

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARVESTER COLE and U.S. SENATE, SERGEANT AT ARMS, Washington,
DC

*Docket No. 99-803; Submitted on the Record;
Issued June 12, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability, due to his June 10, 1993 and November 16, 1994 employment injuries, commencing August 7, 1995.

The Office of Workers' Compensation Programs accepted appellant's claim for a contusion of the left ankle and traumatic trochanteral bursitis. On August 10, 1995 appellant filed a recurrence of disability, Form Ca-2a, alleging that on August 7, 1995 he sustained a recurrence of disability of the June 10, 1993 and November 16, 1994 employment injuries. After the June 10, 1993 employment injury, appellant returned to light-duty work. Appellant submitted medical evidence to support his claim. By decision dated September 7, 1996, the Office denied the claim, stating that the evidence of record failed to establish that the claimed medical condition was causally related to the November 16, 1994 employment injury. The Office subsequently denied appellant's requests for modification on September 17, 1996, April 17, 1997 and October 6, 1998.

The relevant medical reports, which address causation are those of Dr. Joseph D. Linehan, a Board-certified orthopedic surgeon, dated March 18 and April 18, 1996, and Dr. Hampton J. Jackson, a Board-certified orthopedic surgeon, dated March 14, April 22 and 29, 1997. In his March 18, 1996 report, Dr. Linehan stated that appellant was under his care for recurrent tendinitis in his left ankle and it was "definitely" related "to the two injuries" he had. In his April 18, 1996 report, he stated that the magnetic resonance imaging (MRI) scan showed a very slight effusion in the left ankle and the bone scan results suggested osteomyelitis. Dr. Linehan stated that he was "not quite sure" what the etiology of appellant's ankle pain was at the time although it was related to his previous injuries. In his April 22, 1996 report, Dr. Linehan opined that appellant had mild post-traumatic arthritis of the left ankle from the previous injuries he had experienced.

In his March 14, 1997 report, Dr. Jackson considered appellant's history of injury and noted that a plastic object struck the lateral side of appellant's left heel with a puncture-type wound which resulted in appellant's persistent complaints of pain. On physical examination he found an old puncture scar with secondary healing laterally right above the os calcis and anterior to the tendon calcaneus. Dr. Jackson reviewed x-rays and diagnosed status post puncture wound of the left foot, residual reflex sympathetic dystrophy, residual stasis dermatitis and healed stasis and evidence of irritation of the posterior tibial nerve. He stated that the November 16, 1994 employment injury caused a permanent partial impairment to the lower extremity. In Dr. Jackson's April 29, 1997 report, based on an electromyogram (EMG) and nerve conduction studies (NCS), he additionally diagnosed chronic venous stasis and tarsal tunnel syndrome in the left leg. Dr. Jackson stated that all of appellant's conditions were "totally" related to the November 16, 1994 employment injury. He stated that the puncture wound to appellant's leg caused significant inflammation of the tissues around the ankle causing venous stasis. Dr. Jackson emphasized that the sequel of events, starting with the puncture wound and November 16, 1994 employment injury, caused a significant chain reaction in appellant's left ankle which was "the development of reflex sympathetic dystrophy, chronic venous stasis with subsequent impingement of the posterior tibial nerve in the tarsal tunnel."

The Board finds that the case is not in posture for decision.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he cannot perform such light duty.² As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.³ This burden includes the necessity of furnishing medical evidence from a 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 An award of compensation may not be made on the basis of surmise, conjecture or speculation or an appellant's unsupported belief of causal relation.⁵

In the present case, Dr. Linehan's reports dated March 18 and April 18, 1996, in which he stated that appellant's recurrent tendinitis and mild post-traumatic arthritis of the left ankle

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

² *George DePasquale*, 39 ECAB 295, 304 (1987); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

⁴ *See Nicolea Brusco*, 33 ECAB 1138 (1982).

⁵ *See William S. Wright*, 45 ECAB 498, 503 (1994).

was related to his June 10, 1993 and November 16, 1994 injuries is supportive that appellant's current disability is work related but nonetheless are insufficient in themselves to establish the requisite causation because they do not contain a rationalized medical opinion explaining causation. In his March 14, 1997 report, Dr. Jackson noted that appellant sustained a puncture wound when a plastic object struck the lateral side of appellant's left heel and found on physical examination that appellant had an old puncture scar on his left ankle. He diagnosed, *inter alia*, chronic venous stasis and tarsal tunnel syndrome in the left leg based on the EMG and NCS and concluded that all of appellant's conditions were related to the November 16, 1994 employment injury. Dr. Jackson's March 14, 1997 report is also supportive that appellant's current disability is causally related to his employment. In his April 29, 1997 report, Dr. Jackson explained that the puncture wound caused significant inflammation of the tissues around the ankle causing venous stasis. He emphasized that the sequel of events, starting with the puncture wound and the November 16, 1994 employment injury, caused a significant chain reaction in appellant's left ankle, which was the development of reflex sympathetic dystrophy and chronic venous stasis with subsequent impingement of the posterior tibial nerve in the tarsal tunnel.

Although, in his March 21, 1997 report, Dr. Jackson stated that appellant wanted to clarify that he did not sustain a puncture wound but sustained an ulcer, it would appear appellant is referring to the November 16, 1994 employment injury. The contemporaneous evidence to the November 16, 1994 employment injury indicated appellant sustained a contusion or ulcer but no puncture. The police report dated June 10, 1993, which is the only evidence in the record contemporaneous to the June 10, 1993 employment injury, stated appellant's skin was broken after being struck by the skid. No evidence of record contradicts the police report's finding. Thus Dr. Jackson provided a rationalized medical opinion as to how appellant's current disability due to venous stasis and tarsal tunnel syndrome developed from his work injuries and that appellant's disability changed. However, because he did not specifically address whether the August 7, 1995 recurrence of disability is work related, Dr. Jackson's opinion is not sufficient to discharge appellant's burden as to whether the August 7, 1995 recurrence of disability was related to the June 10, 1993 and November 16, 1994 employment injuries. It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The Office has an obligation to see that justice is done.⁷

The Office should prepare a statement of accepted facts and refer appellant, along with the statement of accepted facts and the medical records, to an appropriate specialist for an examination of appellant and a rationalized medical opinion as to whether appellant's August 7, 1995 recurrence of disability is causally related to the June 10, 1993 and November 16, 1994 employment injuries. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

⁶ See *March A. Cacchione*, 46 ECAB 148, 152 (1994); *Lourdes Davila*, 45 ECAB 139, 143 (1993).

⁷ See *March A. Cacchione*, *supra* note 6 at 152; *Gary L. Fowler*, 45 ECAB 365, 373 (1994).

The decision of the Office of Workers' Compensation Programs dated October 6, 1998 is hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.
June 12, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member