

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY J. HOWELL and DEPARTMENT OF THE TREASURY,
UNITED STATES MINT, Philadelphia, Pa.

*Docket No. 96-509; Submitted on the Record;
Issued March 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's disability beginning October 7, 1988 is causally related to his May 15, 1980 employment injury.

The Office of Workers' Compensation Programs accepted that appellant, a police officer, sustained torn ligaments of the left ankle as a result of making practice kicks on a bag in a defensive training class on May 15, 1980. Appellant's ankle was placed in a short walking cast, and he completed his training course in Georgia. Appellant stopped work on May 26, 1980 and received continuation of pay until he returned to work on June 6, 1980. The Office also accepted that appellant sustained a recurrence of disability from September 12 to 23, 1985 causally related to the May 15, 1980 employment injury, and authorized payment of compensation for that period.

Appellant filed a claim for another recurrence of disability beginning October 7, 1988. From that date appellant missed some intermittent days of work until May 26, 1989, when he stopped work and did not return. By decision dated September 3, 1991, the Office rejected appellant's claim for a recurrence of disability beginning October 7, 1988, and terminated his authorization for medical treatment under the Federal Employees' Compensation Act. An Office hearing representative affirmed this decision in a June 11, 1992 decision. Appellant submitted additional evidence, consisting of reports from his attending physician, Dr. James A. Anthony, Jr., a Board-certified orthopedic surgeon, whereupon the Office vacated its September 3, 1991 decision, found that the reports of Dr. Anthony constituted the weight of the medical evidence, and accepted the October 7, 1988 recurrence of disability. The Office, however, did not pay compensation based on this acceptance, but instead referred appellant for a second opinion evaluation by Dr. Frank Mattei, a Board-certified orthopedic surgeon. By decision dated February 16, 1994, the Office found that the weight of the medical evidence, constituted by the report of Dr. Mattei, did not support a causal relation between appellant's May 15, 1980 employment injury and his recurrence of disability beginning October 7, 1988. The decision was affirmed by an Office hearing representative in a decision dated September 5, 1995.

The Board finds that there is a conflict of medical opinion in this case, necessitating referral to an impartial medical specialist pursuant to section 8123(a) of the Act.¹

Appellant's attending physician, Dr. Anthony, a Board-certified orthopedic surgeon, concluded in a June 2, 1992 report: "There is no question that he has a severe arthralgic problem of the left ankle joint, which is secondary to the injury he sustained on the 15th of May, 1980, and has left him severely debilitated and requiring long-term treatment and rehabilitation." Dr. Anthony provided an explanation for his opinion, noting that a diagnostic arthroscopy was very revealing: "The majority of the pathology appeared to be along the anterior medial aspect of the left ankle joint in the form of severe fibrosis, scarring, synovial plica within that area. ... However, there was significant arthritic-type changes along the talotibia, anteromedial and medial aspect of the cartilaginous endplate and obvious trauma had been sustained to this area, which could not be appreciated on routine roentgenographic studies, magnetic resonance imaging (MRI) or other modalities which we commonly use to help document patient's injuries." Dr. Anthony then stated, "Based on the diagnostic arthroscopy, a positive bone scan which showed the area of involvement along the medial malleolus, and MRI examination which showed a subchondral cyst along the medial and distal aspect to the malleolus, there is no question that this patient has had severe debilitating pain and discomfort in the left ankle joint consistent with trauma, in and around the medial malleolus, anterior and medial talotibiar area. Scarring in the form of fibrosis, cartilagenous articular surface changes of the tibiotalar region of the left ankle joint are established." The opinion of Dr. Anthony is consistent with that of another of appellant's attending physicians, Dr. Thomas A. Robinson, a general practitioner, who concluded in a February 12, 1992 report that appellant had "ankle instability ... caused by irreparable ligament damage and laxity."

On the other side of the conflict of medical opinion, Dr. Mattei, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, concluded in a December 7, 1993 report: "After careful review of the documentation of the records that were supplied to me, along with my examination of the lower extremities, limited by [appellant], it is my medical opinion that he has made an excellent recovery of any injuries that he may have sustained in May 1980 and any occurrence that he had in 1982 which was another injury to his ankle joint and not related to the injury of 1980." As explanation for his opinion, Dr. Mattei noted that "except for his subjective complaints, he has good objective findings of his left ankle joint," and that appellant was "discharged as ankle joint sprain resolved" by June 2, 1980, and that the MRI's showed "no pathology." On a work tolerance limitations form dated October 12, 1993, Dr. Mattei indicated appellant could perform work eight hours per day with restrictions, and added, studies show subchondral cyst of fibula with resultant degenerative involvement."

The Office found that Dr. Mattei's opinion was entitled to greater weight than that of Dr. Anthony on the basis that Dr. Anthony relied upon an inaccurate history. In his September 5, 1995 decision, an Office hearing representative stated, "[T]he opinion of Dr. Anthony on causal relationship appears to be based on a history given to him that the

¹ 5 U.S.C. § 8123(a) states 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."

claimant had continual significant symptoms in his leg ever since the injury of May 15, 1980; also Dr. Anthony gives no indication that he was aware of the new injuries sustained by the claimant on July 9, 1982 and September 12, 1985.” There is, however, no evidence that establishes that Dr. Anthony’s history of continuous symptoms following the May 15, 1980 injury is inaccurate. This history is, in fact, consistent with appellant’s written statement received by the Office on November 27, 1985: “My ankle has hurt me continuously since the injury.” It is also consistent with his sworn testimony at hearings held before Office hearing representatives on February 24, 1992 and March 22, 1995. With regard to July 9, 1982 and September 12, 1985 injuries, both of which were recorded in contemporaneous medical records as involving turning of the ankle on a stone, no doctor has attributed appellant’s disability beginning October 7, 1988 to these injuries. Appellant testified that these incidents were not new injuries but were two of numerous episodes in which his ankle buckled, with the earlier one occurring on a stone walkway. In a report dated March 22, 1995, Dr. Anthony noted that appellant had “subsequently twisted and reinjured his left ankle,” and indicated this occurred “as a result of the instability in the left ankle joint, secondary to the trauma sustained on the 15th of May 1980.”

The Board finds that the opinion of Dr. Anthony is equivalent in probative value to that of Dr. Mattei. To resolve the conflict of medical opinion, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for a reasoned opinion on the causal relation, if any, between appellant’s May 15, 1980 employment injury and his condition and disability beginning October 7, 1988.

The decision of the Office of Workers’ Compensation Programs dated September 5, 1995 is set aside and the case remanded to the Office for further action consistent with this decision of the Board, to be followed by a *de novo* decision.

Dated, Washington, D.C.
March 3, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member