U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY ELIZABETH HICKMAN and DEPARTMENT OF THE ARMY, HEALTH SERVICE COMMAND, Fort Devens, Mass.

Docket No. 96-1361; Submitted on the Record;
Issued May 21, 1998

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted November 1, 1991 employment-related injury.

On November 4, 1991 appellant, then a 58-year-old administrative coordinator, filed a claim alleging that on November 1, 1991, she sustained injuries to her right foot when she dropped a box of dental continuation sheets on her right foot as she was picking them up to file. The Office of Workers' Compensation Programs accepted appellant's November 1, 1991, claim for a contusion of the right foot and the fifth toe on December 11, 1991. Continuation-of-pay was authorized and medical expenses were paid.

Appellant filed a notice of recurrence of disability on September 14, 1994, alleging that "the original injury never really healed and as time went on it simply got worse to the point where I can no longer walk without pain. As a result of the pain I hobble and walk off balance which causes upper leg and back stress." The record, however, shows that appellant retired from her federal employment. By decision dated March 26, 1995, the Office denied appellant's claim finding that she failed to establish a causal relationship between her recurrence of disability and her accepted employment-related injury. Appellant requested reconsideration and by decision dated June 21, 1995, the Office denied appellant's request for reconsideration on the grounds that the medical evidence submitted in support of reconsideration was found to be immaterial and insufficient to warrant a review of its prior denial dated March 26, 1995. Appellant again requested reconsideration and submitted additional evidence on August 10, 1995, and in a merit decision dated November 2, 1995, the Office denied appellant's second request for reconsideration finding that the medical evidence submitted was insufficient to warrant modification of its prior decisions. On November 27, 1995 appellant requested reconsideration for the third time and by decision dated February 12, 1996, the Office denied appellant's third request for reconsideration finding that the evidence submitted was again immaterial and insufficient to warrant a review of the prior decisions.

The Board has duly reviewed the case record in the present case and finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her accepted November 1, 1991 employment-related injury.

Under the Federal Employees' Compensation Act,[1] 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[2] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,[3] and supports that conclusion with sound medical reasoning.[4]

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-rays and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.[5]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.[6] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[7] Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that her condition was caused by her employment is sufficient to establish a causal relationship.[8] A physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician.[9]

In a July 27, 1995 medical report, Jeffery G. Resnick, D.P.M. [Doctor of Podiatry Medicine] stated that he saw appellant on February 6, 1992 for an injury which occurred in November 1991 when she dropped a box on the side of her foot. He indicated that the fifth toe

[1] 5 U.S.C. §§ 8101-8193.

[2] *Dennis J. Lasanen,* 43 ECAB 549, 550 (1992).

[3] *Kevin J. McGrath,* 42 ECAB 109, 116 (1990).

[4] *Lourdes Davila,* 45 ECAB 139, 142 (1993).

[5] 20 C.F.R. § 10.121(b).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[7] *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

[8] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[9] *Jean Culliton*, 47 ECAB ___ (Docket No. 94-1326, issued August 26, 1996).

was erythematous and edematous, that the x-rays themselves could not be obtained, but the radiologist report which centered mostly around the fifth toe showed no pathology. Dr. Resnick also noted that appellant was given a steroid injection which provided 100 percent relief, but his impression was a contusion with ligamentous injury to the right fifth toe. Dr. Resnick went on to note that appellant was examined again on June 14, 1994, (approximately two and one-half years after the Office had accepted appellant's November 1, 1991 employment-related injury for contusion of the right foot and fifth toe) for complaints of right lateral foot pain for a one week duration. He stated that appellant could not relate any recent history of trauma to her foot, but there was pain palpable to the area of the cuboid and the forth and fifth metatarsal areas, with pitting edema localized to the same area. He indicated that the x-rays showed either an old avulsion fracture or previous trauma to the cuboid bone of the right foot. Dr. Resnick again opined that it was his impression "that it is entirely possible that the injury in November 1991 caused a small fracture to the cuboid bone of the right foot which is now causing pain upon ambulation. I am unsure of the amount of disability incurred but do believe that surgical removal of the bone spur has a good chance to relieve patient's [appellant's] symptoms." On September 29, 1994 surgery was performed on appellant's right foot. Although Dr. Resnick indicated that x-rays showed either an old avulsion fracture or previous trauma to the cuboid bone of the right foot, opined that it is entirely possible that the injury in November 1991 caused a small fracture to the cuboid bone of the right foot which is now causing pain upon ambulation, and that he believed a surgical removal of the bone spur had a good chance to relieve appellant's symptoms, Dr. Resnick's opinion is of diminished probative value because it is equivocal, and speculative in nature.[10] For example, Dr. Resnick did not explain how and why appellant's alleged September 14, 1994, recurrence of disability was exacerbated by her accepted November 1, 1991 employment-related injury. In addition, Dr. Resnick examined appellant approximately two and one-half years after the Office had accepted her November 1, 1991 employment-related injury and did not indicate when the above-mentioned x-rays were taken, or even address causal relationship between a specific diagnosed condition and the factors of employment or the accepted employment-related injury of November 1, 1991. Therefore, Dr. Resnick's report is insufficient to establish appellant's claim.

