

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES J. SLAUGHTER and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 97-2495; Submitted on the Record;
Issued January 10, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after November 25, 1994; and (2) whether appellant has any right foot or knee conditions causally related to her accepted left foot conditions.

The Office of Workers' Compensation Programs accepted that on May 19, September 11, October 7 and December 4, 1969 and May 18, 1989 appellant sustained injuries related to her left foot. The record reflects the acceptance of the conditions of left foot contusion, subsequent surgeries for removal of ganglions cysts on the left foot and a fractured fourth toe on the left foot. The Office paid appropriate compensation for all relevant periods.

Dr. James A. Hill, appellant's treating physician and a Board-certified orthopedist, released appellant to work with restrictions starting at four hours a day on June 20, 1994. Appellant did not return to work at that time. On October 4, 1994 Dr. Hill approved of appellant's job as a modified mailhandler, which the employing establishment offered consistent with Dr. Hill's June 20, 1994 restrictions. In an examination of October 19, 1994, Dr. Hill indicated that appellant had some crepitus in her left ankle and that the roentgenogram revealed some osteoporosis but no arthritic changes. He noted that appellant was status post right little toe amputation and that aggressive treatment was not warranted.¹ Dr. Hill stated, "[I]t is my understanding that the patient is going back to restricted work activity." Appellant returned to limited-duty work as a modified mail handler for four hours a day on October 19, 1994.

On January 3, 1995 appellant filed a notice of recurrence of disability due to her employment-related conditions. Appellant contended that the recurrence of disability began on November 25, 1994 when she stopped work. She stated that she has pain and swelling in both feet and that her little toe has not healed properly since the amputation.

¹ The right toe amputation apparently occurred in 1992. The Office did not accept appellant's right foot conditions as being employment related.

Dr. Hill reported that on November 30, 1994, appellant was complaining of pain and swelling in both feet and discomfort at her right amputated little toe. Dr. Hill noted that appellant's right little toe was swollen and tender and recommended that appellant remain off work and acquire a bone scan to rule out any osteomyelitis. Subsequent reports from Dr. Hill referenced appellant's status but did not address whether she was disabled for work due to her employment injury.

In a March 2, 1995 report, Dr. Hill noted that appellant was involved in a nonwork-related motor vehicle accident on February 5, 1995 and sustained a fractured right lateral plateau and loss of consciousness. He stated that appellant was subsequently hospitalized and had a right knee arthroscopy, closed reduction and percutaneous pinning of her right tibia. He noted that appellant was in a nonweight-bearing brace and on crutches. Regarding appellant's toe, Dr. Hill stated appellant was "still having pain there but as you can deduce, she is having many more problems with her recent injury." Additional reports from Dr. Hill addressed the status of appellant's right foot.

In a July 26, 1995 report, Dr. Hill noted that appellant had a poor dorsalis pedis pulse on both feet with marked tenderness on palpation of her right amputation site. He recommended that appellant acquire an arterial blood flow study. In a September 5, 1995 report, Dr. Hill stated that the peripheral blood flow examination revealed no abnormalities. On examination, appellant had marked diffuse tenderness of both feet, especially at her fifth toe amputation site on the right. He stated, "I am at loss to explain this patient's ongoing difficulty with her feet." In an October 23, 1995 report, Dr. Hill noted that appellant complained of pain in both feet, the right greater than the left, but discussed only appellant's right fifth toe amputation site.

In a November 30, 1995 report, Dr. Hill stated that appellant had marked hypersensitivity on palpation of her left foot diffusely with some slight decrease in sensation in the L5 distribution. He opined that appellant had some dysesthesia in her lower extremity due to multiple operations.

In a December 4, 1995 report, Dr. James C. Erickson, a Board-certified anesthesiologist, noted appellant's history and indicated that examination of the lower extremities was normal except for a hypesthetic zone along the medial aspect of the ankle and foot extended over the dorsum of the foot and to the base of the first and second toes. There was no edema of either foot or ankle. Dr. Erickson stated that his impression was postsurgical deafferentation of portions of the left ankle and foot, normally enervated by the posterior and anterior tibial nerves. He also noted that the zone enervated by superficial saphenous and superficial peroneal nerves was also affected. In a December 21, 1995 report, Dr. Erickson noted that appellant's left foot pain was essentially relieved for about one week after the administration of an ankle block. He opined that the duration and degree of relief strongly suggests that appellant had a sympathetically mediated pain, but not a full blown reflex sympathetic dystrophy syndrome. Dr. Erickson recommended another ankle block and urged appellant to consider weight reduction.

In a January 11, 1996 report, Dr. Hill noted that appellant had diffuse tenderness and hypersensitivity of her left foot. He opined that appellant had a dyskinesia of her left leg due to multiple operations. In medical reports of February 29, April 8, May 17, July 15 and

September 30, 1996, Dr. Hill essentially reiterated his opinion that appellant has a dyskinesia of her left lower extremity secondary to multiple operations.

In a decision dated July 16, 1996, the Office advised appellant that the job of modified mailhandler, which she was employed in on October 19, 1994 for four hours per day fairly and reasonably represented her wage-earning capacity.² It appears that appellant continued to receive compensation for the remaining four hours a day.

In a November 1, 1996 report, Dr. Hill supported that appellant could work provided that she avoid prolonged standing, walking, kneeling, squatting, bending, climbing or heavy lifting greater than 20 pounds.

