

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMIE C. RICHARDSON and DEPARTMENT OF THE ARMY,
THE ADJUTANT GENERAL, St. Louis, Mo.

*Docket No. 96-2601; Submitted on the Record;
Issued September 28, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant had any disability on or after October 7, 1991, causally related to his October 18, 1989 ruptured left plantaris tendon injury or to his July 20, 1990 accepted recurrence of disability.

This case has been before the Board on two previous occasions and the facts and circumstances of the case contained in the prior decisions are hereby incorporated by reference.¹ In a March 5, 1996 decision, the Board set aside the Office's February 8, 1994 decision and remanded the case for further development to resolve a conflict in medical opinion evidence between Dr. John J. Sheridan, who evaluated appellant on October 14, 1993 and Dr. Leo D. Jansen, an Office referral physician.

Upon remand the Office prepared a statement of accepted facts and referred appellant, together with the case record and questions to be answered, to Dr. Bruce T. Vest, Jr., a Board-certified orthopedic surgeon, for resolution of the conflict.

By report dated May 28, 1996, Dr. Vest reviewed appellant's history, examined appellant and found that appellant had mild tenderness to palpation of the left calf, marked difficulty ambulating with an antalgic gait on the left leg, atrophy of the left calf, weakness of the left ankle, weakness of the left lower extremity, decreased range of left ankle motion, left foot drop and decreased left lower extremity sensation to pinprick and to light touch. Dr. Vest noted that appellant's ruptured left plantaris tendon required multiple medical treatments continuing through October 7, 1991. He opined that the condition never completely healed and on July 20, 1990 was responsible for appellant's exacerbation of symptoms. Dr. Vest further opined that the

¹ Docket No. 92-458 (issued October 15, 1992); Docket No. 94-1435 (issued March 5, 1996). Appellant sustained an injury on October 18, 1989 accepted by the Office of Workers' Compensation Programs for a rupture of left plantaris tendon. On August 14, 1990 appellant filed a notice of recurrence of disability commencing July 20, 1990. In the October 15, 1992 decision, the Board found appellant submitted insufficient medical evidence to establish his recurrence of disability claim.

current findings of weakness of the left ankle and atrophy of the left leg “may be in part due to the injury sustained on October 18, 1989” but also noted that appellant’s current level of weakness and atrophy “is also in large part caused by the severe left lumbar radiculopathy.” In an Office Work Capacity Evaluation form dated May 29, 1996, Dr. Vest noted that appellant should limit kneeling, standing and walking, that he should limit walking to 15 minutes at a time and that appellant could work 0 hours per day, indicating that he was disabled permanently. To the question, of which of the above-described limitations were due to the employment injury Dr. Vest wrote “all.” Dr. Vest also noted that appellant had nonwork-related nerve damage to his left leg and noted that appellant had reached maximum medical improvement.

By decision dated August 8, 1996, the Office accepted that appellant’s July 20, 1990 recurrence was due to his accepted employment injury, but found that there was no evidence of work-related disability after October 7, 1991. The Office concluded that Dr. Vest’s comment that indicated appellant’s weakness of his left ankle and his atrophy of the left calf “may” be in part due to the employment injury, was equivocal, but that his comment that the weakness and atrophy were due in large part to the radiculopathy was unequivocal. The Office concluded that any current disability appellant had was not due to his employment injury. The Office noted the opinion of Dr. Sheridan, found appellant was able to return to work on October 7, 1991.

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

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist’s statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist’s supplemental report is also vague, speculative, or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question. Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Federal Employees’ Compensation Act² will be circumvented when the impartial specialist’s medical report is insufficient to resolve the conflict of medical evidence.³

In the instant case, the Board finds that Dr. Vest’s medical reports, fail to provide sufficient rationale to support the determination that there were no employment-related residuals after October 7, 1991.

² 5 U.S.C. § 8123(a) provides the following: “An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. 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.”

³ *Harold Travis*, 30 ECAB 1071 (1979).

Dr. Vest opined that appellant sustained a rupture of the left plantaris tendon, which required surgical exploration. He opined that appellant's condition never completely healed by July 20, 1990 and was responsible for an exacerbation of symptoms despite the fact that appellant had returned to work. Dr. Vest stated his belief that appellant's synovitis of the left ankle and posterior tibial tendinitis were related to the accepted employment injury. With regard to appellant's condition at the time of examination, Dr. Vest found weakness of the left ankle and atrophy of the left calf, which he attributed in part, to the accepted injury. While Dr. Vest noted that appellant's current weakness could also be attributed in part to lumbar radiculopathy, the Board finds that this statement does not support the Office's conclusion that appellant's current disability is wholly attributable to his nonemployment-related back condition. It is well established that it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relation.⁴ If the medical evidence reveals that an employment factor contributes in any way to the employee's condition, such condition would be considered employment related for purposes of compensation under the Act. In the present case, Dr. Vest indicates that appellant has residuals of the October 18, 1989 injury, which contributed to his findings on examination. At a minimum, the Office should have requested clarification from Dr. Vest as to the nature and extent of the physical residuals due to appellant's accepted injury and recurrence of disability and to the degree such residuals disable appellant for work.

Therefore, this case will be remanded to the Office for clarification by Dr. Vest of the nature and extent of residuals due to either appellant's ruptured tendon injury or to his 1990 recurrence.

The decision of the Office of Workers' Compensation Programs dated August 8, 1996 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
September 28, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁴ See *Arnold Gustafson*, 41 ECAB 131 (1989).