In a medical report dated April 13, 1995, Dr. Anthony R.M. Caprio, a Board-certified orthopedic surgeon stated that he had evaluated appellant for a weak right ankle. He noted the history of appellant's accepted November 1, 1991, employment-related injury and indicated that appellant had originally been examined by Dr. James L. Barzun, an internist for an extremely swollen and discolored foot that slowly subsided. He indicated that in time, appellant started having problems with her right heel and saw Dr. Resnick. He noted that x-rays were taken which showed degenerative changes to the first MP joint with a bipartite mesial sesamoid, hallux valgus and a heel spur. After examining appellant, Dr. Caprio noted that appellant had no dropping of the metatarsal heads, but had peculiar deformities to both great toes and opined that it almost looked like a mycotic type of problem, but the right may be post-traumatic. Dr. Caprio diagnosed appellant with S/P crush injury to the right foot, resolved; S/P right heel spur with

[10] *Charles H. Tomasezewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

excision, resolved; weakness of the right leg, question discogenic, question neurological and stated: "I explained to the patient [appellant] that the crush injury to her right foot has nothing to do with her present problem and is unrelated. She most likely has degenerative disc disease and her right leg weakness is most likely due to a neuropathy, stemming from her back which would also explain weakness of the ankle and decreased ankle reflex. I suggest she see a neurologist as Dr. [Gary] Stanton for further evaluation..." In this report, Dr. Caprio, a Board-certified orthopedic specialist, diagnosed appellant with "S/P crush injury of the right foot, resolved; S/P right heel spur with excision, resolved; weakness of the right leg, question discogenic, question neurological" and stating that "I explained to the patient [appellant] that the crush injury to her right foot has nothing to do with her present problem and is unrelated." As this report provided a complete and accurate history of appellant's condition, subsequent medical treatments, a diagnosis and a opinion on causal relationship, the Board finds that the Office properly gave exceptional weight to this report.[11]

Appellant then saw Dr. Gary Stanton, a Board-certified psychiatrist and neurologist as suggested, and in a May 19, 1995 report, he noted the history of injury for appellant's November 1, 1991, accepted employment-related injury and the medical examinations performed by Dr. Resnick in 1994 and Dr. Caprio in 1995. Dr. Stanton stated that upon examination, appellant's straight leg raising was full, that he could see no local edema or discoloration about the right foot or ankle and that there was no significant temperature difference between the feet. He opined with regard to appellant's right foot pain that "I do not believe the patient has significant signs or symptoms to suggest an underlying neurological disorder. I am doubtful of lumbar radiculopathy. Perhaps she has a chronic neuropathy of the right superficial peroneal nerve, or the right lateral plantar nerve. I doubt tarsal tunnel syndrome. My main suspicion, however, is that her pains are of orthopedic origin, related to her original crush injury of the right foot." Dr. Stanton then suggested that appellant undergo an EMG (electromyography study) of the right lower extremities to screen for the possibilities of peripheral entrapment neuropathy as well as for the possibility of lumbar radiculopathy. He also noted that "it might also be useful to obtain a bone scan of the legs, to see if there is any evidence for a chronic inflammatory process in the right foot." He went on to note that the appellant had asked him to request that the Office make the necessary arrangement for her studies. In this report, Dr. Stanton provided a complete and accurate history of appellant's condition, subsequent medical treatments, diagnosis and opined that "I do not believe the patient has significant signs or symptoms to suggest an underlying neurological disorder... My main suspicion, however, is that her pains are of orthopedic origin, related to her original crush injury of the right foot." Dr. Stanton's suspicions are speculative in nature, and therefore his report is of diminished probative value and insufficient to meet appellant's burden of proof.[12]

As none of the medical evidence of file are sufficient to meet appellant's burden of proof in establishing that her September 4, 1994, recurrence of disability was causally related to her

[11] *See Lee R. Newberry,* 34 ECAB 1294 (1983) (where the Board held that opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians).

[12] *See George Randolph Taylor supra* note 10.

accepted November 1, 1991 employment-related injury, the Office properly denied appellant's claim.[13]

[13] *See Robert J. Krstyen*, 44 ECAB 227 (1992) (finding that appellant failed to submit sufficient medical evidence to establish that specific work factors caused or aggravated his back condition).

The decisions of the Office of Workers' Compensation Programs dated February 12, 1996, November 2, June 21 and March 26, 1995 are affirmed.

Dated, Washington, D.C.
May 21, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member