U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN H. PEARSON and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 02-2034; Submitted on the Record;
Issued December 17, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's partial disability, beginning December 4, 2000, was causally related to her September 15, 1999 employment injury.

On September 15, 1999 appellant, then a 39-year-old letter carrier, sustained an injury at work when she slipped and fell, twisting her right ankle. She sought medical attention that day and was diagnosed with a right ankle sprain. The Office of Workers' Compensation Programs accepted her claim for compensation.

On July 24, 2000 appellant's attending physician, Dr. Eric I. Mitchell, an orthopedic surgeon, diagnosed a right ankle fracture and returned appellant to work on light duty.

On November 8, 2000 the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Richard Mandel, a Board-certified orthopedic surgeon, for an opinion on whether appellant remained disabled as a result of her September 15, 1999 employment injury.

On December 1, 2000 Dr. Mandel related appellant's history, right heel complaints and findings on physical examination. He noted no edema or atrophy and full range of motion of both ankles without crepitus. Appellant complained of tenderness to palpation diffusely about the right ankle and heel, but this complaint was not localized to any structure or combination of structures and was simply diffuse in a band-like distribution. Thigh, calf and ankle circumferences were equal bilaterally and symmetrical. There was no diminished sensation in any discernible anatomic pattern. Observing ambulation, Dr. Mandel noted that with her first few steps appellant appeared to bear weight fully on both feet in a normal fashion, then, after taking several steps, she tended to avoid weight bearing on the right heel. An inspection of her shoes, which she stated that were her work shoes, showed moderate and equal wear over both heels with somewhat more wear over the lateral aspects of the heels than over the medial. This wear pattern, Dr. Mandel reported, was inconsistent with decreased weight bearing on the right heel.

After reviewing relevant medical records, Dr. Mandel reported as follows:

"This claim was accepted for a diagnosis of strain of the right ankle. A more precise terminology would be a sprain of the anterior talofibular ligament of the right ankle. In addition, there was evidence of an associated bone bruise of the talus. The ganglion cyst noted on MRI [magnetic resonance imaging] [scan] was an incidental finding and is of no relevance to this injury.

"There was no objective evidence of any residuals of the accepted injury on today's examination. It is my opinion that she is fully recovered from the work-related injury to the right foot and ankle of September 15, 1999.

"She is not in need of further treatment for this work-related injury.

"She has no ongoing physical limitations resulting from this work injury. With regard to the injury, she can return to full duty.

"I found no evidence on my examination of any lumbar radiculopathy or other symptoms arising from any lumbar disc herniation. It should be noted that the herniation described in the lumbar MRI [scan] did not involve any neural compression. In my opinion the lumbar disc herniation is an incidental finding and is totally unrelated to the slip and fall at work. This is supported by the fact that the patient had no back symptoms for over a year following the fall.

"The patient states that she had a preexisting right upper extremity injury and for this reason was on light[-]duty work at the time of the injury of September 1999. The right upper extremity was not part of today's examination."

On December 4, 2000 Dr. Mitchell diagnosed ankle fracture and restricted appellant to working four hours a day with limited walking. He noted that she continued with generalize discomfort from her degenerative arthritis and could be able to get into a swim program through the Arthritis Foundation.

On February 12, 2001 Dr. Mitchell reported as follows:

"The patient is managing in her work situation at four hours per day. The patient has weakness and then the ankle starts to invert. We do not want her to get into any trouble and to cause damage. The patient had an independent medical examination [an employing establishment referral] dating back to August 2000. In the report, there was grave concern about the patient, however, it was determined that the patient was capable of returning to full[-]duty work. As the patient's treating orthopedic surgeon, I do not wish the patient to be placed at risk, nor do I want her coworkers to be placed at risk. The patient will continue to work light duty at four hours per day. The patient states that she does not physiologically believe that she can do more. We have worked very hard to try and get her into a swim program and she has finally gotten approval for it. As she gets her strength and flexibility increased, we will then increase her work hours from four to six and then up to eight hours."

Findings on physical examination showed right ankle weakness on inversion and eversion and pain beyond 20 degrees of movement. With dorsiflexion to 0 degrees and plantar flexion to 20, Dr. Mitchell reported: "This ankle still only [has] approximately 60 percent of the range of motion that it should have."

On March 10, 2001 appellant filed a claim asserting that she sustained a recurrence of disability on December 4, 2000 as a result of her September 15, 1999 employment injury.

The Office found a conflict in medical opinion between Dr. Mitchell, appellant's attending physician and Dr. Mandel, the Office referral physician. Before it referred appellant to a referee medical specialist to resolve the conflict, the Office received on April 9, 2001 an undated report from Dr. Christine V. Soutendijk, an assistant professor of medicine at Drexel University:

> "[Appellant] has suffered two accidents at the workplace in the last few years: a slip on stairs causing an upper extremity injury on January 8, 1999[1] and a fall on September 15 1999 with subsequent right ankle pain. The ankle pain was initially diagnosed as a sprain, but after prolonged symptoms, further evaluation led to the diagnosis of occult right ankle fracture. In between the two falls she had no back or leg complaints. Following the second accident, [appellant] complained of significant pain in the right ankle, that was attributed to the fracture. However, after the fracture healed, her discomfort persisted. This prompted investigation for a possible nerve compression injury with an EMG [electromyogram] August 14, 2000, which showed an acute L5-S1 radiculopathy and a lumbosacral MRI [scan] September 30, 2000, which showed an L5-S1 herniation with mild neuroforaminal narrowing. These were consistent with [appellant's] symptoms of discomfort, although her strength and reflexes were normal in this area. She has continued physical therapy for the ankle and back, as well as pain medication. Her orthopedist has recommended that she begin aqua therapy, which she has not been able to pursue, because it was not covered by her insurance at a location that she could get to. She, however, plans on pursuing this using her own limited funds, because she simply wants to feel better.
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> "Dr. Mandel at the time of his evaluation, did not have the EMG findings to validate the MRI [scan] findings and perhaps this may have changed his opinion. However, since [appellant] had no ankle symptoms before the injury and now has symptoms, even though they may not be from the ankle fracture, I believe these symptoms, now attributed to an L5-S1 radiculopathy, are likely a result of the September 15, 1999 fall. [Appellant] should not be penalized for a delay in diagnosis. Please continue to treat this injury as a work related one."

