

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALONSO ALLEN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Coatesville, PA

*Docket Nos. 98-950 & 98-990; Submitted on the Record;
Issued April 19, 2000*

DECISION and ORDER

The issues are: (1) whether appellant has met his burden of proof to establish that his bilateral tarsal tunnel syndrome is causally related to the combined effect of all of his accepted employment-related injuries; and (2) whether appellant has met his burden of proof to establish that his bilateral tarsal tunnel syndrome is causally related to his March 14, 1977 accepted right ankle condition or his August 23, 1988 accepted left foot condition.

With respect to the first issue, whether appellant has established that his diagnosed bilateral tarsal tunnel resulted from the combined effect of all of his accepted employment injuries, the Board finds that the case is not in posture for decision due to an unresolved conflict in the medical opinion evidence. Further development of the medical evidence is required.

On August 6, 1983 appellant, then a 30-year-old housekeeping aid, filed a claim for traumatic injury, number A3-84604, alleging that he was injured when a table fell on his right foot. The Office of Workers' Compensation Programs accepted appellant's claim for a right foot contusion. Appellant was off work from August 7 through August 30, 1983.

On August 16, 1995 appellant filed a claim for recurrence of disability, in part seeking approval for surgical treatment of his bilateral tarsal tunnel syndrome. In a decision dated November 21, 1995, the Office denied his claim for recurrence of disability, number A3-84604, on the grounds that appellant failed to establish that he suffers from any condition causally related to his 1983 accepted right foot contusion. Appellant disagreed with the decision and requested an oral hearing, which was held on June 20, 1996. At the hearing he testified and submitted additional medical evidence in support of his claim. Appellant stated that he has sustained multiple employment injuries to his back, legs and feet, and has filed 10 separate claims as a result of these injuries. He asserted that the combined effects of these injuries has contributed to the development of his tarsal tunnel syndrome.

By decision dated August 6, 1996, an Office hearing representative found that it was apparent that appellant was not actually claiming a recurrence of disability related to the single August 6, 1983 employment injury, and remanded the case to the district Office for further development. The hearing representative directed the Office to gather all available information

on appellant's multiple claims and "strongly suggested" that consideration be given to combining appellant's multiple files into one record. In light of the fact that the record contained reports from appellant's treating physician, Dr. Vincent Pongia, who opined that appellant's multiple foot injuries, as well as his back injury, had contributed to his development of bilateral tarsal tunnel syndrome, the hearing representative further directed the Office to prepare a statement of accepted facts and refer appellant to a podiatrist for a second opinion evaluation.

On October 4, 1996 the Office referred appellant to Dr. Josephine DePalma, a podiatrist, for a second opinion examination. The Office asked Dr. DePalma to consider all of appellant's accepted conditions, including two right ankle contusions, a right foot strain, a left foot contusion, laceration and sprain, a left knee strain, a head contusion, a right shoulder strain, a lumbosacral strain and scabies, and to determine whether appellant continues to suffer from any residuals of any of these work injuries.

In her narrative report dated November 6, 1996, after listing her findings on physical examination and testing and reviewing appellant's medical and employment history, Dr. DePalma diagnosed appellant as "status post heel spur surgery which is well healed" and "status post sprains and multiple contusions of both feet and ankles, now healed." She listed her conclusions, as follows:

"There were no objective physical findings to support the amount of pain the patient states he is experiencing.

"The work-related injuries to both his feet and his ankles have had an adequate time for healing and I feel [appellant] has fully recovered from these injuries, as described in the medical history.

"[Appellant] is currently not disabled from his work[-]related foot and ankle injuries.

"The tarsal tunnel syndrome, I feel, more likely would be a result of his obesity and his flatfoot type, which can result in a strain on the medial aspect of the foot and ankle. It is highly unlikely that the sprains and strains, of the traumatic nature, as noted in the patient's history, could cause this kind of problem with the nerve in that area. However, I did not note any neuropathy that would support the idea of a tarsal tunnel syndrome.

"Regarding any injuries during the military service, the patient completely denies any injuries, and he states that he was running seven miles in the service. So, he states, there are no problems resulting from what occurred during the service."

In a decision dated December 19, 1996, the Office denied appellant's claim on the grounds that the weight of the medical opinion evidence rested with Dr. DePalma, the Office second opinion physician. Appellant disagreed with the decision and requested an oral hearing, which was held on November 19, 1997. He submitted additional medical evidence in support of his claim.

