

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE WEBB and DEPARTMENT OF JUSTICE, BUREAU
OF PRISONS, FEDERAL CORRECTION COMPLEX, Coleman, FL

*Docket No. 99-1548; Submitted on the Record;
Issued July 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has more than a two percent permanent impairment of the right leg; and (2) whether appellant has met his burden of proof in establishing that his right shoulder condition is causally related to his employment injury.

On December 7, 1995 appellant, then a 41-year-old correctional officer, was stepping down from inspecting a truck when he twisted his left ankle and fell, landing on his right foot. Appellant filed a claim for a fracture of the right leg. In a December 11, 1995 report, Dr. H. Howard Vesser, a Board-certified orthopedic surgeon, diagnosed a fracture of the lateral malleolus of the right ankle and anterolateral sprain of the left ankle. In a January 9, 1996 report, Dr. Vesser indicated that appellant was using crutches and had developed pain in his neck, right shoulder and right arm. He diagnosed cervical strain from the original injury and use of crutches. In a February 19, 1996 report, Dr. Philip N. Gelfand, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan showed early degenerative changes and bulging discs and disc space narrowing at C5-6 and C6-7. He indicated that there was no evidence of focal disc herniation. In a March 7, 1996 report, Dr. J. Mandume Kerina, an orthopedic surgeon, interpreted the MRI scan as showing a herniated C5-6 disc with disc dissection at C5-6 and C6-7. In an April 25, 1996 report, Dr. Allan Herskowitz, a Board-certified neurologist, reported that an electromyogram and nerve conduction studies showed appellant had findings consistent with a right C6 cervical radiculopathy. He commented that only minimal denervation was noted.

The Office of Workers' Compensation Programs accepted appellant's claim for a fracture and sprain of the right ankle, aggravation of cervical degenerative disc disease and aggravation of cervical strain. Appellant received continuation of pay for the period December 8, 1995 through January 21, 1996. The Office began payment of temporary total disability compensation effective January 21, 1996. Appellant returned to work on December 8, 1996.

In an April 30, 1998 decision, the Office issued a schedule award for a two percent permanent impairment of the right leg. In a February 17, 1999 decision, the Office found that appellant had not established that he had a right shoulder condition causally related to his December 7, 1995 employment injury.

In regards to appellant's schedule award, the Board finds that the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule award. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

In a June 18, 1996 report, Dr. Stephen R. Goll, a Board-certified orthopedic surgeon, stated that appellant had no evidence of trauma to the right ankle but had evidence of soft tissue swelling laterally and tenderness over the posterior, medial and lateral aspects of the right ankle. He noted appellant had plantar flexion to approximately 40 degrees and dorsiflexion to approximately 12 degrees. Dr. Goll found inversion and eversion of the right ankle. He stated that there was no evidence of instability and noted appellant's motor and sensory functions appeared to be intact. Dr. Goll concluded appellant had a two percent permanent impairment of the right leg. In a November 5, 1996 note, Dr. H. Andrew Hunt, Jr., a Board-certified orthopedic surgeon, stated that he concurred with Dr. Goll's opinion that appellant had a two percent permanent impairment of the right leg due to his ankle injury. He noted appellant had 10 degrees of inversion and 10 degrees of eversion and some chronic intermittent pain in the right ankle with no tingling or numbness. In a January 22, 1997 memorandum, an Office medical adviser noted that Dr. Goll had not provided a basis for a permanent impairment of the right ankle. Dr. Hunt indicated that appellant had no permanent impairment for loss of motion and no permanent impairment for motor or sensory loss. The medical record, therefore, contains no discussion from Drs. Goll or Hunt explaining how these physicians calculated appellant had a two percent permanent impairment of the right leg due to the employment-related ankle injury. The case will, therefore, be remanded for referral of appellant to an appropriate physician for an examination and description of appellant's right ankle condition, with an estimate of appellant's permanent impairment of the right leg due to his right ankle condition. After further development as it may find necessary, the Office should issue a *de novo* decision.

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

The Board finds that appellant has not established that he has a right shoulder condition causally related to the December 7, 1995 employment injury.

A person who claims benefits under the Act⁴ has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.⁵ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁶ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁸

The record contains a September 22, 1995 report from Dr. Huntt who noted appellant complained of pain in the right shoulder while unloading boxes of ammunition. In an October 20, 1995 note, he indicated appellant's right shoulder was about normal with full mobility and pain only at the extremes of the ranges of motion. Subsequent medical reports, after the December 7, 1995 employment injury, referred to appellant's cervical condition. However, none of the medical reports of record discussed or diagnosed a right shoulder condition as a result of the December 7, 1995 injury. Appellant, therefore, has not established that he had a shoulder condition causally related to this employment injury.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁶ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁷ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁸ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

The decision of the Office of Workers' Compensation Programs dated February 17, 1999, is hereby affirmed and the decision of the Office dated April 30, 1998, is hereby set aside and the case remanded for further development as set forth in this decision.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member