

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY BEATTIE and ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC

*Docket No. 00-1639; Submitted on the Record;
Issued March 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability causally related to the December 16, 1997 employment injury.

On January 6, 1998 appellant, then a 27-year-old secretary, sustained an employment-related contusion of the left foot. On December 21, 1998 she filed a claim for recurrence of injury. Appellant stated that there was no specific date of recurrence but that her foot began to bother her again "as the season changed." In support of her recurrence claim, appellant submitted notes dated January 7 and February 2, 1999, in which Dr. Charles Mess, a Board-certified orthopedic surgeon, stated that there was less inflammation in the foot, but that there was a cyst over the fifth metatarsal area and evidence of early inflammatory or degenerative changes between the cuboid and the third cuneiform. She also submitted a magnetic resonance imaging (MRI) scan of the left foot taken on April 16, 1998; and reports dated April 23 and 27, 1998 from Dr. Norman D. Rubin, an orthopedic podiatrist.

By letter dated June 8, 1999, the Office of Workers' Compensation Programs requested further information from appellant including a physician's opinion as to the relationship of appellant's alleged condition to the accepted injury.

In a decision dated August 13, 1999, the Office denied appellant's claim for recurrence on the grounds that the evidence submitted by appellant did not establish that the alleged recurrence was causally related to the accepted injury.

By letter dated November 2, 1999, appellant requested reconsideration and submitted additional medical evidence including a report dated September 2, 1999 in which Dr. Rubin opined that the accepted injury was directly related to her present condition. She also submitted a report dated September 7, 1999 in which Dr. Mess opined that the symptoms that appellant was then suffering were directly related to her original injury. He also noted that he was not aware of any subsequent injuries.

By decision dated January 13, 2000, the Office denied modification of its prior decision. The Office found that the reports from Drs. Rubin and Mess failed to establish a causal relationship between appellant's condition and her initial injury.

The Board finds that this case is not in posture for decision.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a 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.¹

Causal relationship is a medical issue² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

The relevant medical evidence includes the results of an MRI scan of the left foot taken on April 16, 1998 which demonstrated bone bruising or edema from trauma; a report dated April 23, 1998 from Dr. Rubin; a report dated April 27, 1998 in which Dr. Rubin noted appellant's history and referred her to Dr. Mess; notes from Dr. Mess dated January 7 and February 2, 1999; a September 2, 1999 note in which Dr. Rubin stated: "It is my personal opinion that the injury that [appellant] sustained on December 17, 1997 is causing her current problem and is directly related to the injury"; and a September 7, 1999 note in which Dr. Mess opined:

"I believe at this time that the symptoms [appellant] is experiencing [in] her left foot are directly related to her original injury of November [sic] 1997. I am not aware of any subsequent injuries."

While these reports are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.

¹ *Alfredo Rodriguez*, 47 ECAB 288 (1996); *Jose Hernandez*, 47 ECAB 288 (1996); *Carolyn F. Allen*, 47 ECAB 240 (1995); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996); *Kurt R. Ellis*, 47 ECAB 505 (1996); *Thomas L. Hogan*, 47 ECAB 323 (1996); *Charles E. Burke*, 47 ECAB 185 (1995); *Victor J. Woodhams*, 41 ECAB 345 (1989).

As both Drs. Rubin and Mess indicated that appellant's foot condition was causally related to the December 16, 1997 employment injury, these opinions are sufficient to require further development of the record.⁴ It is well established that proceedings under the Federal Employees' Compensation Act⁵ are not adversarial in nature⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷ On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether her foot condition in December 1998 was causally related to the December 16, 1997 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated January 13, 2000 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
March 19, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁴ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁷ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).