

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILOU BROWN and DEPARTMENT OF THE TREASURY,
U. S. CUSTOMS SERVICE, Dallas/Fort Worth, Tex.

*Docket No. 95-2364; Submitted on the Record;
Issued March 11, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a consequential injury to her left ankle causally related to her accepted January 24, 1992 right knee strain.

On January 24, 1992 appellant, then a 27-year-old customs inspector, filed a traumatic injury claim (Form CA-1) alleging that on that date she twisted her right knee when she ran from one position to another in response to a call for help. The Office of Workers' Compensation Programs accepted appellant's claim for a right knee strain.

On January 12, 1994 appellant filed a recurrence claim (Form CA-2a), alleging that on January 3, 1994 she fell at home, while walking out to feed her dog and that her right knee gave out resulting in a fractured left ankle. Appellant submitted the January 13, 1994 medical report of Dr. Robert D. Chapman, a Board-certified orthopedic surgeon, indicating that, due to the January 24, 1992 employment injury, appellant's knee "gives out" periodically and that appellant complained of this problem, beginning during her first office visit on March 30, 1992. Dr. Chapman provided a history of the January 3, 1994 injury and medical treatment, including a diagnosis of a fracture by Dr. Jean Akpan, a Board-certified internist, and Dr. Larry Turner Johnson, a Board-certified orthopedic surgeon. Dr. Chapman stated that the diagnosis given by Drs. Akpan and Johnson correlated inflammation/giving way of the right knee as the direct cause of the left ankle injury. Dr. Chapman concluded that he agreed with the diagnosis of Drs. Akpan and Johnson. Appellant also submitted the February 10, 1992 magnetic resonance imaging test results of Dr. Hano A. Siegle, a Board-certified radiologist, revealing that appellant had a large lateral tibial plateau area of a presumed post-traumatic bony contusion, and possible trabecular fracture without cortical involvement and without any evident tear of the adjacent meniscus. Further, appellant submitted an undated statement in response to specific questions appearing on the Form CA-2a.

By letter dated February 7, 1994, the Office advised appellant to submit medical evidence supportive of her claim. In response, appellant submitted a February 28, 1994 narrative statement. Appellant resubmitted Dr. Chapman's January 13, 1994 medical report and submitted another medical report of Dr. Chapman dated January 13, 1994, which revealed a history of the January 3, 1994 injury and medical treatment. Dr. Chapman diagnosed a classical avulsion fracture tip of the lateral malleolus based on x-ray examination. Further, appellant submitted Dr. Chapman's February 25, 1994 medical report, indicating a history of his treatment of appellant's right knee condition. Dr. Chapman stated that he explained to appellant that her right knee employment injury could cause giving way episodes. Additionally, appellant submitted a completed workers' compensation questionnaire dated January 5, 1994. Appellant submitted the January 5, 1994 medical report of Dr. Akpan which provided a diagnosis of sprained left ankle and noted the January 24, 1992 employment injury and January 3, 1994 injury and that appellant's knee "gives way" periodically. Dr. Akpan also noted her findings on physical and objective examination and stated that appellant did not have a fracture based on an x-ray examination. Appellant also submitted the January 10, 1994 disability certificate of Dr. Johnson revealing a diagnosis of sprained left ankle with a possible fracture. Dr. Johnson opined that "it is medically probable that the left ankle injury is related to the preexisting right knee injury."

By decision dated June 29, 1994, the Office found the evidence of record insufficient to establish that appellant's left ankle condition was causally related to her accepted January 24, 1992 right knee injury.

By letter dated July 28, 1994, appellant requested an oral hearing before an Office representative. At the hearing, appellant submitted Dr. Chapman's August 9, 1993 medical report revealing appellant's complaint of plantar fasciitis-type pain in the right foot and medical treatment, and Dr. Akpan's referral form dated February 23, 1994. Appellant also submitted Dr. Johnson's January 10, 1994 medical report indicating his findings on physical and objective examination, medical treatment, and a diagnosis of sprained ankle and possible fracture. Dr. Johnson stated that "based upon [appellant's] history, that it is medically probable that the left ankle injury, is related to the preexisting right knee injury, especially if it causes her to be unbalanced." Further, appellant submitted Dr. Akpan's January 10, 1994 medical report revealing that based on the x-ray results of appellant's ankle, she had a lateral malleolus fracture. In addition, appellant submitted Dr. Akpan's January 5, 1994 medical report indicating that appellant was examined on January 5, 1994 and that appellant had an ankle sprain. Dr. Akpan advised appellant to return to work on January 17, 1994. Appellant submitted medical bills and resubmitted her July 28, 1994 request for an oral hearing, Dr. Akpan's January 5, 1994 medical report and her January 5, 1994 questionnaire.

By decision dated May 26, 1995, the hearing representative found that appellant failed to establish that she had any disability on or after January 12, 1994, causally related to her accepted January 24, 1992 employment-related injury.

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

The Board has held that a second nonemployment-related injury is compensable if it is the direct and natural result of an earlier injury. That is, if the second injury is sustained as a

consequence of a residual resulting from a previous industrial injury, the second injury is deemed to arise out of and in the course of employment because of the chain of causation.¹

In this case, appellant has alleged that her left ankle condition is the consequence of her right knee giving out which was due to the accepted January 24, 1992 right knee strain. The medical evidence appellant has submitted is supportive of her claim. The reports of Drs. Chapman and Johnson relate appellant's left ankle condition to the January 24, 1992 employment injury. There is no contradictory medical opinion evidence in the record.

Although the reports of Drs. Chapman and Johnson are insufficient to discharge appellant's burden of establishing that her left ankle condition was causally related to the January 24, 1992 employment injury, in the absence of medical evidence to the contrary, the reports constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.²

On remand the Office should compile a new statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's left ankle condition and the January 24, 1992 employment injury.

The May 26, 1995 and June 29, 1994 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
March 11, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ *Anthony S. Wax*, 7 ECAB 330 (1954).

² *See Horace Langhorne*, 29 ECAB 821 (1978).