

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSWITHA GALLELI and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

*Docket No. 97-1311; Submitted on the Record;
Issued July 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability causally related to her February 19, 1990 employment injury.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision on the issue whether appellant has met her burden of proof to establish that she sustained a recurrence of disability causally related to her February 19, 1990 employment injury.

On May 6, 1991 appellant, then a 34-year-old single needle sewing machine operator, filed a claim for an occupational disease (Form CA-2) alleging that on February 19, 1990 she first realized that the lump on her right ankle was caused or aggravated by her employment. Appellant stopped work on July 17, 1991 and returned to light-duty work as a buttonhole machine operator on April 14, 1992.¹

By letter dated June 13, 1991, the Office of Workers' Compensation Programs accepted appellant's claim for synovial cyst of the right ankle and authorized surgical excision of a large synovial cyst on the right ankle with arthrotomy into the ankle, which was performed on July 17, 1991.

On May 13, 1994 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on February 16, 1993. By letter dated November 18, 1994, the Office advised appellant to submit medical evidence supportive of her claim.

By decision dated December 17, 1994, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her

¹ The record reveals that appellant was separated from the employing establishment due to downsizing of the factory.

February 19, 1990 employment injury. In a December 30, 1994 letter, appellant, through her counsel, requested an oral hearing before an Office representative.

In an April 21, 1995 decision, the hearing representative vacated the Office's December 17, 1994 decision and remanded the case for further development of the medical evidence based on the March 30, 1995 medical report of Dr. Dominic F. Nappi, an orthopedic surgeon and appellant's treating physician, revealing that appellant's ongoing problems were caused by the surgery she underwent to correct the accepted condition.

By letter dated June 7, 1995, the Office referred appellant along with a statement of accepted facts, medical records and list of specific questions to Dr. Frank Mattei, a Board-certified orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Mattei of the referral.

Dr. Mattei submitted a July 7, 1995 medical report, revealing that appellant's current right foot condition was not employment related.

By decision dated August 22, 1995, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her employment injury based on Dr. Mattei's medical opinion. By letter dated September 5, 1995, appellant, through her counsel, requested an oral hearing before an Office representative.

In a June 13, 1996 decision, the hearing representative affirmed the Office's decision. In an August 30, 1996 letter, appellant, through her counsel, requested reconsideration of the Office's decision.

By decision dated December 3, 1996, the Office denied appellant's request for modification.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.² As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

Section 8123 of the Federal Employees' Compensation Act 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.⁴

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

⁴ 5 U.S.C. § 8123; see *Shirley L. Steib*, 46 ECAB 309 (1994).

In the present case, appellant's treating physician, Dr. Nappi, opined in a March 30, 1995 medical report that appellant's peroneal spastic right foot and ankle secondary to peroneal tenosynovitis and fibrosis were related to a new complication to the surgery appellant underwent on July 17, 1991 and her employment injury. The Office referred appellant to Dr. Mattei for a second opinion evaluation who opined that appellant had peroneal spasm, which restricted her inversion/eversion of her right foot, mostly at the subtalar joint. Dr. Mattei further opined that the condition of spasm of the peroneal spasm was not in the vicinity of the surgery, but may have been a preexisting condition that predated the development of the diagnosed synovial cyst. The Board finds that there is a conflict in the medical opinion evidence between Dr. Nappi and Dr. Mattei regarding whether appellant had a recurrence of total disability due to her accepted employment injury. Upon remand, therefore, the case shall be referred to an appropriate Board-certified specialist accompanied by a statement of accepted facts and the complete case record, for a rationalized medical opinion addressing the issue. After such further development as deemed necessary, the Office shall issue a *de novo* decision.

The December 3 and June 13, 1996 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further development consistent with this decision.

Dated, Washington, D.C.
July 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member