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Thomas A. Corcoran, a Board-certified orthopedic surgeon, to resolve the conflict on whether appellant continued to suffer residuals of her accepted employment injury.

[1] The record indicates that the Office denied this claim.

In a report dated May 31, 2001, Dr. Corcoran related appellant's history of injury, complaints and findings on examination. He reviewed x-rays, an MRI scan report from September 28, 1999 and diagnostic testing of the lumbar spine from August 2000. Dr. Corcoran diagnosed postfracture pain syndrome, right ankle, status post right ankle sprain, status post right cuboid fracture status post right talar contusion, lumbar radiculopathy, lumbar degenerative disc disease and right carpal tunnel syndrome. He offered the following summary:

> "The patient has subjective evidence of carpal tunnel syndrome. EMG testing of her upper extremities is not available to me today. The causation of her carpal tunnel may be related to the trauma from surgery and her fall in January 1999. Certainly, she has plateaued with regards to her current treatment and modalities. Depending on the results of her EMG testing, surgery may be warranted in this case.
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> "The patient has healed fractures of her right ankle. She has a healed contusion and sprain. Her ankle is completely rehabilitated. She does have postfracture symptoms, which are weather related. These are rather routine and should not prevent her from full function.
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> "The patient suffers from lumbar radiculopathy. The onset of these symptoms was in May 2000. I do not feel that the lumbar radiculopathy is a result of her trauma either in January or September 1999. I do not feel that the disc changes at L4[-]5 or L5[-]S1 are related to the trauma. The patient show[s] radicular signs on physical examination. Any intermittent symptoms that she would have from this could be treated with over the counter nonsteroidal medications.
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> "I do not feel that the patient requires further treatment with regards to her right ankle.
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> "I have stated my opinion to a reasonable degree of medical certainty. Please do not hesitate to contact me if there are further questions."

In a decision dated August 11, 2001, the Office denied appellant's claim of recurrence beginning December 4, 2000. The Office found that the opinion of Dr. Corcoran, the referee medical specialist, represented the weight of the medical evidence and failed to establish that the claimed recurrence of disability was related to the September 15, 1999 work injury.

Appellant requested a hearing before an Office hearing representative, which was held on January 24, 2002.

In a decision dated April 12, 2002, the hearing representative affirmed the denial of appellant's claim of recurrence.

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

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the

physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[2]

The Office selected Dr. Corcoran to resolve a conflict in medical opinion between Dr. Mandel, the Office referral physician and Dr. Mitchell, appellant's attending physician, on whether appellant continued to suffer residuals of her September 15, 1999 employment injury. Dr. Corcoran based his opinion on a proper factual background and supported his opinion with sufficient rationale to establish that appellant no longer suffered residuals of the accepted right ankle sprain.[3] Although he reported that appellant continued to have postfracture symptoms that were weather related, the Office did not accept that these ankle fractures were a result of the incident that occurred at work on September 15, 1999. Even if they were shown to be work related, Dr. Corcoran explained that the postfracture symptoms should not prevent appellant from full function and that she required no further treatment with regards to her right ankle.

Dr. Corcoran's May 31, 2001 opinion requires clarification, however, because he does not sufficiently explain when residuals of the accepted ankle sprain ceased. He does explain whether ankle residuals ceased prior to December 4, 2000, as Dr. Mandel reported. It is well established that when an impartial medical specialist's opinion requires clarification or elaboration, the Office has the responsibility to secure supplemental report.[4]

The Board will set aside the Office's August 11, 2001 and April 12, 2002 decisions and remand the case for a supplemental report from the referee medical specialist, Dr. Corcoran. He should explain when residuals of the September 15, 1999 employment injury ceased. Following such further development as may be necessary, the Office shall issue a final decision on appellant's claim of recurrence.

In her undated report, received by the Office on April 9, 2001 Dr. Soutendijk did not address whether appellant's partial disability beginning December 4, 2000, was causally related to her September 15, 1999 employment injury. She reported that the persistence of appellant's right ankle discomfort after the healing of her occult right ankle fracture was attributable to an L5-S1 radiculopathy and was likely the result of the September 15, 1999 fall. Dr. Soutendijk reasoned that appellant had no ankle symptoms before the injury and "now has symptoms." The Board has held that when a physician concludes that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.[5] Without more convincing reasoning, Dr. Soutendijk's opinion has little probative value on whether appellant's L5-S1 radiculopathy is causally related to the September 15, 1999 fall. Her

[2] 5 U.S.C. § 8123(a).

[3] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to a referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

[4] *See Elmer K. Kroggel*, 47 ECAB 557 (1996).

[5] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

opinion is insufficient to create a conflict in medical opinion and is of diminished probative value on whether appellant's partial disability beginning December 4, 2000, was causally related to the September 15, 1999 injury.

The April 12, 2002 and August 11, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed, in part, and set aside in part. The case is remanded for further action consistent with this opinion.

Dated, Washington, DC
December 17, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member