U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE D. CONAWAY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA

Docket No. 99-2118; Submitted on the Record;
Issued May 3, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of disability after March 4, 1996 causally related to her employment injuries of July 9, 1981 or December 6, 1994.

On July 9, 1981 appellant, then a 23-year-old nursing assistant, developed pain in the left side of the chest and the back after lifting patients out of beds and into chairs. She stopped working on July 11, 1981 and returned to work on September 1, 1981. She received continuation of pay for the period July 12 through August 25, 1981 and used annual leave for the period August 26 through 31, 1981. She had subsequent recurrences of disability for which she received compensation.

On December 8, 1994 appellant filed a claim for recurrence of disability beginning December 6, 1994. She stated that she had returned to her regular duties, occasionally working with a little pain. She reported that she had muscle spasms which were increasing. She indicated that she had never been without pain since the original injury. She stopped working on December 8, 1994.

In a December 15, 1994 report, Dr. Edgar C. Fearnow, a Board-certified radiologist, reported that a computerized tomography scan of the lumbar spine showed moderate to severe stenosis at L4-5, mild spinal stenosis at L3-4 and L5-S1 and left posterolateral disc protrusion at L5-S1 with disc material protruding into the left-sided neuroforamen with associated foraminal stenosis.

The Office of Workers' Compensation Programs accepted appellant's claim for an aggravation of a herniated L4-5 disc and began payment of temporary total disability compensation, effective January 22, 1995. Appellant returned to work on August 7, 1995, four hours a day and gradually increased to six hours a day. The Office paid compensation for the hours appellant did not work.

On March 15, 1996 appellant filed a claim for a recurrence of disability, beginning March 4, 1996. She stopped working the next day. Appellant stated that she had been on light duty with various restrictions on bending and lifting. She indicated that, because she was on her feet constantly, she had developed spurring in the right foot which was exacerbating her back pain. She returned to work on August 14, 1996.

In a July 15, 1996 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and the claimed recurrence of total disability. Appellant requested a hearing before an Office hearing representative. In a July 14, 1997 decision, the Office hearing representative found that appellant had submitted sufficient medical evidence to support her claim that the right foot condition was a direct and natural result of the employing establishment. She, therefore, set aside the Office's July 15, 1996 decision and remanded the case for referral of appellant to an appropriate specialist for an examination and second opinion. In a December 15, 1997 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the original work injury and the claimed recurrence of disability. In a November 24, 1998 letter, appellant requested reconsideration. In a March 17, 1999 merit decision, the Office denied the request for modification of the prior decision.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

In a March 4, 1996 office note, Dr. Michael Maggitti, a Board-certified orthopedic surgeon, stated that appellant was complaining of back pain with work activities. He recommended that appellant begin working eight hours a day with her current restriction. In a March 15, 1996 note, Dr. Maggitti reported that appellant was complaining of an acute onset of pain in the right foot over the previous few days. She denied direct injury to her foot and attributed her foot condition to her back condition. He noted that appellant had some tightness on heel cord stretching and plantar fascial stretching. X-rays showed minimal spurring in the right heel along the plantar aspect of the calcaneus. Dr. Maggitti indicated that there was no evidence of acute bony abnormalities.

In an August 2, 1996 report, Dr. Maggitti stated that appellant had achieved maximum benefit from treatment. He indicated that appellant could return to work 40 hours a week with restrictions. Dr. Maggitti restricted lifting to 10 pounds frequently and 20 pounds occasionally. He reported that appellant could sit, stand, walk, bend, kneel or stoop two to four hours a day intermittently. Dr. Maggitti noted that he had referred appellant for treatment of her heel pain.

In a September 3, 1996 report, Dr. Vincent J. Pongia, a podiatrist, stated that appellant's examination was consistent with heel spur syndrome and plantar fasciitis of the right heel. He indicated that it was within a reasonable degree of podiatric certainty to assume that appellant's long-standing back pain resulted in a chronically abnormal and antalgic gait pattern that had subsequently resulted in the formation of heel pain. Dr. Pongia commented that heel pain could develop due to heel spur syndrome without a back injury. He indicated, however, that appellant's back injury to some extent contributed to the exacerbation of the heel pain as a

