

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL DENNY and DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS, ROCKY BOY'S AGENCY, Box Elder, Mont.

*Docket No. 96-2006; Submitted on the Record;
Issued September 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant had any disability after December 5, 1994 causally related to his April 1, 1994 employment injury.

On April 1, 1994 appellant, then a temporary laborer on a road building project, sustained an employment-related fracture of the distal left fibula. He stopped work that day, received appropriate compensation, and returned to light duty on June 1, 1994, continuing in that position until the project ended on December 2, 1994. On May 1, 1995 he submitted a recurrence claim, contending that he reinjured his ankle while walking by his house and realized it was employment related when it started to hurt in the same place as the original injury. In an accompanying statement, appellant stated that the pain recurred "just from regular walking" and that he had had no problems with his left ankle prior to April 1, 1994.

In support of his recurrence claim, appellant submitted reports from Dr. Paul G. Bizzle, an osteopathic orthopedist, who had treated him since April 4, 1994. In a March 6, 1995 office note, Dr. Bizzle advised that appellant related that he had been doing well until he went hunting on February 19, 1995 when he slipped and fell three times with subsequent pain. Dr. Bizzle continued to submit reports, and in a report dated July 18, 1995, advised that appellant had not recovered from his employment injury in that he continued to have Achilles tendinitis "off and on." He continued that, although appellant did sustain other nonwork-related injuries while hunting, this was primarily a result of appellant's left ankle "giving way" on him.

By letter dated November 28, 1995, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support his recurrence claim, to include contemporaneous well-rationalized medical opinion evidence explaining why he continued to be disabled from the April 1, 1994 employment injury. He was given 30 days in which to respond. Nothing further was submitted.

By decision dated January 31, 1996, the Office denied the claim, finding the medical evidence insufficient to establish total disability as of December 5, 1994. Appellant, through his agent, requested reconsideration and submitted additional medical evidence. In a January 19, 1996 office note, Dr. Michael E. Luckett, a Board-certified orthopedic surgeon, noted the history of injury and appellant's complaint of continued bilateral ankle pain. He advised that x-rays that day showed no evidence of significant joint space narrowing and that appellant's gait was normal. Diffuse mild tenderness about the ankles was present on examination with no limitation or asymmetry in range of motion and no evidence of chondral trauma. Dr. Luckett concluded:

"I think, certainly, it is conceivable he may have some early degenerative change secondary to chondral trauma, but he clearly has no evidence of joint space narrowing."

A January 22, 1996 bone scan of the feet and ankles revealed slightly increased activity associated with the right lateral malleolus which could indicate trauma or synovitis. No other significant abnormalities were present with very minimally increased activity noted in appellant's left ankle to the level of the distal tibia. In a January 22, 1996 office note, Dr. Luckett advised that the bone scan was consistent with early degenerative pain, noting that neither ankle was normal. In a February 27, 1996 report, Dr. Luckett advised that appellant continued to be symptomatic from early degenerative joint disease in both ankles, noting that he would not qualify for his previous job but could perform sedentary or light-duty work that did not involve prolonged standing or walking.

By decision dated May 3, 1996, the Office denied modification of the prior decision, finding that the medical evidence submitted in support of appellant's reconsideration request did not contain an opinion regarding the cause of his condition. The instant appeal follows.

The Board finds that appellant failed to establish that he had any disability after December 5, 1994.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

Causal relationship is a medical issue,² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated

¹ *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

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

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

While the record contains medical reports from appellant's osteopathic orthopedist, Dr. Bizzle, who advised that appellant's ankle condition was employment related, these reports are of diminished probative value as they contain inconsistencies and are lacking in medical rationale to support their conclusions. Dr. Bizzle initially advised that appellant had been doing well until he slipped and fell while hunting on February 19, 1995 and, while he checked the "yes" box on a form report indicating that appellant's condition was employment related, the Board has held that merely checking a box on a form is insufficient to establish causal relationship.⁴ Dr. Luckett's reports contain no opinion regarding the cause of appellant's condition. The Office advised appellant of the evidence needed to support his claim and gave appellant 30 days in which to submit further evidence. He failed to do so. Lastly, the Board notes that the Office did not accept that appellant sustained an employment-related injury to his right ankle. The Office, therefore, properly determined that appellant had no disability causally related to his federal employment.

The decisions of the Office of Workers' Compensation Programs dated May 3 and January 3, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 1, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

³ Gary L. Fowler, 45 ECAB 365 (1994); Victor J. Woodhams, 41 ECAB 345 (1989).

⁴ Debra S. King, 44 ECAB 203 (1992).