

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBEN J. GRACIA and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Orangeville, Ida.

*Docket No. 98-115; Submitted on the Record;
Issued July 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's wage-loss compensation benefits.

In the present case, the Office accepted that appellant, a forestry range technician, sustained Morton's neuroma of the right foot, and exacerbation of right foot congenital hammertoe deformity as a result of a fall on July 25, 1995. On May 22, 1996 the Office terminated appellant's wage-loss compensation benefits on the grounds that the residuals of the accepted injury no longer caused disability. On July 17, 1997 the Office denied modification of the prior decision, after merit review.

The Board has duly reviewed the case record and finds that the Office did not meet its burden of proof in this case.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹

On January 23, 1996 the Office referred appellant to Dr. Edwin Clark, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated February 6, 1996, Dr. Clark reviewed in detail appellant's history of injury, medical history and examination findings. He stated appellant's diagnoses as painful hammertoe deformity, second toe, right foot, secondary to an intrinsic plus overpull, possible rupture of joint capsule and fibular collateral ligament, post trauma; and transfer lesion of the right foot. In response to the Office's request for clarification of what condition(s) resulted from the July 25, 1995 injury, Dr. Clark explained that he could not find evidence of a stress fracture as diagnosed by Dr. Beall, and was unable to confirm a Morton's neuroma as diagnosed by Dr. Waters. Dr. Clark opined that appellant had a

¹ Gary L. Ward, 44 ECAB 1014 (1993).

preexisting hammertoe deformity and on July 25, 1995, when forcefully falling and applying extreme pressure onto his right foot, he felt a sudden popping or snapping sensation, he likely ruptured the fibular collateral ligament of the second toes, perhaps tearing the joint capsule and allowing an overpull of the intrinsic of the foot. Dr. Clark noted that appellant now walked on the lateral border of his foot and in actuality was transferring his weight to the lateral border of the foot to avoid pressure on the acutely painful second metatarsal phalangeal dislocation. He concluded that this indicated that appellant had sustained a new injury on July 25, 1996. Regarding appellant's disability, Dr. Clark opined that appellant's current disability was directly related to his work-related conditions and that appellant should be limited from prolonged standing, walking, squatting and climbing. Finally, he recommended that appellant undergo magnetic resonance imaging (MRI) and/or computerized tomography (CT) evaluation of the soft tissue structure in relation to the bone in the right foot, he also recommended that appellant be referred to Dr. Michael J. Coughlin, a Board-certified orthopedic surgeon, for evaluation of surgical treatment.

Dr. Clark thus supported a finding that appellant continued to be disabled due to his accepted hammertoe condition as well as intrinsic plus overpull, possible rupture of the joint capsule, fibular collateral ligament post trauma; and transfer lesion of the right foot resulting from the July 25, 1995 injury. In assessing medical opinion evidence, the weight to be accorded such medical evidence is determined by its reliability, its probative value, and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.² Dr. Clark's opinion was based upon a proper factual background, was well rationalized, and supported a finding that appellant continued to be disabled due to his employment injury. His opinion thus was of probative medical value.

In a report dated February 23, 1996, appellant's treating physician and orthopedic surgeon, Dr. Waters, noted that he agreed with Dr. Clark's findings that appellant had bilateral congenital hammertoe deformities, and that appellant had good results from a Kenalog injection for his Morton's neuroma of his right foot. Dr. Waters also stated that appellant "clearly had a right foot second toe hammer toe deformity with intrinsic plus lesser toe deformity," which resulted from trauma. Regarding Dr. Clark's finding that appellant had a transfer lesion under the second metatarsal head, Dr. Waters stated that this finding was consistent with a chronic diagnosis, rather than from injury on July 25, 1996. Dr. Waters stated that appellant's prior employment-related injuries and his hammertoe deformity resulted in the second metatarsal condition. Dr. Waters stated that appellant had a second hammertoe deformity which he could correct surgically, and which did not require MRI or CT scan to evaluate. Dr. Waters indicated that he was concerned that even after a hammertoe correction on appellant's second toe, because of appellant's preexisting other hammertoe deformities, appellant would never return to his prior level of employment. On March 11, 1996 Dr. Waters reported that he agreed with Dr. Clark that appellant probably did have a rupture of the fibula collateral ligament and joint capsule injury resulting in the malrotation of the second toe. He indicated that appellant's diagnosis was congenital hammertoe deformities, which could also be "interpreted" as intrinsic plus lesser toe deformity". Dr. Waters opined that "clearly his injury was an exacerbation of his existing right congenital hammertoe deformity." Dr. Waters again noted that the transfer lesion was more