In a March 20, 1997 report, Dr. Erickson noted that ankle blocks only afforded a few days of relative comfort from left foot pain. He noted that appellant was inactive as usual and uses a cane to assist during walking. Sensation, muscle strength and straight leg raisings were essentially normal in both lower extremities and the patellar reflexes were mere trace responses with absent Achilles deep tendon reflexes.

By decision dated April 29, 1997, the Office denied appellant's claim for a recurrence of disability on November 25, 1994 as the medical evidence failed to demonstrate a causal relationship between the recurrent disability and a worsening of appellant's accepted condition.

In a May 16, 1997 letter, appellant requested reconsideration. On reconsideration, appellant also contended that her right knee and foot conditions were caused by her accepted left foot conditions.

In a May 14, 1997 report accompanying the request, Dr. Hill noted appellant's continuing complaints of difficulty with her left foot. He stated that x-rays were normal and opined that appellant's main problem was "secondary to her neurological status."

In a May 27, 1997 merit decision, the Office denied modification of the April 29, 1997 decision. The Office further found that the evidence did not establish that any of appellant's right foot or knee conditions were caused by her accepted left foot condition.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on or after November 25, 1994 causally related to her accepted conditions.

When an employee, who is disabled from a job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must

² Since more than one year has elapsed between the issuance of the Office's wage-earning capacity decision of July 16, 1996 and July 24, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review this decision. See 20 C.F.R. §§ 501.2(c), 501.3(d).

show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

As noted above, appellant may establish a recurrence of disability by showing a change in the nature or extent of her light-duty job. The Board finds that there is no evidence indicating that appellant experienced a change in work duties.

The Board further notes that the medical evidence is insufficient to establish that appellant sustained any disability, beginning November 25, 1994, due to her accepted left foot conditions. Instead, the medical evidence either attributes her disability to nonemployment conditions or indicates that she could resume her modified duties. Part of appellant's burden of proof includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

Dr. Hill, appellant's treating physician, released appellant to work with restrictions starting at four hours a day on June 20, 1994 and, on October 4, 1994 he approved of appellant's job as a modified mailhandler. In reports subsequent to November 25, 1994, Dr. Hill did not specifically address whether appellant's accepted left foot condition caused any disability for work or did not provide any explanation or medical rationale to provide the necessary causal relationship to establish that appellant's new condition in her left foot was causally related to the accepted work-related conditions. Similarly, Dr. Erickson noted appellant's conditions, but did not opine that she had any disability due to her accepted conditions. For example, in his reports of November 30, 1995, January 11, February 29, April 8, May 17, July 15 and September 30, 1996 reports, Dr. Hill opined that appellant had some dysesthesia in her lower extremity secondary to her multiple operations but failed to provide the necessary medical rationale to support causal relation or provide an explanation as to how dysesthesia would arise approximately 16 years later. In his December 4, 1995 report, Dr. Erickson opined that appellant had postsurgical deafferentation of portions of the left ankle and foot and noted that the zone enervated by superficial saphenous and superficial peroneal nerves were also affected, but failed to relate these conditions to any of appellant's work-related injuries. In his December 21, 1995 report, Dr. Erickson felt that appellant had sympathetically mediated pain, but failed to provide any objective findings to support such a diagnosis.

For these reasons, appellant had not established that she sustained a recurrence of disability beginning November 25, 1994.

The Board further finds that appellant has not established that she has any right foot or knee conditions causally related to her accepted left foot conditions.

³ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Jerry A. Miller*, 46 ECAB 243 (1994); *Ezra D. Long*, 46 ECAB 791 (1995); *Ronald M. Cokes*, 46 ECAB 967 (1995).

In her reconsideration request, appellant contended that her right foot and knee problem conditions were related to her accepted left foot condition. Appellant asserted that her right toe was amputated secondary to her work injuries because of the shifting of her weight to that area of the body. She stated that, due to pain, she was unable to walk straight such that the majority of her weight shifted to her right side. Appellant asserted that her right knee problems were due to a fall caused by her left leg giving way and was not affected by her automobile accident.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from that injury is deemed to arise out of the employment, unless it is the result of an intervening cause which is attributable to the employee's own intentional conduct.⁵ An employee has the burden of establishing that any specific condition for which compensation is claimed is causally related to the employment injury.⁶

Conditions concerning appellant's right foot and knee were not accepted by the Office as being work related. While reports from Drs. Hill and Erickson note appellant's right leg conditions and symptoms, the physicians failed to provide an opinion on whether the conditions appellant experienced in her right foot and knee were causally related to the accepted left foot conditions. As appellant has not provided medical opinion evidence causally relating her right knee and foot conditions to her accepted left foot conditions, the evidence is insufficient to meet appellant's burden of proof.⁷

Therefore, appellant has not established that she sustained any injuries consequential to her accepted left foot conditions.

⁵ *Robert W. Meeson*, 44 ECAB 834 (1993).

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Elizabeth Stanislav*, 49 ECAB ____ (Docket No. 96-1030, issued May 26, 1998). Thus, as a lay person, appellant's opinion that her feet pain on both the right and left side and her knee condition are causally related to her employment injuries has no probative value on the medical issue. *Birger Areskog*, 30 ECAB 571 (1979); see also *James A. Long*, 40 ECAB 538 (1989).

The May 27 and April 29, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 10, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member