

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STACY HAAG and DEPARTMENT OF DEFENSE, RESERVE OFFICERS'
TRAINING CORPS ADVANCED CAMP, Fort Bragg, N.C.

*Docket No. 97-1361; Submitted on the Record;
Issued February 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that her right toe condition and resulting cheilectomy of the right great toe was causally related to her July 1, 1993 employment injury.

The Board has duly reviewed the case record and finds that appellant has not established that her right toe condition and resulting cheilectomy of the right great toe was causally related to her July 1, 1993 employment injury.

On July 1, 1993 appellant, then a 25-year-old Reserve Officers' Training Corps (ROTC) cadet, filed a traumatic injury claim alleging that she tore a ligament in her right ankle in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for a right calcaneus fracture, a right ankle sprain and right peroneal tendinitis.

By letter dated April 16, 1996, Dr. David A. Kavjian, a Board-certified orthopedic surgeon, requested that the Office authorize a cheilectomy of appellant's right great toe. On April 26, 1996 Dr. Kavjian performed a cheilectomy of appellant's right great toe. On the recommendation of an Office medical adviser, the Office referred appellant to Dr. William Hanff, a Board-certified orthopedic surgeon, for an opinion regarding whether appellant required surgery on her ankle or right great toe due to her July 1, 1993 employment injury.

Based on Dr. Hanff's findings, by decision dated July 25, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish that her July 1, 1993 injury caused degenerative arthritis of the right great toe. In merit decisions dated September 23,

1996,¹ November 7, 1996 and January 14, 1997, the Office denied modification of its prior decision.

With respect to appellant's April 26, 1996 surgery, the medical evidence of record does not establish that it was causally related to the July 1, 1993 employment injury. In order to be entitled to reimbursement of medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.² Therefore, in order to prove that her surgery was warranted, appellant must submit evidence to show that the surgery was for a condition causally related to the employment injury and that the surgery was medically warranted.³ In the present case, appellant has not submitted rationalized medical opinion evidence establishing that her right great toe condition for which she underwent a cheilectomy was causally related to her accepted employment injury.

In a March 26, 1996 report, Dr. Kavjian discussed appellant's history of ankle pain since her 1993 employment injury and her complaints of "associated numbness in the plantar aspect of the foot, as well as pain in the anterior aspect of the ankle and in the dorsum of the midfoot." Dr. Kavjian further stated, "For the past two years, [appellant] reports increasing pain in the right great toe with activities. She does not recall any injury of her toe." He diagnosed chronic peroneal tendinitis of the right ankle and possible impingement syndrome of the ankle, and mild degenerative arthritis of the right great toe. Dr. Kavjian recommended further objective studies to determine the treatment of appellant's ankle problems and noted that "the pain in her great toe may be due more to degeneration of the joint surfaces of the great toe than the osteophytes." Dr. Kavjian did not relate appellant's toe condition to her accepted employment injury and thus his opinion is of little relevance regarding the pertinent issue in the instant case.

The record indicates that Dr. Kavjian performed a cheilectomy of appellant's right great toe on April 26, 1996. Following the operation, Dr. Kavjian submitted follow-up reports documenting appellant's recovery; however, in these reports he does not render an opinion on causation, and thus the reports are of little probative value.

In a report dated May 15, 1996, Dr. Hanff discussed the history of injury, the results of objective tests, and listed findings on examination. Dr. Hanff noted that Dr. Kavjian treated appellant for osteophytes of the right great toe but did not relate the condition to the employment injury. Dr. Hanff diagnosed status post right ankle strain "with no objective clinical findings to demonstrate any permanent damage," status post cheilectomy of the right great toe, "unrelated to the accident of July 1993," and peroneal neuropathy of undetermined etiology. He stated:

¹ The Office informed appellant that she should file a claim with the Department of Veterans' Affairs if she believed that she had a permanent disability resulting from her employment injury and to obtain coverage of her medical treatment by the military installation; *see* Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Reserve Officers' Training Corps*, Chapter 4.600.7(b)(2), (8) (May 1996).

² *See Debra S. King*, 44 ECAB 203 (1992).

³ The Office accepted appellant's claim for a right calcaneus fracture, a right ankle sprain and right peroneal tendinitis. The Office did not accept appellant's claim for any other condition and it is appellant's burden to establish causal relationship for conditions not accepted by the Office. *Charlene R. Herrera*, 44 ECAB 361 (1993).

“I can see no relationship to the operative procedure performed on [appellant’s] right great toe to an ankle sprain, and the operating surgeon also suggested that this was unrelated. [Appellant] apparently has gone through rather extensive evaluation of what sounds like acute ankle sprain. Suggestion has been that this could be an interarticular lesion that is not manifesting itself on MRI [magnetic resonance imaging study], which could be the case, however, her clinical exam[ination] her today appears not to demonstrate any finding suggestive of any reason to perform surgery on [her] ankle.”

In support of her claim, appellant submitted a July 29, 1996 letter from Dr. Hanff in which he indicated that the reports appellant provided from Dr. Kavjian supported a finding that “[t]he complaints that were suspect of being job related indeed, in his opinion, are.” However, Dr. Hanff does not himself relate any condition to appellant’s employment injury but rather stated that Dr. Kavjian found certain unspecified complaints caused by her employment. As this does not support a finding that appellant’s right great toe condition was causally related to her July 1993 employment injury, it is of little probative value.

In a report dated June 14, 1996, Dr. Kavjian stated:

“[Appellant] had a cheilectomy performed on April 26, 1996, due to the development of a bone spur and degenerative changes in the metatarsophalangeal joint of the great toe. It was discussed that such changes can be related to previous injury. Most patients get this disorder at a much older age, after decades of wear and tear. It is therefore felt to be more likely that [appellant’s] problem with the great toe resulted from previous trauma. I cannot state with complete certainty that the July 1993 injury caused the disorder. However, if [appellant] did not have any other injury of her foot this is the most likely explanation.”

While Dr. Kavjian stated that appellant’s employment injury may have caused her great toe condition, his report is couched in speculative and equivocal terms and is, therefore, of diminished probative value.⁴ Thus, his opinion is not sufficient to establish appellant’s claim.

In a report dated December 12, 1996, Dr. Doug A. Vermillion, a physician with the employing establishment, noted that appellant had a history of foot and ankle problems following her July 1993 injury and that she developed arthritis of the toe which required a cheilectomy. He indicated that a physician currently recommended an ankle arthroscopy due to her continued complaints of ankle pain. As Dr. Vermillion does not relate appellant’s arthritis of the toe and cheilectomy to her July 1993 employment injury, his opinion is of little probative value.

Appellant has failed to submit sufficient rationalized medical opinion evidence to establish that her great toe condition and cheilectomy are causally related to her July 1993 employment injury. Therefore, she has failed to meet her burden of proof.

⁴ *William S. Wright*, 45 ECAB 498 (1994).

The decisions of the Office of Workers' Compensation Programs dated January 14, 1997 and November 7, September 23 and July 25, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 8, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member