

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALONSO ALLEN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION HOSPITAL, Coatesville, PA

*Docket No. 01-222; Submitted on the Record;  
Issued April 4, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that his bilateral tarsal tunnel syndrome is causally related to the combined effect of all of his accepted employment-related injuries.

This is the second appeal in this case.<sup>1</sup> On the first appeal the Board reviewed a January 29, 1998 decision, by which the Office of Workers' Compensation Programs found that the weight of the medical evidence represented by the opinion of the Office referral physician, Dr. Josephine DePalma, established that appellant had fully recovered from the effects of all of his accepted employment injuries. By decision dated April 19, 2000, the Board found that with respect to the issue of whether appellant has established that his diagnosed bilateral tarsal tunnel syndrome resulted from the combined effect of all of his accepted employment injuries, the case was not in posture for decision due to an unresolved conflict in the medical opinion evidence between Dr. DePalma and appellant's treating physician, Dr. Vincent Pongia. The Board, therefore, set aside the Office's January 29, 1998 decision and directed the Office to refer appellant to an impartial medical specialist for resolution of the conflict.<sup>2</sup> The complete facts of this case are set forth in the Board's April 13, 1999 decision and are herein incorporated by reference.

By letters dated June 14 and June 27, 2000, the Office referred appellant, together with the case record, a list of questions to be resolved and a statement of accepted facts to Dr. Gary Gordon, a Diplomate of the American Board of Podiatric Surgery, to resolve the conflict of medical opinions regarding whether or not appellant's diagnosed tarsal tunnel syndrome is causally related to his multiple employment-related conditions. The statement of accepted facts prepared by the Office indicated appellant's age and position at the employing establishment and

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<sup>1</sup> Docket Nos. 98-950 & 98-990 (issued April 19, 2000).

<sup>2</sup> In its April 19, 2000 decision, the Board also affirmed an April 2, 1997 decision of the Office on a separate but related issue. The April 2, 1997 decision of the Office is not the subject of the instant appeal.

the circumstances of a March 9, 1977 employment injury, which was accepted for a contusion of the right ankle. The Office listed eight additional accepted injuries, including a 1981 right shoulder sprain, a 1982 lumbar sprain, a 1983 contusion of the right foot, a 1985 contusion and sprain to the left knee, a 1988 laceration of the left foot and sprain of the left ankle, a 1989 lumbosacral strain, a 1990 right foot sprain and 1991 tarsal tunnel syndrome of an unspecified foot. The Office emphasized, however, that these additional injuries were unrelated to the instant claim. In an accompanying list of questions to be resolved, the Office asked Dr. Gordon to address: (1) whether the diagnosis was established; (2) whether direct cause, aggravation, precipitation, or acceleration medically connected the diagnosed condition to the March 9, 1977 work injury; (3) whether appellant had any physical limitations resulting from the March 9, 1977 work-related injury, as well as any restrictions attributable to preexisting conditions; (4) whether appellant continues to suffer from residuals of the March 9, 1977 injury; (5) whether he was capable of resuming his regular work without restrictions; (6) whether appellant has a medical condition causally related to factors of his employment; (7) whether the factors are related to the March 9, 1977 work injury; (8) when did the residual effects of the March 9, 1977 work injury cease; and (9) when did total or partial disability cease in relation to the March 9, 1977 work injury.

In a report dated August 9, 2000, Dr. Gordon reiterated the circumstances surrounding appellant's March 9, 1977 employment injury, when a patient dropped a barbell and it fell on his foot and stated:

"I agree with the diagnosis of contusion of the right ankle. I do not feel that this would have caused or precipitated a tarsal tunnel compression syndrome.

"I feel that the injury of March 9, 1977 would not have caused the other problems that [appellant] has incurred.

"[Appellant] presently states that he has pain from behind his toes into [his] legs above the knee and into his groin. This is present on both extremities. [He] describes the pain as always present more intense at times. There is never an instance when there is no pain. The pain is present with and without activity. Wearing of different shoe gear does not make a difference in the pain.

"[Appellant] states that oral medication does not alleviate the pain. He has taken Aspirin and Talwin.

