

On May 18, 1994 appellant, then a 44-year-old mail handler, filed a claim alleging that his bilateral plantar fasciitis was a result of his federal employment. The Office accepted his claim for bilateral plantar fasciitis and bilateral subtraumatic subtalar arthritis. Appellant

received a schedule award for a 15 percent impairment of his right lower extremity and a 14 percent impairment of his left lower extremity.¹

On March 6, 2006 an Office hearing representative directed the Office to refer appellant to an impartial medical specialist under 5 U.S.C. § 8123(a) to determine whether he developed a knee, hip or back condition causally related to his accepted foot and ankle injuries. The hearing representative instructed that the impartial medical specialist should then address all impairment as a result of all employment-related conditions, whether by injury or consequential injury.

The Office referred appellant, together with the case file and a statement of accepted facts, to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon. On November 17, 2006 Dr. Didizian found that appellant had a three percent pain-related impairment of each lower extremity due to the ankles and another three percent pain-related impairment due to the knees. He did not report impairment of the hips or low back.

On the issue of consequential injury, Dr. Didizian stated: “I do not have any scientific work to indicate that if someone has plantar fasciitis or ankle sprain he/she will develop eventual knee pathology, hip pathology or back pathology. I would be interested in reading such a scientific publication if there is one in existence.”

On the prior appeal,² the Board found that Dr. Didizian’s opinion was not well rationalized on the issue of consequential injury and required clarification. The Board noted that Dr. Didizian reported an alternative gait pattern but did not explain whether the accepted ankle and foot injuries caused this pattern or whether this pattern could physiologically cause a consequential injury to the knees, hips or low back. The Board also noted that when Dr. Didizian acknowledged no scientific literature to support the development of knee, hip or low back pathology as a consequence of plantar fasciitis or ankle sprain, he did not clearly express his own opinion.

On August 19, 2008 Dr. Didizian clarified that when he reported that appellant had an alternating gait pattern, it meant that he was walking normally and alternating one extremity with the other in a symmetrical manner. Appellant showed all three stages of gait analysis: heel strike, mid stance and toe-off, right and left, in an alternating manner. He was also able to stand on his toes and heels. Dr. Didizian expressed the opinion that the accepted bilateral foot and ankle injuries did not cause any kind of pathology to the knees, hips or lower back. He explained that he did not have any scientific evidence or statistical evidence to show that, if someone has plantar fasciitis or an ankle sprain, which was appropriately managed and healed, that it would eventually result in pathology in the knees, hips or back.

¹ Appellant was recovering from a February 24, 1989 work-related left ankle sprain. OWCP File No. xxxxxx623. Following that injury he was assigned limited duty in the rewrap section. He used crutches and a cane and had to walk through two buildings and five floors to reach the rewrap section, with limited availability of elevators. Appellant was working this limited duty when he filed the current claim. He broke his right leg and ankle while off duty in December 1990. On February 7, 1993 he sprained his left ankle when he slipped on ice in the performance of duty. OWCP File No. xxxxxx504. He sprained his right ankle while off duty in August 1993.

² Docket No. 08-354 (issued May 22, 2008).

In a decision dated September 12, 2008, the Office denied an additional schedule award.

Appellant requested an oral hearing before an Office hearing representative and submitted additional medical evidence. In an undated report, Dr. Gerald L. Shomer, an osteopath, noted that appellant's initial injuries occurred while working at the main post office in Philadelphia, where he sustained "a severe fracture of the ankle" requiring a cast and returned to work several weeks later. He stated that appellant's pain in the heels and ankles continued despite treatment, and as a result of this accident he could no longer work after 1998. Dr. Shomer added that knee pain initially developed in the fall of 2001 as a result of compensating for his gait and appellant was noted to have bilateral osteoarthritis. In the fall of 2003, appellant developed increasing lower back pain as a result of lumbar spinal stenosis. "As a result of his initial injuries his gait was altered causing increased stress on his knee joints as well as his lower back resulting in Osteoarthritis and Lumbar Stenosis."

In a decision dated May 19, 2009, the Office hearing representative affirmed the denial of an additional schedule award. She found that the weight of the medical opinion evidence rested with Dr. Didizian, the impartial medical specialist.

On appeal, appellant's attorney argues that Dr. Didizian's supplemental report is insufficient to resolve the conflict in medical evidence. Appellant had reported complaints to Dr. Didizian and had indicated that he could not stand on his toes or heels independently without a cane. Appellant's representative notes that Dr. Didizian did not refer in his supplemental report to appellant's altered gait or discuss it in any meaningful sense. Instead, Dr. Didizian simply concluded that the bilateral foot, ankle, knee, hip and back conditions were not related to the work injury without providing medical reasons.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ 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 attributable to the employee's own intentional conduct.⁴

A claimant seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁵

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶ When there exist opposing medical reports of virtually equal weight and

³ 5 U.S.C. § 8102(a).

