U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE C. HALL and U.S. POSTAL SERVICE,
POST OFFICE, Stirling, NJ

Docket No. 99-751; Submitted on the Record;
Issued July 18, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she aggravated a previous injury to her right ankle in the performance of duty from September 19, 1994 to November 13, 1995.

On December 23, 1996 appellant, then a 64-year-old window/distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) wherein she alleged that the employing establishment did not adhere to her work restrictions which were set due to her limitations in her right ankle caused by an earlier work-related injury, in that although she was restricted to standing 30 minutes followed by 30 minutes of sitting and working at 2-hour intervals, she frequently worked outside these restrictions, which caused her pain. The employing establishment controverted the claim, contending that appellant never returned to work, and that she was offered a suitable job which was approved by her physician, but that it was refused by appellant.

In response to a February 19, 1997 request by the Office of Workers' Compensation Programs for more information, appellant stated in a letter received by the Office on March 13, 1997 that she had already sent medical evidence and other documents. She contended that she returned to work on September 19, 1994 and worked until November 13, 1995, and that caused her additional pain.

In a decision dated April 4, 1997, the Office denied appellant's claim, finding that she had failed to establish fact of injury. Specifically, the Office noted that the evidence was insufficient to establish that she experienced the claimed employment factor at the time, place and in the manner alleged. The Office further noted that no medical evidence was submitted with the claim.

By letter dated April 11, 1997, appellant requested a hearing.

By memorandum dated August 25, 1994, appellant was offered and accepted a job as a modified window clerk for the employing establishment; the position description noted: "all assigned duties will be in strict compliance with your work restrictions. She submitted a facsimile from a rehabilitation counselor who noted that the Office had stipulated that appellant's job would be "within the following work restrictions: sitting (continuous), walking (intermittently up to 2 hours a day), standing (intermittently up to 3 h[ou]rs per day, no more than 30 minutes on feet each hour." The counselor observed appellant at her job on August 25, 1995, and found that although appellant's morning duties met her work restrictions, her afternoon duties did not meet her requirements, as she had to spend a longer time than allowed on her feet.

Appellant also submitted her notes as to her hours and when she got breaks.

In an attending physician's report (Form CA-2a) dated January 8, 1997, Dr. Albert A. Milanesi, an orthopedic surgeon, noted that as of November 15, 1996, appellant was limited to two hours standing and two hours sitting due to a decreased range of motion in her right ankle, pain, achiness and increased swelling. Dr. Milanesi responded to the question, "Is employee's present condition due to the injury for which compensation is claimed" by checking the "yes" box. No explanation was requested or provided.

Appellant also submitted a February 12, 1997 report in which Dr. Milanesi summarized his treatment of appellant to date. Dr. Milanesi noted that he first examined appellant on November 1995 and that at that time appellant had a history of a slip and fall while working for the employing establishment, that this caused a right ankle trimalleolar fracture, resulting in two previous operations on this ankle.[1] He noted that when appellant initially saw him, she had limited range of movement in her right ankle and marked tenderness over the medial deltoid fragment and pain along the screw sites along the lateral malleoar area and tenderness with slight external rotation to the right ankle area. On January 30, 1996 appellant underwent a right arthrotomy with removal of the semitubular plate, cortical screws and exploration of the medial ankle joint with excision of a loose bony fragment. Although Dr. Milanesi noted that appellant had done reasonably well, he found that appellant showed marked limitations in the ankle movement and x-rays of her right ankle demonstrated early osteoarthritis, as well as osteoporosis of the distal end of the tibia. He opined:

> "There is a direct causal relationship between her initial injury with a twist and fall sustained and the trimaleolar fracture, the subsequent tarsal tunnel and subsequent removal of hardware with the nonunion of the medial malleolar area. All of this is attributed to the slip and fall and all of this is a consequence of her initial injury.
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> "This patient has definitely been disabled during this period of time. I feel that the right ankle suffered a traumatic insult with her initial injury and then three subsequent surgical interventions that are three more traumatic episodes to a very

[1] Appellant had an open reduction and internal fixation by Dr. Carlson, an orthopedic surgeon, on March 18, 1993 and a tarsal tunnel syndrome release on February 17, 1994 due to a painful right foot area.

> delicate ankle situation. She still complains of ankle and foot swelling and she still has aching throughout the dorsal, lateral and medial aspects of the ankle. I feel that the right ankle will go on to osteoarthritis with marked pain and limitation of motion ... but this is all directly related to the initial trauma and subsequent surgery.
>
> "There is firm subjective information and there is solid objective information, both clinically and radiologically, that support the claimant's diagnosis and her symptoms. The medical evidence highly sways toward her pain and discomfort."

In a report dated March 24, 1997, Dr. Milanesi found appellant totally disabled, explaining:

> "This is due to extreme limitation in her right ankle motion, moderate but continual swelling with osteoporosis of the right ankle and degenerative traumatic osteoarthritis of the right ankle. She has marked pain on going from a sitting to a standing position and is unable to walk for any period of time. She is unable to stand for any length of time as this increases the swelling, which in turn increases her pain. The pain is severe enough to be distracting to her mental capabilities, and thus place further limitations on her ability to work in any position that requires concentration and accuracy.

In a May 7, 1997 report, Dr. Milanesi indicated that appellant was completely disabled and unable to perform limited duty due to marked pain, limited motion and poor ankle strength. He noted that appellant will need an ankle fusion due to traumatic osteoarthritis this year.

