

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NOLI R. CAPITULO and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

*Docket No. 00-1767; Submitted on the Record;
Issued April 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant had any injury-related residuals after March 6, 1997, causally related to an accepted August 29, 1995 left ankle sprain.

On August 30, 1995 appellant, then a 38-year-old letter carrier, filed a notice of traumatic injury asserting that, on August 29, 1995, he hurt his left foot and ankle when he stepped on an uneven surface while walking his mail route. The Office of Workers' Compensation Programs accepted the claim as a left ankle sprain. Appellant submitted numerous reports from Dr. Don Kim, an attending podiatrist finding continuing residuals from the August 29, 1995 left ankle sprain through 1996 and continuing.

On March 6, 1997 the Office terminated appellant's medical benefits effective that date on the grounds that any residuals of the accepted August 29, 1995 left ankle sprain had ceased. The Office based its decision on the opinion of Dr. Robert Wilson, a Board-certified orthopedist and second opinion physician who submitted a September 23, 1996 report finding no objective clinical indications of injury-related residuals. Appellant disagreed with this decision and requested an oral hearing, which was held on February 23, 1999.

Dr. Kim performed a calcaneocuboid arthrodesis on April 10, 1998, which he attributed to pathology caused by the August 29, 1995 left ankle sprain.

By decision dated May 5, 1999, an Office hearing representative found a conflict of medical opinion between Drs. Wilson and Kim and remanded the case for an impartial medical examiner.

On remand, the Office referred appellant to Dr. Wilmer J. Irvine, a Board-certified orthopedic surgeon. In a July 27, 1999 report, Dr. Irvine reviewed Dr. Kim's reports and the medical record, noting that Dr. Kim's explanation of the anatomy and dynamics of the foot and ankle were not comprehensible or within his 35-year experience as an orthopedic surgeon.

Dr. Irvine performed a detailed clinical examination on July 7, 1999 and obtained x-rays on July 22, 1999 showing no bone or joint abnormalities of the left foot or ankle, and no objective evidence of functional instability.

Dr. Irvine commented that the results of Dr. Kim's April 1998 surgery to fuse the calcaneocuboid joint were "dismal" and the reason for the procedure was unclear from the medical record and x-ray reports, a preoperative magnetic resonance imaging (MRI) scan which did not demonstrate any pathology of the calcaneocuboid joint. He noted a "symptomatic left peroneal neuropathy ... present at the time or shortly after the injury ... [but] not caused by the injury," possibly related to appellant's preexisting, nonoccupational diabetes.

Dr. Irvine opined that appellant's symptoms of pain and a sensation of instability in the left foot and ankle were most likely related to the failed April 10, 1998 surgical fusion of the calcaneocuboid joint, commenting that such surgery was not related to the accepted left ankle sprain as there was no indication that the sprain had injured that area. He concluded that appellant did not have any "objective factors of disability resulting from the injury of August 29, 1995."

By decision dated August 13, 1999, the Office found that appellant's August 29, 1995 left ankle sprain had resolved without residuals, based on Dr. Irvine's report as the weight of the medical evidence. The Office therefore terminated appellant's medical benefits. Appellant disagreed with this decision and requested an oral hearing, which was held on January 31, 2000.

At the hearing, appellant, through his attorney representative, asserted that Dr. Irvine demonstrated bias against Dr. Kim in his report and therefore was not an impartial examiner. He also argued that Dr. Irvine, a Board-certified orthopedic surgeon, did not have sufficient expertise in treating and diagnosing pathologies of the foot and ankle to be accorded the weight of the medical evidence in the case.

Following the hearing, appellant submitted a January 3, 2000 report from Dr. Kim, who asserted that unspecified objective findings of the August 29, 1995 left ankle sprain were the cause of appellant's symptoms and not the failed surgical procedure.

By decision dated March 30, 2000, the Office hearing representative affirmed the Office's August 13, 1999 decision, finding that appellant did not have residuals of the August 29, 1995 left ankle sprain after March 6, 1997. The hearing representative concluded that Dr. Irvine's report was sufficiently rationalized to resolve the conflict of medical evidence and constitute the weight of the medical evidence.

The Board has given careful consideration to the issue involved appellant's contentions on appeal and the entire case record. The Board finds that the March 30, 2000 decision of the Office hearing is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The Board notes that Dr. Irvine's July 27, 1999 report is exceptionally well detailed in its review of the medical record and the objective clinical and radiographic findings. Dr. Irvine thoroughly explained how and why the failed surgical fusion, coupled with a neuropathy

unrelated to the accepted sprain, caused appellant's symptoms. He also carefully explained that the April 10, 1998 surgical fusion of the calcaneocuboid joint was not warranted by any condition as multiple x-rays and MRI scans of the area showed no objective pathology.

The Board notes that Dr. Irvine critiqued specific inconsistencies in Dr. Kim's reports, and noted that the pathophysiologic explanations were not within accepted medical doctrine. Dr. Irvine also questioned why Dr. Kim would have operated on a calcaneocuboid joint which showed no objective abnormality on preoperative MRI. These criticisms are based on Dr. Kim's opinions as he himself stated them in his reports. Dr. Irvine did not offer a generalized, attack on Dr. Kim's opinion that appellant's representative portrays. The Board finds that Dr. Irvine's comments are well within the type of opinion sought by the Office in appointing him as an impartial medical examiner and are in no way indicative of any disqualifying bias.

The March 30, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member