and peroneal tendinitis “likely stem[med] from gait alteration after being shot.”

A February 6, 2004 emergency room report indicates that appellant was treated for a distal fibular fracture of the right ankle when she fell after her right leg gave out.

In a February 9, 2004 report, Dr. Zisko indicated that on February 2, 2004 appellant slipped on ice, sustaining a minor inversion injury to her right ankle and fell again on February 6, 2004 when her knee and leg gave out, resulting in a minimally displaced right lateral malleolus fracture of the right ankle.

On February 24, 2004 appellant reported that on February 6, 2004 her right knee and ankle gave way while she was at home, causing her to fall and injure her left shoulder, knees and right ankle.

In a February 24, 2004 report, Dr. Zisko stated that since the February 6, 2004 fall appellant had experienced increasing pain in the retropatellar aspect of her right knee. He stated: “[Appellant] states that it was actually her knee giving out that caused her to sustain her injury to her right ankle, which resulted in a lateral malleolus fracture.” Dr. Zisko noted that she had right knee chondromalacia and a left rotator cuff strain due to the fall on February 6, 2004. With regard to causal relationship, he stated:

“There was some concern about this possibly being work related and being a [workers’ compensation] injury given her previous ankle and foot injuries. Since this [fall] happened at home, however, I think it would be somewhat of a stretch to include it in her [workers’ compensation] claim with specific reference to her ankle injury. I think she would be on much more solid footing to put this through her regular insurance.”

In a February 24, 2004 report, Dr. John C. Linz, an orthopedic surgeon and an associate of Dr. Zisko, stated that appellant developed plantar fasciitis and peroneal tendinitis causally related to her June 18, 2003 employment injury and then sustained a fall on February 2, 2004 when she slipped on ice and a fall on February 6, 2004 when her knee gave out and she sustained an inversion injury to her right ankle. Appellant stated that “she would not have slipped on the ice if [it] had not been for the weakness in her right leg related to the plantar fasciitis and peroneal tendinitis.” Dr. Linz stated:

¹ Plantar fasciitis is an inflammation of fascia (a sheet or band of fibrous tissue) on the sole of the foot. Peroneal tendinitis is an inflammation of tendons and of tendon-muscle attachments of the fibula (the outer and smaller of the two bones of the leg). DORLAND’S, *Illustrated Medical Dictionary* (27th ed. 1988), 611, 614, 1310; 630, 1265, 1670.

“On her second fall [on February 6, 2004], [appellant] felt a pop and was found to have a right lateral malleolus fracture. She was initially treated nonoperatively but because of failure of this and displacement of the fracture, she is now going to go for open reduction internal fixation.... When she was shot with a [BB] gun it did damage her peroneals and created some plantar fasciitis from her immobilization. She feels this is the reason why she slipped and fell and I think this is perfectly legitimate. I think this is causally related....”

On March 8, 2004 appellant underwent surgery performed by Dr. Linz, consisting of open reduction and internal fixation to repair a right fibula fracture.

In an April 6, 2004 report, Dr. Linz stated that appellant injured her left shoulder and left knee and sustained a right ankle fibula fracture as a result of the February 6, 2004 fall.

On June 4, 2004 appellant filed a claim for a recurrence of disability on February 6, 2004.

A June 27, 2004 report of a magnetic resonance imaging scan of appellant’s right knee indicated several conditions, including osteoarthropathy and a degenerative tear.

In an August 9, 2004 report, Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on physical examination and indicated that he had reviewed the medical evidence and statement of accepted facts. He stated:

“There is a causal relationship between the work-related factors as shown in the statement of accepted facts and the accepted work-related condition of right calf puncture.

“In my opinion [appellant] does not continue to suffer from residuals of the accepted work-related injury.

“I do not find any evidence of plantar fasciitis or peroneal tendinitis. I do not think she suffers from plantar fasciitis or peroneal tendinitis.

“I do not think plantar fasciitis and peroneal tendinitis are related in a causal way to the work-related injury of [June 18, 2003].

“I do not think the period of disability starting [February 6, 2004] was medically necessary or justified because I do not think it is related to work.

