

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH LOVERDI and U.S. POSTAL SERVICE,
POST OFFICE, Lynbrook, NY

*Docket No. 00-1189; Submitted on the Record;
Issued July 11, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability causally related to his accepted December 7, 1994, employment injury.

On March 15, 1995 appellant, then a 46-year-old letter carrier filed an occupational disease claim alleging that his right foot condition was due to factors of his federal employment. Appellant underwent an osteotomy of the third right metatarsal on February 24, 1995. On July 28, 1995 the claim was accepted for a plantarflexed right third metatarsal commencing December 7, 1994 and appropriate benefits were authorized.¹

In a September 18, 1998 report, Dr. Robert Stein, a podiatrist, indicated that appellant had surgery on his right foot and must remain off work until further notice.

In an October 6, 1998 letter of medical necessity, Dr. Stein indicated that appellant had a painful reoccurring neuroma removed from his right foot on September 18, 1998. He stated that appellant suffered from postoperative pain and swelling that has been consistently reducing and still suffered from pain in his third and fourth metatarsal-phalangeal joints of his right foot. Dr. Stein noted that this was secondary to a previous surgery performed by another physician. He indicated appellant was limited to work that did not include driving or excessive walking.

In an October 19, 1998 report, Dr. Stein reported that appellant was under his care for a chronically painful third metatarsal phalangeal joint of his right foot which was the result of an elevated metatarsal from a prior surgery. He noted that this elevated metatarsal caused severe pain upon dorsiflexion of the digit. Dr. Stein indicated that this movement is reproduced with driving and that appellant was not able to drive until further notice.

¹ Office records also indicate that the Office of Workers' Compensation Programs accepted that an osteotomy of the right third metatarsal on February 24, 1995 was due to the accepted condition.

In a November 8, 1998 report, Dr. Stein, indicated that appellant was first seen by him on October 25, 1995. He noted appellant's history including the February 24, 1995 surgery to the third metatarsal of the right foot and an arthroscopy of the second toe of the right foot. Dr. Stein stated that the surgery resulted in a dorsal deviation of the third metatarsal and subsequent plantar prominence to the fourth metatarsal head. He stated that appellant presented with pain beneath the fourth metatarsal phalangeal of the right foot. Dr. Stein indicated that as a result of time, the pain progressed to involve the interdigital branches of the nerves between the second, third and fourth metatarsals. He stated, "over the course of three years, appellant was treated with various methods and was left with pain beneath the fourth metatarsal phalangeal joint of the right foot which was directly related to the excessive dorsiflexion of the third metatarsal secondary to the original surgery in 1995." Dr. Stein also stated that the dorsiflexion of the metatarsal caused his weight bearing to shift laterally, thereby overloading the fourth metatarsal-phalangeal joint.

In a November 24, 1998 attending physician's report, Dr. Stein described appellant's history of injury by stating that appellant had right foot surgery in February 1995 which resulted in severe elevation of appellant's third metatarsal phalangeal thereby overloading his fourth metatarsal phalangeal. He also checked a box "yes" that inquired as to whether or not he believed the condition was caused or aggravated by an employment activity.

On November 28, 1998 appellant filed a notice of recurrence contending that his condition/disability on or after June 15, 1998 was due to his accepted work injury. On December 18, 1998 he accepted a limited-duty assignment.

By letter dated January 7, 1999, appellant was advised to submit factual and medical evidence to support his recurrence claim.

In a report dated January 28, 1999, Dr. Stein reiterated appellant's history of treatment and noted that appellant was left with pain beneath the fourth metatarsal phalangeal joint of the right foot which was directly related to the excessive dorsiflexion of the third metatarsal secondary to the original surgery in 1995. This dorsiflexion of the metatarsal caused appellant's weight bearing to shift laterally, thereby overloading the fourth metatarsal-phalangeal joint. Dr. Stein indicated that appellant's pain was increased with prolonged standing and driving which severely limited his ability to perform his regular activities.

In a March 26, 1999 duty status report, Dr. Stein indicated that appellant's pain developed over time and described his clinical findings as pain at the fourth metatarsal phalangeal joint of the right foot.

By decision dated July 14, 1999, the Office denied the claim on the grounds that the evidence of record failed to demonstrate that the claimed disability was due to the accepted work injury.

By letter dated July 30, 1999, appellant requested an examination of the written record and submitted additional evidence.

In a September 30, 1997 report, which was received by the Office on August 5, 1999, Dr. Steven Schwartz, Board-certified in neurology and psychiatry, indicated that he had

examined appellant and noted that he had a neuroma removed on the “right three to four interspace in the past.” He stated that appellant had the same procedure to raise the metatarsal upwards. Dr. Schwartz stated that he had reviewed the magnetic resonance image (MRI) reports and “they did not reveal the nature of the enhancing lesion at two and three.”