In a decision dated January 29, 1998, an Office hearing representative denied appellant's claim on the grounds that the weight of the medical opinion evidence continued to rest with Dr. DePalma, the Office second opinion physician. The hearing representative specifically found that, although appellant had submitted numerous reports from his treating physicians, Dr. Vincent J. Pongia, a podiatrist, and Dr. James Stephenson, a Board-certified surgeon, who repeatedly diagnosed tarsal tunnel syndrome secondary to appellant's multiple employment-related conditions, as they failed to provide a well-rationalized opinion regarding the causal relationship between the multiple employment factors and their diagnosis, their reports are insufficient to support appellant's claim.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the present case, the Office accepted that appellant sustained multiple foot injuries, a knee injury, and back and head injuries in the course of his federal employment. In support of his claim, appellant submitted numerous medical reports documenting the diagnosis and treatment of his tarsal tunnel syndrome, including many reports on which his physicians stated, without further explanation, that his condition was due to his multiple employment injuries. For example, in his April 6, 1996 report, Dr. Pongia stated that, during his federal employment, appellant sustained a number of injuries, some of which were direct injuries to his feet and lumbar spine. Regarding the relationship between these injuries and appellant's tarsal tunnel syndrome, Dr. Pongia stated that "the injuries sustained to [appellant] with regard to his back as well as his feet would have contributed in some part to the tarsal tunnel syndrome." In a report dated July 19, 1996, Dr. Stephenson recounted appellant's numerous employment-related injuries, including his 1982 fall which resulted in the lumbar strain and his 1985 left knee injury. Dr. Stephenson concluded that these multiple injuries "are related and contributed to the presence of bilateral tarsal tunnel syndrome." While both Drs. Pongia and Stephenson opined that appellant's tarsal tunnel syndrome is causally related, at least in part, to his multiple work injuries, neither physician offered any medical rationale explaining the nature of the relationship between appellant's tarsal tunnel syndrome and any of his accepted injuries, and thus these reports, taken alone, are of diminished probative value.³ In his most recent report of record, however, dated April 8, 1997, Dr. Pongia provides considerable additional rationale for his earlier conclusions stating, in pertinent part:

“[Appellant] has a clear dossier defining injuries that he sustained while under the employ of the [employing establishment]. It has further been determined that a

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *John E. Blount*, 30 ECAB 1374 (1979).

² *Nicolea Bruso*, 33 ECAB 1138 (1982); *Frances B. Evans*, 32 ECAB 60 (1980).

³ *Ern Reynolds*, 45 ECAB 690 (1994).

component part of those injuries have resulted in direct trauma to the lower extremities of [appellant], and as a consequence of those injuries, the trauma has resulted in his ambulation with an antalgic gait and subsequently the development of tarsal tunnel syndrome.

“In terms of establishing a causal relationship between the tarsal tunnel syndrome and the injury sustained, when reviewing the underlying etiology of tarsal tunnel syndrome, trauma cannot be excluded as a direct causal relationship of this diagnostic entity.

“In addition, a patient who is ambulating with an abnormal gait pattern can and frequently does develop tendinitis which, when this occurs in the medial flexor retinaculum, creates pressure on the posterior tibial nerve which in turn can result in tarsal tunnel syndrome.

“In addition, an abnormal gait pattern can cause the patient to excessively pronate or abduct his foot to maintain stability which also can result in injury to posterior tibial nerve.

“I can again state for the record that direct trauma or a patient ambulating with an antalgic gait as a consequence of an injury can, within a reasonable degree of podiatric certainty cause or exacerbate an underlying tarsal tunnel syndrome.

“I would hope that I have made these observations clear because I do not know how to further state with any degree of accuracy, that direct trauma to a body part, can and frequently is a causal factor in medical complications subsequent to the trauma.

“In [appellant’s] case, this gentleman sustained direct trauma to the lower extremities. The trauma injured the posterior tibial nerve and caused lumbar spine injuries which resulted in this gentleman ambulating with an antalgic gait. If the leg sustained injury, they can develop tarsal tunnel. In my point of view this is quite clear.”

Section 8123(a) of the Federal Employees’ Compensation Act provides in pertinent part: “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.”⁴ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁵

The Board finds that there is a conflict in the medical evidence between appellant’s treating physicians, Dr. Pongia, a podiatrist whose opinion is supported by that of

⁴ See 5 U.S.C. § 8123(a); *Melvina Jackson*, 38 ECAB 443 (1987).

⁵ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

Dr. Stephenson, a Board-certified surgeon, and Dr. DePalma, a podiatrist, to whom the Office referred the case for a second opinion, on whether the appellant has a medical condition causally related to factors of his federal employment. In several reports dating from 1995 to 1997, Dr. Pongia diagnosed appellant as having multiple bilateral tarsal tunnel syndrome, causally related to his multiple employment injuries, and in his most recent report, dated April 8, 1997, he provided the necessary rationale for his conclusion. Dr. Pongia's opinion is supported by the reports of Dr. Stephenson, who also diagnosed tarsal tunnel due to multiple employment injuries and by the August 21, 1995 electromyography (EMG) results, which were interpreted by Dr. R.J. Krebs, III, as consistent with bilateral tarsal tunnel syndrome.⁶ In contrast, Dr. DePalma concluded in a November 6, 1996 report that appellant had completely recovered from all his foot and ankle injuries.

The resolution of the question of whether appellant has a medical condition causally related to factors of his employment is a matter within the realm of expertise of the medical specialist. Consequently, the case will be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence. On remand, the Office should refer the case, including the case file and the statement of accepted facts, to an appropriate specialist for a rationalized opinion on this matter. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant's claim.

With respect to the second issue, whether appellant's bilateral tarsal tunnel syndrome is causally related to either appellant's March 14, 1977 or August 23, 1988 accepted injuries, the Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated April 2, 1997, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

⁶ Repeat EMG studies performed by Dr. Krebs in 1997 after tarsal tunnel release surgery no longer showed any evidence of tarsal tunnel syndrome.

The January 29, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of this Board. The decision of the Office dated April 2, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 19, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member