

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN E. GRAY-NEAL and DEPARTMENT OF DEFENSE,
DEFENSE FINANCING & ACCOUNTING, Cleveland, Ohio

*Docket No. 97-2738; Submitted on the Record;
Issued July 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained a left foot condition and/or disability causally related to her accepted January 30, 1997 employment injury.

On February 10, 1997 appellant, a 33-year-old contact representative, filed a Form CA-1 claim for benefits, alleging that she injured her right thigh and both knees on January 30, 1997 when she tripped over a desk drawer and fell to the floor, landing hard on her right knee.

In support of her claim, appellant submitted March 18 and March 31, 1997 treatment notes which indicated she had been examined by Dr. Shaparak Kamarei, a specialist in internal medicine, at the Cleveland Clinic on these dates. The March 18, 1997 note stated that appellant should limit weight-bearing as much as possible and keep her left foot elevated as much as possible during the day. The March 31, 1997 note advised appellant not to walk for four weeks, and stated that appellant could return to work on April 30, 1997.

An April 3, 1997 Office of Workers' Compensation Programs' report of telephone call indicated that appellant had called the Office to advise that she stopped work on March 18, 1997, bringing in slips stating that she could not walk on her left foot and would therefore be off work until April 30, 1997. The Office noted that appellant had never claimed a foot injury and had not submitted any medical evidence to support a claim that the alleged foot injury resulted from the accepted January 30, 1997 employment injury. The Office stated that appellant should reopen the claim and file a Form CA-2 recurrence claim.

By letter dated April 9, 1997, the Office, noting that it had received the March 18 and March 31, 1997 treatment notes from the Cleveland Clinic, advised appellant that the medical evidence she submitted was not sufficient to determine whether he was eligible for compensation benefits, and that she needed to submit additional evidence in support of her claim. The Office also asked appellant to submit a narrative medical report from her treating physician which

should include the history of initial injury; objective evidence upon examination; results of testing; diagnosis; course of treatment; and her physician's opinion, with medical reasons, as to whether the reported work injury caused or aggravated the claimed conditions.

In addition, the Office noted that appellant apparently stopped work and sought treatment on March 18, 1997 for a possible foot condition, although she reported bruises on her right thigh and swollen knees on her initial claim form, and did not indicate that she sustained a foot injury on that date. The Office therefore advised appellant that, if she was attributing her March 18, 1997 work stoppage to her January 30, 1997 employment injury, she was required to submit a factual statement describing how she injured her left foot and her symptoms since the January 30, 1997 employment injury. The Office also requested that appellant indicate what precipitated her March 18, 1997 work stoppage, and whether she had sustained any other injuries, on or off the job, since January 30, 1997. Finally, the Office requested that appellant have her treating physician include in his report a discussion of the development of her current symptoms and findings on examination, a well-reasoned medical opinion indicating the cause of her condition or disability beginning March 18, 1997, and, specifically, whether her current condition was caused or aggravated by the January 30, 1997 employment injury. The Office advised appellant that she needed to submit the information requested within 30 days.

Appellant subsequently submitted several documents containing medical evidence in support of her claim for benefits based on a left foot condition caused or aggravated by the January 30, 1997 employment injury:

“(1) A January 30, 1997 emergency department report from the Cleveland Clinic indicated that appellant had been treated there on that date after tripping and falling for swollen knees, low back and neck pain, plus a “cold” and numb left foot that had the feeling of electric shock. An addendum to the Cleveland Clinic emergency department report dated January 30, 1997 indicated that appellant had possibly struck her head after tripping and falling, and had complained of neck and back pain. The addendum report stated that appellant was in cervical spine immobilization on a back board, and diagnosed a concussion, a sprained neck and a sprained back.¹

“(2) A March 14, 1997 treatment note from Dr. Gilbert Lowenthal, Board-certified in internal medicine, indicated that appellant fell on January 30, 1997 and was seen in the emergency department, at which time she complained of some discomfort in her left ankle. Dr. Lowenthal stated that appellant had persistent discomfort with minimal swelling, and that otherwise her examination was normal.

“(3) A March 14, 1997 Cleveland Clinic chart note completed by a registered nurse indicated that appellant had pain in her left foot since she fell on her knees at work and that appellant thought her foot may have been twisted. The note also

¹ Appellant also submitted chart notes which indicate she underwent physical therapy at the Cleveland Clinic on February 13, 19, March 6, 11, 14, 18 and 31, 1997.

stated that appellant had related that the left foot pain had subsided but then resumed during the week of March 11, 1997.