² *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

suggestive of a chronic injury than an acute traumatic injury. Finally, Dr. Waters indicated that appellant lacked interest in returning to his former employment, and that perhaps appellant could be returned for a position which did not require as much hiking and walking. He noted that appellant's preexisting hammertoe deformities could be aggravated by long marches.

Essentially, Dr. Waters disagreed with Dr. Clark as to whether appellant's transfer lesion was caused by the July 25, 1996 injury, however, he agreed that appellant had sustained aggravation of his hammertoe deformity as a result of the employment injury. Dr. Waters did not indicate that appellant could return to his former employment. Most importantly, Dr. Waters did not clarify whether appellant remained disabled due to residuals of the accepted injury.

In a report dated March 29, 1996, Dr. Michael S. Weiss, a specialist in preventative medicine, stated appellant's diagnoses as bilateral foot and ankle pain; and right varus deformity with multiple hammertoes. Dr. Weiss noted that there were no specific functional limitations for appellant's diagnoses, however, that appellant should be fitted with custom bilateral foot orthotics and should participate in a work-hardening program until he could return to previous work activity. On May 3, 1996 he again noted appellant's diagnoses as chronic bilateral foot pain, hammertoes with tender feet. Dr. Weiss indicated that appellant would be kept on light duty until laboratory test results were received. He also did not indicate that appellant could return to his former employment. Furthermore, Dr. Weiss did not clarify whether appellant remained disabled due to residuals of the accepted injury.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits on May 22, 1996.

The Office terminated appellant's wage-loss benefits on May 22, 1996 on the grounds that the evidence of record established that appellant was no longer disabled due to the residuals of the accepted injury. The Board finds, however, that a conflict existed in the medical opinion evidence as to the diagnosis of appellant's employment-related condition. Furthermore, the evidence of record did not establish that appellant was no longer disabled due to residuals of the accepted injury. As previously discussed, Dr. Clark's diagnoses of appellant's employment-related conditions were more extensive than those accepted by the Office than those made by Drs. Waters and Weiss. 5 U.S.C. § 8123(a) provides that 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.

Furthermore, while Dr. Clark clearly opined that appellant remained disabled due to his employment-related conditions, the Office did not receive an appropriate clarification from Drs. Waters or Weiss as to whether appellant remained disabled due to residuals of the accepted injury. Therefore, at the time that the Office terminated appellant's compensation benefits, May 22, 1996, the Office had not met its burden of proof.

On May 22, 1996 the Office advised Dr. Weiss that it was accepted that appellant's July 25, 1996 injury resulted in Morton's neuroma of the right foot, resolved, and exacerbation of congenital hammertoe deformity. The Office requested that Dr. Weiss clarify whether appellant continued to have residuals of the exacerbation of his right congenital hammertoe deformity or whether his present condition was merely caused by residuals of the underlying congenital abnormality without contribution by the July 25, 1995 injury. On May 30, 1996 Dr. Weiss responded that appellant had chronic foot pain, the onset of which he related to his

July 25, 1995 injury, with a history of multiple injuries previous. Dr. Weiss noted that the only objective abnormality appellant had was congenital hammertoe deformity. Finally, he noted that appellant was encouraged to wear his shoe inserts to increase his standing and walking tolerance.

On May 7, 1997 appellant's representative requested reconsideration. In support of the request for reconsideration, he submitted an August 7, 1996 report from Dr. Weiss in which he noted that appellant had tried physical therapy with some improvement, although not lasting and not sufficient to allow him to return to his usual work which required extensive walking on uneven terrain and in work boots. These reports from Dr. Weiss which were submitted to the record after May 22, 1996 did not fully clarify whether appellant had residuals of the accepted injury, and in fact indicated that appellant remained disabled.

The decision of the Office of Workers' Compensation Programs dated July 17, 1997 is hereby reversed.

Dated, Washington, D.C.
July 14, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member