

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTRANIG BOYAJIAN and U.S. POSTAL SERVICE,
AIRMAIL FACILITY, Windsor Locks, CT

*Docket No. 99-635; Submitted on the Record;
Issued February 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant did not have any disability after January 28, 1993 causally related to his accepted conditions of plantar fasciitis and aggravation of heel spurs.

On November 17, 1992 appellant, then a 54-year-old casual clerk, filed a claim for bone spurs in both heels and Morton's neuroma. He indicated that he last worked on November 5, 1992. In a June 24, 1993 decision, the Office rejected appellant's claim on the grounds that fact of injury was not established. In a July 21, 1993 letter, appellant, through his attorney, requested a hearing before an Office hearing representative. In an August 19, 1994 decision, the Office hearing representative found that appellant had submitted sufficient medical evidence in support of his claim to require further development of the case. He therefore set aside the Office's June 24, 1993 decision and remanded the case for such development to be followed by a *de novo* decision. In a March 21, 1996 letter, the Office accepted appellant's claim for aggravation of bilateral heel spurs and plantar fasciitis.¹ The Office instructed appellant to file a CA-7 if he wished to make a claim for disability or permanent impairment. In an October 11, 1996 CA-7 form, appellant sought compensation effective November 6, 1992, the date he stopped working. In a February 26, 1997 decision, the Office denied appellant's claim for compensation for the period after January 29, 1993 on the grounds that the evidence of record failed to establish disability for work due to the employment injury. In a February 4, 1998 letter, appellant's attorney requested reconsideration of the February 26, 1997 decision. In an April 29, 1998 merit decision, the Office denied modification of its February 26, 1997 decision. In a

¹ In an August 1, 1996 report, the Office rejected appellant's claim for a schedule award on the grounds that the evidence of record failed to demonstrate a causal relationship between appellant's employment injury and the claimed permanent impairment. In a December 3, 1996 decision, the Office denied appellant's request for reconsideration of the August 1, 1996 decision on the grounds that the evidence submitted in support of the request was irrelevant and therefore insufficient to warrant review of its prior decision.

June 29, 1998 letter, appellant's attorney again requested reconsideration. In a September 29, 1998 merit decision, the Office again denied modification of its prior decisions.

The Board finds that appellant has not established that he had any disability after January 29, 1993 causally related to his accepted employment conditions.

Although the Office accepted that appellant had aggravation of bilateral heel spurs and plantar fasciitis due to factors of his employment, appellant still had the burden of establishing that those accepted conditions caused disability from work.² In a December 31, 1992 report, Dr. John S. Wetherbee, a podiatrist, stated that he saw appellant for considerable pain in both feet. He noted that x-rays taken in October 1992 showed bilateral heel spurs. Dr. Wetherbee related that appellant reported his job required long hours of standing and walking. He stated that these factors often exacerbate any heel spur condition. Dr. Wetherbee recommended that appellant limit any prolonged walking or standing in order to permit reduction of any inflammation. He also noted that appellant had symptoms of a Morton's neuroma in the second right toe area. In a February 13, 1993 form report, Dr. Wetherbee diagnosed plantar fasciitis and Morton's neuroma of the right second toe. He commented that appellant could return to work as long as there was no prolonged standing or walking. Dr. Wetherbee indicated that he had discharged appellant from treatment on January 28, 1993. In an April 29, 1993 report, he stated that prolonged standing or walking often exacerbated any heel spur condition. Dr. Wetherbee commented that from appellant's history, his work did aggravate his heel spur condition. He further commented that it appeared the period of aggravation had continued to the present.

In a November 17, 1994 report, Dr. Steven Selden, a Board-certified orthopedic surgeon, indicated that on examination appellant had mild tenderness in both heels. He stated appellant had bilateral plantar heel spurs which were permanently aggravated by his work activities at the employing establishment from July to November 1992. Dr. Selden concluded that appellant had a two percent permanent impairment of each foot and commented that he did not require any further treatment. He indicated that appellant was capable of working but should avoid prolonged standing for more than 1 hour at a time without sitting and resting for 10 to 15 minutes. In a December 13, 1994 report, Dr. Selden, in response to questions by the Office, repeated his conclusion that there had been a permanent aggravation of appellant's bilateral plantar heel spurs by work activities at the employing establishment. He indicated that standing for long periods would permanently aggravate the heel spurs because pressure would cause irritation and permanent damage to the tissues in the area of the heel spurs. Dr. Selden gave no opinion on whether appellant was disabled for work for any period due to his accepted conditions.

In a February 2, 1995 memorandum, an Office medical adviser noted that a heel spur was a bony prominence or osteophyte arising from the plantar surface of the calcaneal bone. He commented that a heel spur was generally considered to be a degenerative process, formed with repeated stretching and partial tearing of the plantar fascia off the calcaneus from the activities of daily living with subsequent bone formation in the area. The Office medical adviser stated that the etiology of the heel spur was more consistent with ambulation on the feet when the plantar