“(4) An April 8, 1997 report from Dr. Kamarei, who stated that he had examined appellant on March 31, 1997 for follow-up concerning left foot trauma she experienced in her January 1997 fall. Dr. Kamarei stated that he planned for appellant to resume physical therapy and continue with podiatry, and he took her off-work for two days. Dr. Kamarei advised that at the time of his evaluation, he did not feel strongly that appellant needed to be completely off work, although she had been placed off work for four weeks by another physician. Dr. Kamarei opined that appellant might benefit from a maximum of two days only off-work and that she could return to work either full-time or on restricted duty with minimal standing on her left foot.

“(5) An April 22, 1997 treatment form from Dr. Curtis W. Smith, a specialist in orthopedic surgery, who indicated he had treated appellant on the date the form was completed for a work-related injury. Dr. Smith diagnosed a sprained left knee, a contusion of the left leg and a sprained left foot.

By decision dated May 23, 1997, the Office denied appellant’s claim for compensation based on an alleged left foot condition, finding that the medical evidence appellant submitted was not sufficient to establish that the claimed foot condition was caused or aggravated by her January 30, 1997 employment injury.

By letter dated May 23, 1997, the Office accepted appellant’s claim for cervical sprain, back sprain and concussion.

By telephone call dated June 11, 1997, the Office advised appellant that the conditions which it had accepted were based on the initial emergency room report, dated January 30, 1997, and that the left foot condition for which she sought compensation was not supported by the medical evidence.²

In a letter received by the Office on June 8, 1997, appellant requested reconsideration. In support of her request, appellant submitted an April 22, 1997 report from Dr. Smith, who related that appellant complained of pain in the left knee with pain and swelling as well as pain and swelling in the left foot and ankle. Dr. Smith advised that appellant asserted she was unable to work at that time, secondary to swelling and “green discoloration” of the left ankle and foot. Dr. Smith diagnosed a sprained left knee, contusion of the left knee, sprained left ankle, and sprained left foot, and noted that radiographs of the ankle and foot were normal with respect to bony structures including abnormalities of the subtalar joint. Dr. Smith placed appellant on disability from March 18, 1997 until approximately June 1, 1997.

² Appellant did not file a Form CA-2 claim for benefits based on an occupational disease or disability. The Office, however, treated this as an occupational disease claim based on appellant’s assertion that she was entitled to compensation for an employment-related left foot condition.

By decision dated July 11, 1997, the Office affirmed its previous decision, finding that the medical evidence appellant submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has not met her burden of proof to establish that she sustained a left foot condition and/or disability causally related to her accepted January 30, 1997 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.⁶

In the present case, the only medical evidence appellant submitted in support of her claim were the emergency department reports dated January 30, 1997, the brief, summary medical reports and physical therapy reports from March 1997 and Dr. Smith's April 22, 1997 report. These documents contain brief, conclusive statements summarily indicating that appellant had symptoms in her left foot which might have been a consequence of the January 30, 1997

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Id.*

employment injury, but do not provide a probative, rationalized opinion that her alleged left foot condition was caused or aggravated by factors or conditions of her federal employment. Appellant did not initially report a left foot injury on her initial Form CA-1, and never provided an explanation as to how she sustained a left foot injury or resulting left foot condition beginning March 18, 1997 which was causally related to the January 30, 1997 employment injury, or what her foot symptoms were from the time of injury up until her work stoppage. Although the emergency room reports on the date of injury indicated that appellant had left foot symptoms, appellant did not submit any definitive diagnoses from a physician pertaining to her left foot. Further, none of the medical evidence pertaining to the March 18, 1997 work stoppage, which she allegedly undertook as a result of her left foot condition, described the process through which appellant's alleged foot condition resulted from the January 30, 1997 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish her claim; however, appellant failed to submit such evidence. In the instant case, none of the medical reports appellant submitted contain any rationalized medical opinion relating the cause of the alleged condition to factors of her federal employment. The reports are therefore of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.⁸ The reports did not explain the process through which factors of appellant's employment would have been competent to cause the claimed left foot condition.

Accordingly, as appellant failed to submit any probative, rationalized medical evidence in support of a causal relationship between her claimed condition and the January 30, 1997 employment injury, the Office properly denied appellant's claim for compensation.

⁷ *See Id.*

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

The decisions of the Office of Workers' Compensation Programs dated July 11 and May 23, 1997 are hereby affirmed.

Dated, Washington, D.C.
July 12, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member