In a July 23, 1999 report, which was received by the Office on August 2, 1999, Dr. Stein stated:

“[A]ppellant underwent foot surgery in February 1995. This surgery included an elevating osteotomy of the third metatarsal of his right foot. The surgery resulted in extreme dorsal deviation of the third metatarsal, and subsequent plantar prominence of the fourth metatarsal head. The fourth metatarsal is now effectively plantar flexed as compared to the third metatarsal. Due to the plantar prominence of the fourth metatarsal head, [appellant] bears excessive weight on this joint and bone. The prior surgery eliminated the weight bearing ability of the third metatarsal, and has transferred the pressure laterally to the fourth metatarsal. It is my medical opinion that [appellant’s] pain at the fourth metatarsal-phalangeal joint is a direct effect of the unwanted outcome of the original surgery to alleviate the third metatarsal.”

By decision dated February 14, 2000, the hearing representative affirmed the July 16, 1999 Office decision.

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

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.² When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee’s attending physician.³ Additionally, the Board has held that surgery, which is performed as a result of an employment injury and which causes further impairments, constitutes a consequential injury and any resulting disability may be compensable.⁴

In this case, the Office accepted the claim for a plantarflexed right third metatarsal and subsequent osteotomy. Dr. Stein, appellant’s treating physician, indicated in several reports that, over time, appellant’s fourth metatarsal phalangeal joint of the right foot was also affected. In his November 8, 1998 report, he stated, “over the course of three years, appellant was treated with various methods and was left with pain beneath the fourth metatarsal phalangeal joint of the right foot which was directly related to the excessive dorsiflexion of the third metatarsal secondary to the original injury of 1995.” Dr. Stein also explained that the metatarsal caused appellant’s weight to shift laterally and overload his fourth metatarsal phalangeal joint; although this report was supportive that appellant’s condition was causally related to the surgery of 1995,⁵

² *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Florence L. Krause*, 33 ECAB 613 (1982).

⁵ The surgery authorized by the Office on February 24, 1995.

he did not explain how the continuing condition would be related to the December 7, 1994 injury. In his November 24, 1998 attending physician's report, Dr. Stein indicated that the surgery of February 24, 1995 resulted in severe elevation of appellant's third metatarsal phalangeal, thereby overloading his fourth metatarsal phalangeal. He also checked the box "yes" that inquired as to whether or not he believed the condition was caused or aggravated by an employment activity; however, checking of the box "yes" that the disability was causally related to employment is insufficient without further explanation or rationale, to establish causal relationship.⁶ Dr. Stein did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated his condition.⁷ In his January 28, 1999 report, he explained how the fourth metatarsal phalangeal joint was affected by the third one, but he did specifically explain how it was causally related to appellant's employment. In his March 26, 1999 duty status report, Dr. Stein indicated that appellant's pain developed over time, although he did not provide any other explanation. Dr. Stein attempted to clarify his findings in his July 23, 1999 report, where he indicated that appellant's surgery of February 1995 resulted in extreme dorsal deviation of the third metatarsal and transferred the pressure to the fourth metatarsal phalangeal joint; however, he did not explain how it was related to appellant's employment.

Dr. Schwartz, in his September 30, 1997 report, discussed appellant's procedure regarding the neuroma, which was removed on the right foot; however, he did not provide any explanation of causal relationship to his employment injury and his report was therefore of limited probative value.⁸

Although appellant has not submitted sufficiently rationalized reports to discharge his burden of proving by the weight of the reliable, substantive and probative evidence that he has, a condition which is causally related to his December 7, 1994 injury, he has submitted sufficient evidence in support of his claim to require further development of the record by the Office.⁹ The Board further notes that there is no medical evidence refuting a causal relationship between appellant's authorized surgery of February 24, 1995 and the excessive dorsiflexion of the metatarsal which overloaded the fourth metatarsal-phalangeal joint.

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

⁶ *Barbara J. Williams*, 40 ECAB 649 (1989).

⁷ The opinion of the physician must be based upon a complete factual and medical background of the claimant, 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 the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. See *James Mack*, 43 ECAB 321 (1991).

⁸ *Arlonia B. Taylor*, 44 ECAB 591 (1992). Medical reports not containing rationale on causal relationship are entitled to little probative value.

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

compensation, the Office shares responsibility in the development of the evidence.¹⁰ The Office has an obligation to see that justice is done.¹¹

On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate specialist. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated February 14, 2000 is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
July 11, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ See *March A. Cacchione*, 46 ECAB 148, 152 (1994); *Lourdes Davilla*, 45 ECAB 139, 143 (1993).

¹¹ See *March A. Cacchione*, *supra* note 11 at 152; *Gary L. Fowler*, 45 ECAB 365, 373 (1994).