“In my opinion, for the condition of right calf puncture, I think [appellant] is medically capable of performing her regular duties as a rural carrier, based on the accepted work-related condition. I think she has resolved any residuals of the right calf puncture and, therefore, can work.”

By decision dated September 21, 2004, the Office denied appellant’s claim on the grounds that the evidence did not establish that she sustained right plantar fasciitis and peroneal tendinitis as a consequence of her June 18, 2003 employment-related right calf puncture wound or a consequential fall on February 6, 2004.

In a September 21, 2004 report, Dr. Linz opined that appellant's injuries to her left shoulder, right ankle and knees were causally related to the June 18, 2003 employment injury.²

Appellant requested an oral hearing that was held on May 25, 2005.

By decision dated September 8, 2005, the Office hearing representative affirmed the September 21, 2004 decision.

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.³ With regard to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.⁴

ANALYSIS

The Board finds that this case is not in posture for a decision because further development of the medical evidence is required.

Dr. Zisko, an attending orthopedic surgeon, opined that appellant's plantar fasciitis and peroneal tendinitis "likely stem[med] from gait alteration after being shot." In another report he indicated that her fall on February 6, 2004 might not be work related as the fall occurred while appellant was at home. However, as noted, if an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable. Therefore, the fact that the fall occurred while appellant was at home does not necessarily preclude a consequential injury. Dr. Linz indicated in his reports that appellant's plantar fasciitis and peroneal tendinitis and injuries sustained in the February 6, 2004 fall were causally related to the June 18, 2003 employment injury. He opined that when she was shot with a BB gun it caused damage to her peroneals and her period of immobilization created plantar fasciitis. The reports from appellant's attending physicians, although containing some medical rationale, were not sufficient to establish that appellant sustained consequential injuries causally related to her June 18, 2003 employment injury. Therefore, the Office referred appellant to Dr. Sheridan.

² Dr. Linz indicated that appellant's osteoarthritic changes and meniscal tear in her right knee might not be related to the June 18, 2003 employment injury.

³ *Albert F. Ranieri*, 55 ECAB ____ (Docket No. 04-22, issued July 6, 2004); *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2000).

⁴ *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004).

Dr. Sheridan indicated that appellant did not have any residual medical condition or disability causally related to her June 18, 2003 employment-related right calf puncture wound. He stated that she did not have the conditions of plantar fasciitis or peroneal tendinitis and that her fall on February 6, 2004 was not causally related to her employment injury. However, Dr. Sheridan failed to provide medical rationale for his opinions. He did not explain why he found no evidence of plantar fasciitis and peroneal tendinitis when both of appellant's attending physicians diagnosed these conditions. Such a discrepancy between his findings and those of the attending physicians requires a rationalized explanation. He did not provide medical rationale for his opinion that the February 6, 2004 fall was not related to the June 18, 2003 employment injury. For a medical report to be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of little probative value.⁵ Lacking medical rationale to support his opinions, Dr. Sheridan's report is of little probative value and does not resolve the issue of whether appellant sustained right plantar fasciitis and peroneal tendinitis and a fall on February 6, 2004, resulting in injuries to her right ankle, both knees and left shoulder, as a consequence of her June 18, 2003 employment injury.

It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The Office has an obligation to see that justice is done.⁷ Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.⁸

CONCLUSION

The Board finds that this case requires further development of the medical evidence. On remand, the Office should request a supplemental report from Dr. Sheridan with a rationalized opinion on the issue of whether appellant sustained right plantar fasciitis and peroneal tendinitis and a fall on February 6, 2004, resulting in injuries to her right ankle, both knees and left shoulder, as a consequence of her June 18, 2003 employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision on appellant's claim for a consequential injury.

⁵ See *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁶ See *Udella Billups*, 41 ECAB 260 (1989).

⁷ See *John J. Carlone*, 41 ECAB 354 (1989).

⁸ See *Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 8, 2005 and September 21, 2004 are set aside and the case is remanded for further development consistent with this decision.

Issued: January 19, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board