⁴ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ 5 U.S.C. § 8123(a).

rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

ANALYSIS -- ISSUE 1

In his initial report on November 17, 2006, Dr. Didizian, the impartial medical specialist, noted on physical examination that appellant's gait was alternating with all three stages of gait analysis. On the prior appeal, appellant's representative argued that Dr. Didizian failed to discuss whether this "change in gait" was work related and caused consequential injuries to the lower extremities or low back. The Board remanded the case in part on those grounds. The Board noted that Dr. Didizian did not fully explain whether the accepted ankle and foot injuries caused the reported alternating gait pattern, whether an alternating gait pattern can physiologically cause a consequential injury to the knees, hips or low back, or whether appellant in fact developed such a consequential injury.

Dr. Didizian explained in an August 19, 2008 supplemental report that an alternating gait pattern meant that appellant was walking normally, alternating one extremity with the other in a symmetrical manner. Appellant showed all three stages of gait analysis: heel strike, mid stance and toe-off, right and left, in an alternating manner. He found no suggestion of a consequential injury to the knees, hips or low back due to an altered gait. Dr. Didizian made clear that it was his opinion that the accepted bilateral foot and ankle injuries did not cause any kind of pathology to the knees, hips or lower back. He explained that he did not have any scientific evidence or statistical evidence to show that if someone had plantar fasciitis or an ankle sprain, which was appropriately managed and healed, that it would eventually result in pathology to those portions of the anatomy.

The Board finds that Dr. Didizian's opinion is based on a proper history and is sufficiently well reasoned to be given special weight in resolving whether appellant's accepted employment injuries caused a consequential injury to his knees, hips or low back. Dr. Didizian's opinion is clear and unequivocal. He explained that appellant's gait was in fact normal. Dr. Didizian's rationale adequately supported his conclusion. He found no medical basis for associating plantar fasciitis or ankle sprain, appropriately managed and healed, with any pathology to the knees, hips or low back.

The undated report of Dr. Shomer, an osteopath, is insufficient to create a conflict with Dr. Didizian. He based his conclusions on an undated initial work injury in which appellant sustained "a severe fracture of the ankle" requiring a cast. The record does not support that appellant sustained such a work injury. Appellant broke his right leg and ankle outside the course of his employment in December 1990. So it appears Dr. Shomer did not base his opinion

⁷ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

on a proper history of appellant's employment injuries. Medical conclusions based on inaccurate or incomplete histories have little probative value.⁸

Dr. Shomer stated that appellant's initial injuries altered his gait, which caused increased stress on the knee joints and lower back, resulting in osteoarthritis and lumbar stenosis. He did not explain how the gait was altered or how any stress from an altered gait caused osteoarthritis and lumbar stenosis. Dr. Shomer did not explain how he was able to identify appellant's osteoarthritis and lumbar stenosis as a natural consequence of the accepted employment injuries, as opposed to medical conditions that might have arisen regardless in a 50-year-old man.⁹ Because he did not support his assertions with sound medical reasoning, his opinion has diminished probative value.¹⁰

As the weight of the medical opinion evidence fails to establish that the accepted employment injuries caused a consequential injury to appellant's knees, hips or low back, the Board finds that appellant has not met his burden of proof. The Board will affirm the Office's May 19, 2009 decision on the issue of consequential injury.

Appellant reported complaints to Dr. Didizian, stating that he could not stand on his toes or heels independently without a cane. That does not suggest a consequential injury to the knees, hips or low back nor does it establish greater impairment than Dr. Didizian calculated. The impartial specialist did not find that appellant had an altered gait, only complaints of pain. Dr. Didizian explained in his supplemental report that appellant's gait was in fact normal. He offered sufficient rationale to support his conclusion that appellant's accepted medical conditions did not cause injury to the knees, hips or low back.

LEGAL PRECEDENT -- ISSUE 2

Section 8107 of the Act¹¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹²

⁸ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

⁹ A temporal relationship is not sufficient to establish causal relationship. *Thomas D. Petrylak*, 39 ECAB 276 (1987).

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. § 10.404.

ANALYSIS -- ISSUE 2

Dr. Didizian examined appellant on November 17, 2006 and found no loss of motion in the ankles. The Board has reviewed his measurements and finds that none represents a lower extremity impairment under the A.M.A. *Guides*.¹³ Dr. Didizian did rate a three percent impairment of the lower extremities bilaterally due to appellant's complaints of pain. This is not sufficient to show that appellant has more than a 15 percent impairment of his right lower extremity or more than a 14 percent impairment of his left lower extremity causally related to the accepted employment injuries. Appellant's representative does not explicitly take issue on appeal with the percentage impairment Dr. Didizian calculated.

The Board finds that Dr. Didizian's opinion on the extent of appellant's impairment is entitled to special weight and establishes that appellant has no more than a 15 percent impairment of his right lower extremity or more than a 14 percent impairment of his left lower extremity, for which he previously received a schedule award. Appellant is not entitled to an additional schedule award. The Board will therefore affirm the Office's May 19, 2009 decision on the issue of impairment.

CONCLUSION

The Board finds that appellant has not met his burden to establish that the accepted employment injuries caused a consequential injury to his knees, hips or low back. The Board also finds that appellant is not entitled to an additional schedule award.

¹³ A.M.A., *Guides* 537 (5th ed. 2001). Dr. Didizian inadvertently reported two measurements as inversion, but both are sufficient to show no impairment in inversion or eversion.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board