

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SUNDEE SOZIO and U.S. POSTAL SERVICE,  
POST OFFICE, Wantagh, NY

*Docket No. 99-318; Submitted on the Record;  
Issued December 15, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or after April 23, 1996 causally related to her employment injury of October 17, 1992.

On October 17, 1992 appellant, then a 26-year-old letter carrier, was delivering mail when she fell down a flight of stairs and injured her left ankle. The Office of Workers' Compensation Programs accepted appellant's claim for a left ankle and foot sprain and authorized surgery on January 20, 1995 for removal of the left navicular bone and reconstruction of the left lateral ankle ligament. Appellant stopped work following her work injury and received appropriate compensation for wage loss. Appellant returned to part-time limited duty following her surgery. As of June 16, 1995, she was working six hours per day limited duty.

Appellant was initially treated for a left ankle sprain by an internist at the local emergency room where her ankle was wrapped with an ACE bandage. Several days later, appellant came under the care of a physician's assistant who obtained x-rays showing a cortical fracture of the navicular tarsal accessory bone of the left ankle. Appellant's left ankle was placed in cast for eight weeks and continued to receive conservative care for the left ankle sprain.

Appellant next sought treatment with Dr. Jimmy U. Lim, a Board-certified orthopedic surgeon. When appellant's cast was removed, she started eight months of physical therapy. An magnetic resonance imaging performed on September 23, 1993 was interpreted as being suggestive of a fracture; therefore, Dr. Lim had appellant fitted with a custom brace.

Appellant continued under the care of Dr. Lim who, in a November 16, 1993 report, stated that appellant was complaining of pain along the lateral ankle ligament complex and along the tarsal navicular bone. He noted that comparison with the right foot revealed that appellant also had a tarsal navicular bone on the right foot that was partly symptomatic and "could be aggravated by the fall." Dr. Lim placed appellant on restricted duty, reducing her workload to five hours per day.

The employing establishment referred appellant for an evaluation with Dr. Bert S. Horwitz, a Board-certified orthopedist. In a report dated April 11, 1994, Dr. Horwitz noted that x-rays dated October 20, 1992 and August 3, 1993 showed no evidence of a fracture, although there was evidence of an accessory navicular present bilaterally. He opined that appellant sustained a left foot and ankle sprain due to the work injury with development of post-traumatic tendinitis at the point of attachment of the tendons to the tarsal navicular. According to Dr. Horwitz, if appellant's symptoms continued, she should consider excision of the accessory navicular.

In a May 10, 1994 report, Dr. Lim recommended that appellant undergo reconstructive surgery of the left anterior talar fibula ligament. He noted that simply removing the tarsal navicular would only partially address appellant's problem. The Office approved the surgical request on July 6, 1994.

In an October 22, 1994 report, Dr. John C. Killian, a Board-certified orthopedic surgeon, noted that on October 12, 1992 appellant sustained an injury to her left ankle when she fell off a step. Dr. Killian described appellant's course of treatment, the x-ray results and physical findings. He stated that "[it] is definitely possible that she had an injury to the lateral ligaments of her ankle combined with a nondisplaced fracture through the medial malleolus. It is clear that she did have preexisting bilateral accessory naviculars. The fact that it has become symptomatic on the left and not on the right suggests that the continuing pain in that area is attributable to an aggravation caused [by the work injury]." Dr. Killian recommended that appellant undergo surgery.

On January 20, 1995 appellant underwent surgery consisting of "reconstruction of the lateral ligament instability using mitex anchoring suture, removal of the tarsal accessory navicular, with rerouting of the posterior tibial tendon on the left foot and application of a splint."

In an April 25, 1995 report, Dr. Lim indicated that appellant was improving in her left ankle with very little swelling. He diagnosed a consequential right ankle problem due to the work injury, noting that appellant's right ankle would often give way and that she complained of on the lateral side of the right ankle. Dr. Lim approved appellant for a return to restricted duty effective May 1, 1995.