At the hearing held on October 29, 1997, appellant testified that she sustained a trimalodeleer flat fracture when she slipped on ice in the employing establishment's parking lot, and that following this injury, she was out of work for one and one-half years. Appellant testified that after her tarsal tunnel release on February 18, 1994, she was eventually able to go back to work part time and limited duty. However, although appellant's morning job was within her restrictions, her afternoon job required her to stand too long and she was not relieved for her breaks, as promised. As a result of this, appellant testified that she found that the problems with her ankle were getting worse, that she was getting excruciating pain as the time went on, and that when she went home, she would be off her feet for about two hours because of the swelling and the pain. She testified that Dr. Milansi took her off work beginning November 13, 1995 and that she had been out of work since that time. Appellant also testified that she underwent surgery, and that after the surgery, she was not in as much pain as before. She stated her belief that the job aggravated her condition, because the pain would be progressive when working.

By decision dated December 8, 1997, the hearing representative disallowed appellant's claim for compensation, finding that appellant had not established that she sustained an injury or worsening of her condition due to her duties from September 1994 to November 1995, as claimed.

On January 16, 1998 appellant requested reconsideration of the Office's decision. In support thereof, appellant submitted a November 11, 1997 medical report in which Dr. Milanesi opined as follows:

> "The injury to [appellant's] right ankle while working at the [employing establishment] aggravated her preexisting injury related to her traumatic fall injury at work on March 18, 1993. The prolonged standing permanently aggravated her problem relative to the right ankle making her condition worse, necessitated subsequent surgery and prolonged rehabilitation.... She is totally disabled from work and may need a subsequent ankle fusion in the future."

By decision dated March 26, 1998, the Office denied appellant's request for reconsideration, finding that "the evidence and/or argument submitted and of the record is not sufficient to warrant modification of our decision of April 4, 1997.

By letter dated June 15, 1998, appellant again requested reconsideration. In support thereof, she submitted a June 5, 1998 medical opinion by Dr. Milanesi, wherein he stated:

> "On this date of traumatic right ankle injury which was surgically reconstructed; [appellant] suffered irreversible traumatic osteoarthritis of the right ankle. While working at the [employing establishment] prolonged standing and walking at work between September 1994 and November 1995 aggravated the preexisting condition. Since then [appellant's] right ankle continues to deteriorate due to marked pain, limited range of motion and decreased functional capacity. She will need an ankle fusion. Her condition is chronic and permanent disability has resulted."

By decision dated September 14, 1998, the Office denied reconsideration, finding that a causal relationship had still not been established.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing 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 an injury was sustained in the performance of the duty as alleged and/or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential

[2] 5 U.S.C. §§ 8101-8193.

[3] *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is alleged; (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 appellant 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 appellant.[5] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[6] 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 appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.[7]

In this case, the Office found that appellant failed to establish fact of injury in that she failed to establish a causal relationship between the condition claimed and specific employment factors of appellant's job. The Office reasoned that Dr. Milanesi did not explain the nature of the relationship between the diagnosed condition and specific duties of appellant's employment.

The Board finds, however, that the medical evidence submitted from Dr. Milanesi, appellant's treating physician, is sufficiently rationalized to raise an uncontroverted inference that appellant's injury is causally related to her employment.[8]

Dr. Milanesi's initial reports are not sufficient, by themselves, to link appellant's right ankle injury to her alleged working outside of her restrictions at the employing establishment between September 19, 1994 and November 13, 1995. Dr. Milanesi's reports received by the Office prior to the decision of the hearing representative on December 8, 1997 may link appellant's pain to her initial injury, but fail to link her disability to her working outside of her restrictions during the aforementioned time period. However, in his report dated November 11,

[4] The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. § 10.5(a)(15), (16).

[5] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *Ern Reynolds*, 45 ECAB 690 (1994).

[7] *Kathy Marshall*, 45 ECAB 827, 832 (1994).

[8] *See Ruth Sewell*, 48 ECAB 188, 193 (1996).

1997, Dr. Milanesi noted that appellant's prolonged standing permanently aggravated her problem relative to her right ankle, but did not provide sufficient details. Then, in his opinion dated June 5, 1998, Dr. Milanesi opined that, "While working at the [employing establishment] prolonged standing and walking at work between September 1994 and November 1995 aggravated the preexisting condition." Although this evidence, in combination with Dr. Milanesi's earlier reports, is not sufficient to meet appellant's burden of proof, these reports, together with appellant's testimony and the statement of the rehabilitation counselor, support a *prima facie* case that the aggravation of her employment-related ankle injury is related to her alleged exceeding of her restrictions from September 1994 to November 1995, and accordingly, raise an uncontroverted inference as to causal relationship, sufficient to require further development of the record by the Office.[9]

It is well established that proceedings under the Act are not adversarial in nature and while appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[10] The Office has an obligation to see that justice is done.[11] When an uncontroverted inference of causal relationship is raised, as is the case here, the Office is obligated to request further information from an employee's attending physician.[12]

On remand, the Office shall prepare an appropriate statement of accepted facts and shall refer it together with appellant and the case record to Dr. Milanesi for a rationalized medical opinion explaining any causal relationship between appellant's light ankle disability and factors of his federal employment. If Dr. Milanesi is either unable or unwilling to submit a supplemental report, the Office shall refer appellant, the case record and statement of accepted facts to a specialist in the appropriate field of medicine for such opinion. Following this and any necessary further development, the Office shall issue a *de novo* decision.

[9] *See Horace Langhorne*, 29 ECAB 820, 821 (1978).

[10] *John J. Carlone*, 41 ECAB 354 (1990).

[11] *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[12] *John J. Carlone*, *supra* note 10 at 360.

The September 14 and March 26, 1998 and December 8, 1997 decisions by the Office of Workers' Compensation Programs are set aside and this case is remanded for further proceedings in accordance with this decision.

Dated, Washington, D.C.
July 18, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member