"[Appellant's] Tinel's sign was not consistent. He felt pain at the site of percussion below the medial malleolus bilaterally. [Appellant] stated there was tingling into the dorsum of the big toes. I understand that with a positive Tinel's an individual will feel tingling into the bottom of the feet. [Appellant] did have surgery for the [t]arsal [t]unnel bilaterally which may explain some of the unusual findings, but the innervation to the dorsum of the big toe is not from the area that was percussed. The findings on pinprick and vibratory sensation were inconsistent. [Appellant] walked with a cane and demonstrated an antalgic gait.

“[He] stated that the pain from the injury on March 9, 1977 lasted approximately [two] years. Following the [two] years the pain dissipated.

“I do not feel that [appellant] can resume his normal activities as he uses a cane for ambulation and he is unsteady in gait.

“It is my medical opinion that the accident on March 9, 1977 did not cause his present problems. The injury of March 9, 1977 was a localized incident that was a contusion. This would not have caused a [t]arsal [t]unnel [s]yndrome on both feet. The injury would not have made him susceptible to the other injuries he suffered.

“I do not feel [that appellant] at this time is capable of performing work that involves standing or ambulating. [He] should be able to perform a sitting job.”

By decision dated October 4, 2000, the Office denied appellant’s claims for recurrence, bilateral tarsal tunnel syndrome and surgery. The Office stated that the weight of the medical evidence rested with Dr. Gordon, an impartial medical examiner, who found that appellant’s condition is not causally related to factors of his employment.

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

The Office based its denial of appellant’s claim for employment-related bilateral tarsal tunnel syndrome on the opinion of Dr. Gordon, the designated impartial specialist selected to resolve the conflict between the opinions of Drs. Pongia and DePalma.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>3</sup>

In this case, the Office properly referred appellant to Dr. Gordon to resolve a conflict in the medical evidence concerning whether appellant’s diagnosed bilateral tarsal tunnel resulted from the combined effect of all of his accepted employment injuries. However, he did not resolve the conflict in the medical evidence as his opinion is not sufficiently well rationalized or based on a complete factual background of appellant’s case because the statement of accepted facts prepared by the Office was deficient in several respects. In preparing the statement of accepted facts, the Office failed to indicate that all of the accepted conditions were to be considered by the physician and instead specifically noted that all conditions with the exception of the March 9, 1977 contusion were unrelated to the instant claim. The Office compounded this error by specifically asking that Dr. Gordon discuss only the March 9, 1977 injury and its causal relationship, if any, to appellant’s current condition. The Office did not tell him which foot had the accepted 1991 tarsal tunnel syndrome and it is uncertain whether the Office correctly informed Dr. Gordon that appellant’s 1983 bookcase injury was to his right foot, not his left foot.<sup>4</sup> In his August 9, 2000 report, he understandably confined his discussion, as directed, to the

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<sup>3</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

<sup>4</sup> While the record does contain corrected copies of the statement of accepted facts noting the right foot injury, it

effects of appellant's March 9, 1977 injury and did not offer an opinion as to whether the combined effects of all appellant's accepted employment injuries, including his foot, ankle, back and shoulder injuries, contributed to his development of bilateral tarsal tunnel syndrome. Dr. Gordon noted that appellant used a cane and walked with an antalgic gait, but did not state the cause of this condition. Similarly, while Dr. Gordon noted that appellant could not perform his regular work duties as a housekeeping aide, or any work which required standing or ambulating, he did not address whether this was due to the effects of appellant's accepted conditions, either singularly or combined, or whether this was due to some completely nonemployment-related cause. Because of the inadequate statement of accepted facts and questions to be answered provided by the Office, Dr. Gordon has not provided a rationalized medical opinion based on a complete factual background which clearly explains whether appellant's diagnosed bilateral tarsal tunnel syndrome is causally related to the combined effects of appellant's multiple accepted employment-related injuries. Under these circumstances, the Board finds that Dr. Gordon's report is not entitled to special weight.

On remand the Office shall prepare a new statement of accepted facts and new list of questions to be answered indicating all of the conditions accepted as work related and refer this list together with the medical record, to Dr. Gordon for a supplemental report. He should be requested to provide a reasoned medical opinion regarding all of appellant's employment-related conditions contributed to or caused his bilateral tarsal tunnel syndrome. After such further development as is necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated October 4, 2000 is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC  
April 4, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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appears that the copy sent to Dr. Gordon indicated that the left foot was injured.