In a May 16, 1995 report, Dr. Killian noted that appellant reported having been kept in a short cast for six weeks following her surgery and that during the prior two weeks that the cast was on she was allowed to do some weight-bearing on the ankle. Appellant's recovery was uneventful although she still complained of pain and swelling in the left ankle and also some pain in the right foot. Dr. Killian noted on physical examination that appellant's left ankle was somewhat swollen but that she had a full range of motion. He indicated that appellant's right ankle showed a mild prominence of the medial portion of the navicula, which had been present prior to her work injury. Dr. Killian stated:

"Given that there is no history of injury to her right foot I do not feel it is attributable to the [October 17, 1992] accident. Given that she has not been working I do not feel that it is attributable to work related activities. I do not feel

that it is in any way related to the injuries to her left ankle or that the surgery on her left ankle caused excessive stress on the right lower extremity.”

Dr. Killian opined that appellant had a mild residual disability and was capable of performing limited duty for 8 hours per day so long as she was not required to walk more than 20 minutes at a time. Appellant was to continue with physical therapy.

Dr. Killian examined appellant again on October 18, 1995. In an October 29, 1995 report, he noted that appellant had been walking and carrying mail for two hours per week and complained of increased symptoms in her left ankle. Dr. Killian indicated that appellant had reached maximum medical improvement and recommended placing appellant in a job position that did not require prolonged walking. He noted with respect to appellant’s right ankle that she had a congenital condition of an accessory navicula unrelated to the work injury but complicated by her excessive weight. Dr. Killian advised that excessive ambulation would also cause her right ankle to become more symptomatic.

On April 25, 1996 appellant filed a claim for a recurrence of disability beginning April 23, 1996. She stated on her CA-2a claim form that her right ankle became swollen and painful due to her having to overcompensate for her left ankle injury. Appellant stopped work on April 23, 1996.<sup>1</sup> Appellant was cleared to return to work in June of 1996 but she did not actually return to full time (eight hour) light-duty work until December 2, 1997

In a September 26, 1996 report, Dr. D.G. Sulibhavi, a neurologist, noted that appellant presented with numbness in the right leg and occasional numbness in the right foot. He concluded that electromyogram (EMG) testing was normal with no evidence of any radiculopathy or entrapment of the nerve in her right foot.

In a June 10, 1996 decision, the Office denied compensation on the grounds that the evidence was insufficient to establish that appellant sustained a recurrence of disability on or after April 23, 1996.

In a November 5, 1996 report, Dr. Lim opined that appellant should remain on her sitting job for four hours per day only since she still had symptoms of swelling and giving way and numbness in the right foot.

Appellant subsequently requested a hearing, which was held on January 10, 1997.

In a decision dated May 5, 1997, an Office hearing representative vacated the June 10, 1996 decision. The Office hearing representative found that there was a conflict in medical opinion between appellant’s treating physician and the Office referral physician as to whether appellant’s right ankle condition was causally related to her accepted work injury. The case was remanded for further medical development.

In a December 17, 1996 report, Dr. Lim noted that appellant was having problems with both of her ankles. He discussed appellant’s medical history, noting that when appellant’s cast

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<sup>1</sup> Appellant was approved again for light duty by Dr. Lim on July 2, 1996

was removed from her left ankle during March 1995 she complained of problems with her right ankle. Dr. Lim diagnosed tarsal tunnel syndrome in the right ankle with symptoms of parasthesia, tingling along the medial side and recurrent swelling and pain. He indicated that an EMG would confirm his diagnosis. Dr. Lim opined that the right ankle condition was a consequence of the left ankle injury and appellant having to place excessive weight on her right ankle during recovery from that injury.

The Office referred appellant, together with a statement of accepted facts and a copy of the medical record, for an impartial medical evaluation with Dr. Richard Goodman, a Board-certified orthopedic surgeon, on July 7, 1997. In a report dated July 9, 1997, Dr. Goodman noted appellant's medical history and physical findings. He opined that appellant suffered from a congenital condition to her right foot that was unrelated to her accepted left ankle injury and was not aggravated by employment injury. He stated:

"This patient had a sprained ankle. On evaluation of the sprained ankle, congenital bilateral accessory navicular bones were noted. There were presumed to be symptomatic and surgery was done on the left ankle for removal of a congenital tarsal accessory navicular bone. She remains symptomatic. Physical examination, however, has repeatedly been within normal limits postoperatively. This patient is, therefore, deemed to have been recovered completely from the surgery. She has no disability, no impairment, no handicap. Despite her condition, she is able to work a full eight-hour day without restrictions. There is no indication for causally related removal of the right tarsal navicular bone or surgery on the right ankle. There is no indication for further diagnostic testing."