consequence of her abnormal gait pattern. Dr. Pongia also commented that the heel pain and the consequentially altered gait pattern would be an exacerbating factor with regard to back pain.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Bong S. Lee, a Board-certified orthopedic surgeon, for an examination and second opinion. In a September 16, 1997 report, Dr. Lee stated that appellant had no evidence of involuntary muscle spasm, no swelling or atrophy of the legs and negative leg raising in the sitting position. He found a full range of motion in the legs with no deformity, swelling, tenderness or instability. Dr. Lee stated that both feet were symmetrical with no evidence of atrophy, normal motion in the toes and normal sensation. He noted that appellant complained of tenderness on the inferior aspect of the right heel. Dr. Lee reported the arch was slightly flat but symmetrical bilaterally. He diagnosed chronic low back pain syndrome associated with degenerative discogenic disease and plantar fasciitis of the right foot associated with bone spurs. Dr. Lee stated that appellant's chronic low back pain appeared to be associated with her job. He concluded that appellant's right heel condition was not related to her employment. Dr. Lee indicated that the low back condition was not significant enough for appellant to be disabled. He stated that she should be allowed to continue full-time light duty.

In a December 2, 1997 memorandum, an Office medical adviser noted that Dr. Lee had not elaborated on his statement that appellant's foot condition was not related to the employment injury. The medical adviser commented that appellant's date of injury was December 6, 1994, while the date of onset of the foot pain was March 4, 1996. He stated that any abnormal gait due to back pain would appear closely following the back injury, not over a year after the injury. Dr. Lee pointed out that there was no report of abnormality in the foot in 1995. The medical adviser commented that there was no evidence of an abnormal gait until after the start of the foot pain, which then produced the antalgic gait.

In a July 30, 1998 report, Dr. Maggitti indicated that during the time he treated appellant for her back and leg pain, she developed symptoms of right plantar fasciitis and heel pain. He noted that Dr. Pongia related appellant's right foot condition to her altered gait secondary to her back injury. Dr. Maggitti stated that he would not expect appellant would develop these symptoms in the first several weeks to months following the back injury. He commented that the gait apparently developed as a direct result of appellant's chronic back condition, which caused a chronic change in her stance and swing phases of gait. Dr. Maggitti stated that no other precipitating factors such as significant weight gain or direct injury occurred to the right foot during this time, thus eliminating other causes for the condition. He concluded that appellant's right heel plantar fasciitis and heel spur syndrome was precipitated by her work-related back condition.

In an August 17, 1998 report, Dr. Pongia noted Dr. Maggitti's report that appellant's heel pain was a result of her chronic back condition resulting in an altered stance and swing phase of her gait. He stated that this observation coincided with his September 3, 1996 report, in which he related appellant's back pain led to altered gait pattern and resulted in her right heel condition. Dr. Pongia stated that patients who injured their backs frequently changed their gait pattern in an attempt to guard their back pain, which resulted in one leg carrying a larger percentage of weight bearing through the mid-stance phase of the gait. As a consequence, the increased weight-bearing limb in question would undergo additional internal rotation and consequently increased

pronation of the foot. He stated that the pronation of the foot and the subsequent decline of the longitudinal arch would cause a tearing and pulling of the plantar fascia on the calcaneus, resulting in chronic heel spur syndrome and plantar fasciitis. Dr. Pongia noted that appellant's job required considerable standing. He stated that appellant's extended periods of weight bearing were a contributing and exacerbating factor of heel spur syndrome and plantar fasciitis. Dr. Pongia concluded that a patient who sustained a low back injury resulting in an abnormal gait pattern could and would precipitate heel spur pain and plantar fasciitis.

Dr. Lee stated that appellant's right foot condition was not related to the employment injury. The Office medical adviser concurred, stating that the altered gait pattern would have developed shortly after the employment injury which meant that the right heel condition would have occurred sooner if it were causally related to the employment injury. On the other hand, Drs. Maggitti and Pongia indicated that the altered gait from appellant's back injury would have developed over time and would then have resulted in a right heel spur and plantar fasciitis. Their reports directly conflict with the report of the Office medical adviser and the report of Dr. Lee. The case must, therefore, be remanded to an appropriate impartial medical specialist for resolution of the conflict. The impartial medical specialist should be requested to give a diagnosis of appellant's condition and indicated whether appellant's disability between March 4 and August 14, 1996 was due to her employment-related condition or was caused by a consequential injury. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated March 17, 1999, is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
May 3, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member