² See *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

fascia is stretched. He indicated that the heel spur formation was slow and gradual, occurring over many years. Therefore, the heel spur was related more to activities of daily living than to a specific incident or situation. The Office medical adviser stated that when there was an acute condition of heel spur, standing or direct pressure on the heel could symptomatically aggravate the condition but did not change the course or progression of the heel spur. He concluded that a four-month period of employment involving walking and standing would not permanently or materially aggravate a heel spur. The Office medical adviser added that prolonged standing could aggravate a heel spur but did not change the natural course of the condition. He stated that the symptomatic aggravation was temporary and self-limiting and would resolve within a matter of days or weeks or, in rare cases, several months. The medical adviser commented that the medical evidence of record failed to substantiate or establish a permanent or material aggravation of appellant's calcaneal spurs as a direct consequence of his factors of employment, particularly standing for an eight-hour work shift.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Paul B. Murray, an orthopedic surgeon. In an April 21, 1995 report, he stated that, in both feet, appellant had tenderness along the plantar fascial region around the arch of the foot and about its insertion into the calcaneus. Dr. Murray noted appellant complained of subjective decreased sensation in the second toe to the right foot but had normal sensation subjectively around the second toe of the left foot. He reported that x-rays of both feet showed calcaneal heel spurs. Dr. Murray diagnosed plantar fasciitis of both feet and concluded that appellant had a two percent permanent impairment of each foot based on objective and subjective symptoms. The Office requested clarification of the issue of causal relationship. In a September 1, 1995 report, Dr. Murray indicated that he agreed with Dr. Selden that prolonged standing can permanently aggravate the heel spur and plantar fascia that would be attached to the heel spur. He commented that the pressure from standing causes irritation and permanent damage to the plantar fascia in the area of the heel spurs. Dr. Murray noted that walking and standing for long periods of time, especially on a hard surface, would lead to permanent aggravation. He, however, did not discuss whether appellant would have been disabled for work for any period due to the accepted employment-related conditions.

Appellant's attorney submitted a November 15, 1995 report from Dr. Robert L. Fisher, a Board-certified orthopedic surgeon, which had been obtained pursuant to a discrimination claim appellant had filed against the employing establishment. He noted that appellant had not received any treatment since he had been treated by Dr. Wetherbee and was still using the soft arch supports provided by him. In an examination, Dr. Fisher reported that appellant could heel and toe walk with no difficulty. He found no plantar callosities. Dr. Fisher commented that he was not impressed by any tenderness under the heel or the plantar fascia. He noted appellant complained of tenderness at the tip of the right second toe. Dr. Fisher stated that there was no doubt that appellant developed plantar fasciitis due to his employment in 1992. He commented that the condition was appropriately treated with cushions and arch supports but, despite the treatment, appellant felt he could no longer handle his job. Dr. Fisher indicated that, under the circumstances, it was prudent that appellant did not continue in that particular job which involved prolonged standing and walking on concrete floors. He noted appellant never had definitive treatment for his plantar fasciitis such as steroid injections or surgery. Dr. Fisher stated that, while appellant still had subjective symptoms, he could find no objective evidence of

permanent disability. He concluded that appellant could be currently employed in most positions with or without walking or standing. Dr. Fisher did not address any past periods of possible disability due to the accepted employment-related condition.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Myron E. Shafer, a Board-certified orthopedic surgeon, for a second opinion. In a September 11, 1996 report, he recounted appellant's medical history and noted that he had not been treated for his foot since January 1993. Dr. Shafer noted that in examination appellant was tender at the tip of his heel but not over the plantar fascia and not on the under surface of the heels. He commented that pain at the tip of the heel was not the area expected to be tender from a heel spur or plantar fasciitis. Dr. Shafer concluded appellant did not have any disability. He stated appellant did not have a Morton's neuroma. Dr. Shafer also stated that there was no relationship between the finding of tenderness in the posterior aspect of the heel and the 1992 employment. He noted appellant gave a history of pain in his feet and the diagnosis of plantar fasciitis. Dr. Shafer stated, however, that this condition had cleared up and probably ended several months after appellant stopped working and stopped being on his feet.

The Office based its decision that appellant's employment-related condition ended on January 29, 1993 on Dr. Shafer's report that appellant had not been treated since January 28, 1993 and, at the time of his examination, had no evidence of plantar fasciitis.³ He commented that appellant's condition probably resolved within of few months of his cessation of work involving prolonged standing and walking. Dr. Wetherbee, in his April 29, 1993 report, had stated that prolonged standing and walking would aggravate appellant's plantar fasciitis and stated that appellant's condition had been aggravated to at least the time of his report. Dr. Selden and Dr. Murray stated that the prolonged standing had permanently aggravated appellant's condition and walking required by his job. While these reports therefore present medical evidence that appellant's employment-related condition lasted beyond January 29, 1993, the physicians did not give any medical opinion on whether appellant was disabled for work due to such aggravation of his plantar fasciitis. Dr. Fisher stated that appellant had subjective symptoms of the condition but no objective evidence in support of his condition. He concluded that appellant could be employed at most positions with or without walking or standing. Dr. Shafer concluded that appellant's condition had resolved by the time of his examination. Appellant has not submitted sufficient medical evidence to establish that he was totally disabled for work due to the accepted employment-related aggravation of his heel spurs and plantar fasciitis after Dr. Wetherbee ceased treating him in January 1993. Drs. Fisher and Shafer, in their examinations, demonstrated that appellant's employment-related condition had either resolved or was no longer causing any disability for work.

The decisions of the Office of Workers' Compensation Programs, dated September 28 and April 29, 1998, are hereby affirmed.

³ While evidence in the record shows that the Office referred appellant to Drs. Selden, Murray and Shafer, the record does not contain the initial letters addressed to those physicians by which the Office set forth the nature of the referral. The Board, therefore, cannot determine whether any of the physicians were selected to serve as an impartial medical specialist to resolve a conflict in the medical evidence. Under the circumstances of this case, the Board will treat each of these physicians as second opinion specialists.

Dated, Washington, D.C.
February 22, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member