In a supplemental report dated August 19, 1997, Dr. Goodman specifically opined that appellant's right ankle condition was a congenital or birth-related condition and was not a consequence of the left ankle injury and not a consequence of her surgeries. He noted that the right ankle condition was a "finding on x-ray which has no pathological findings and produces no disability and no impairment."

In a September 10, 1997 decision, the Office denied appellant's recurrence of disability claim, finding that the weight of medical opinion rested with the reports of Dr. Goodman, the impartial medical specialist, which established that appellant's right ankle condition was not a consequence of the accepted work injury. The Office found that appellant failed to establish a change in the nature and extent of her injury-related condition sufficient to establish a recurrence of disability.

Appellant requested a hearing and submitted reports dated January 27 and February 27, 1998 report, by Dr. Lim, which noted that doctor's disagreement with Dr. Goodman's report. Dr. Lim reiterated his conclusion that appellant's right ankle condition was causally related to the difficulty she had on ambulation following the work injury to the left ankle on October 17, 1992.

In a July 15, 1998 decision, an Office hearing representative affirmed the Office's September 10, 1997 decision.<sup>2</sup>

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on or after April 23, 1996 causally related to her employment injury of October 17, 1996.<sup>3</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup>

In the instant case, appellant filed a claim for a recurrence of disability alleging that she developed a consequential right ankle condition as the result of her October 17, 1992 work-related left foot injury.<sup>5</sup> In support of her claim, Dr. Lim, her treating physician, opined that following appellant's surgery on January 20, 1995, she placed excessive weight on her right foot ankle as she was unable to ambulate on her left foot and ankle. Dr. Lim diagnosed that appellant has tarsal tunnel syndrome of the right ankle due to this overcompensation. In contrast, the Office referral physician, Dr. Killian, opined that appellant's right ankle condition was a congenital condition, preexisting the work injury, and that appellant's symptoms of right ankle pain and "giving way" had no relation to the left ankle work injury or surgery.<sup>6</sup>

When a conflict exists in the medical record and the case is referred to an impartial medical specialist for the purpose of resolving that conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>7</sup>

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<sup>2</sup> A hearing was held on February 12, 1998.

<sup>3</sup> Although appellant submitted additional evidence subsequent to the Office's July 15, 1998 decision, the Board does not have jurisdiction to consider evidence that was not before the Office at the time it issued its final decision. See 20 C.F.R. § 5101.2(c).

<sup>4</sup> *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry Hedman*, 38 ECAB 222 (1987).

<sup>5</sup> It is an accepted principle of workers' compensation law and the Board has so recognized, 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. See *John R. Knox*, 42 ECAB 193 (1990).

<sup>6</sup> Section 8123 of the FECA provides that if there is a 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. 5 U.S.C. § 8123(a); see *Shirley L. Steib*, 46 ECAB 309 (1994); *William C. Bush*, 40 ECAB 1064 (1989).

<sup>7</sup> *Charles E. Burke*, 47 ECAB 185 (1995); *Roger Dingess*, 47 ECAB 123 (1995).

The Board finds that Dr. Goodman, the impartial medical specialist, thoroughly discussed the medical record, physical findings, and objective tests results to conclude that appellant's right ankle condition was not causally related to or a consequential condition of the accepted October 17, 1992 left ankle work injury. He found that appellant's right ankle symptoms were due to a congenital tarsal navicular bone as demonstrated by the x-ray evidence. Dr. Goodman stated that appellant was not disabled from work and suffered no impairment from the congenital right ankle condition and found that it was not causally related to the accepted ankle injury or resulting surgery. Because Dr. Goodman's opinion is rationalized and based on a proper factual background, the Board finds that his opinion is entitled to the special weight given to the reports of an impartial medical specialist. Appellant has failed to establish her claim for a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated July 15, 1998 is hereby affirmed.

Dated, Washington, DC  
December 15, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member