

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL A. POTTER and U.S. POSTAL SERVICE,
POST OFFICE, Troy, MO

*Docket No. 01-2160; Submitted on the Record;
Issued June 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in rescinding its acceptance of appellant's claim for permanent aggravation of a calcaneal spur of the left foot and rupture of the plantar fascia ligament; and (2) whether appellant sustained a left knee, right foot or back condition in the performance of duty.

On February 15, 1998 appellant, then a 54-year-old rural carrier, filed an occupational disease claim for a torn ligament in her left foot due to carrying heavy mail. She indicated that she first became aware of her condition on February 3, 1998.

By letter dated September 29, 1998, the Office accepted appellant's claim for permanent aggravation of a left foot calcaneal spur and rupture of the plantar fascia ligament.

By decision dated August 4, 2000, the Office rescinded its acceptance of a permanent aggravation of a calcaneal spur of the left foot and rupture of the plantar fascia ligament based on new evidence which negated the presence of a ligament rupture and a causal relationship between the left calcaneal heel spur and work factors. The Office accepted a temporary aggravation of underlying left foot plantar fasciitis from February 3 to May 3, 1998. The Office denied appellant's claim for a knee and back condition as causally related to the 1998 temporary aggravation of the left foot plantar fasciitis. The Office terminated compensation and medical benefits as of August 24, 2000.

The Board finds that the Office met its burden of proof in rescinding its acceptance of a permanent aggravation of a left foot calcaneal spur and a rupture of the plantar fascia ligament.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Federal Employees' Compensation Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.¹ The

¹ See *Eli Jacobs*, 32 ECAB 1147, 1151 (1981).

Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.² It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.³ This holds true where, as here, the Office later decides that it has erroneously accepted a claim for compensation.⁴

In a narrative report dated September 11, 1998, Dr. Ann Seifert, appellant's attending podiatrist, stated that appellant had consulted her in November 1997 for left heel pain beginning in August or September 1997 and x-rays indicated several spurs including a calcaneal spur. On February 4, 1998 appellant presented with a ruptured ligament in her left instep. She described appellant's course of treatment and noted that she was still limping and having problems with an old left knee injury and also low back pain caused by her unnatural gait. Dr. Seifert stated that while appellant was on vacation she threw out her back and had severe back pain and pain extending down the back of the left leg into the area of the heel spur. She stated that it was "not inconceivable" that she threw her back out because of her foot injury, "due to walking so badly for so long." Dr. Seifert stated that appellant's heel spur and ruptured ligament of the left foot were caused or aggravated by the walking, standing, and carrying required in her job.

In a narrative report dated December 1, 1998, Dr. John A. Gragnani, a specialist in occupational and environmental medicine and an Office referral physician, noted that appellant had developed left heel pain in 1997 and ruptured a ligament in her left foot in February 1998. He stated that she was vacationing in July 1998 when she slipped and fell and hurt her back. Dr. Gragnani stated that appellant had also developed pain in the right foot. He diagnosed subjective complaints of pain of the low back, left leg and foot, and right knee and foot, and degenerative arthritic changes revealed by x-rays. Dr. Gragnani stated:

"[Appellant] does not, in my opinion, have a work-related condition.... Without evidence of trauma, to accept a heel spur as a condition related to work is not acceptable.... Since there was no trauma here, this would, by definition, have to be considered cumulative trauma. There is no history, epidemiologic evidence or supporting data that cumulative trauma has anything to do with heel spurs....

"The back problem clearly did not occur at work. [Appellant] admits freely that she was in Colorado on vacation when she fell. There is no information that supports that [appellant] fell because of a foot problem. Furthermore, [appellant] had been off work for several months at the time of the incident in Colorado. If [appellant] had been off work almost six months at the time of her reported fall in Colorado, she should have been much better from her heel problem but apparently was not. This, by the way, further establishes the fact that the condition of her foot is not work related since no reversibility of any significance was shown in this case when [appellant] was removed from her job.

² See *Shelby J. Rycroft*, 44 ECAB 795, 802-03 (1993).

³ See *Frank J. Mela, Jr.*, 41 ECAB 115, 124 (1989); *Harold S. McGough*, 36 ECAB 332, 336 (1984).

⁴ 20 C.F.R. § 10.610.

“As far as causations or aggravations, the same applies. There is no aggravation. There is no direct causation of a direct nature here involving [appellant’s] foot or back. [Appellant], with reasonable certainty, better than 51 percent, seems to have these problems in her back, knee and foot secondary to arthritic changes....”

In a report dated December 4, 1998, Dr. Gragnani reiterated his opinion that appellant’s condition was not work related. He stated that her conditions were degenerative in nature.

In a disability certificate dated March 17, 1999, Dr. Seifert indicated that appellant was totally disabled from February 17 to April 1, 1999.

By letter dated March 11, 1999, the Office referred appellant to Dr. James P. Emanuel, a Board-certified orthopedic surgeon, for an examination and evaluation in order to resolve the conflict in the medical opinion evidence between Drs. Gragnani and Seifert as to whether appellant had any continuing disability or medical condition causally related to her February 3, 1998 employment injury.

Section 8123(a) of the Act provides, in pertinent 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.”⁵ In this case, the Office properly referred appellant to an impartial medical specialist due to the conflict in the medical opinion evidence between appellant’s attending physician, Dr. Seifert and Dr. Gragnani, the Office referral physician, as to whether appellant had any continuing disability or medical condition causally related to her employment.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶

In a report dated April 26, 1999, Dr. Emanuel provided a history of appellant’s left and right foot and back problems, a review of the medical records, detailed physical findings on examination and the results of x-rays. He stated:

“[Appellant] shows signs of a plantar fasciitis of the left foot and possible tarsal tunnel syndrome of the right foot. Both of these conditions can occur insidiously in the general population and I do not feel that there is sufficient evidence in her past history to directly and causally relate her condition to her employment. This, as well, goes along with the degenerative condition of her back and the problems with her knee. [Appellant] is overweight and in poor physical condition and that can cause more symptoms in her back and knee and plantar fasciitis and tarsal tunnel syndrome.

⁵ 5 U.S.C. § 8123(a); *see James P. Roberts*, 31 ECAB 1010 (1980).

⁶ *See Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

“With regards to the ability to return back to full duty, it is apparent that she has a problem with her lower back with evidence of some spinal stenosis, possible herniated disc and degenerative disc disease. I do not feel that she would be capable of performing lifting duties. I do not think [appellant’s] diagnosis of plantar fasciitis on the left foot or tarsal tunnel syndrome necessarily prevents her from performing her normal duties of standing or walking short distances. She may have difficulty in climbing and squatting with regards to her knee and her plantar fasciitis on the left side. I think the treatment that she is getting from her podiatrist is reasonable. She may require a tarsal tunnel release on the right and would continue with a stretching of the plantar fascia on the left.

“There were no specific injuries that indicated trauma despite the fact that [appellant] states that she stepped down and popped a ligament in her foot. I could feel no defect in the area of the plantar fascia on exam[ination] and generally if you rupture the plantar fascia, there is either a defect or area of scar formation. [Appellant’s] subjective [symptoms] do not correlate with the findings on physical exam[ination]. I do not feel [appellant] has a left knee or back condition that is related to her occupational disease claim of February 3, 1998. Her knee injury is eight years old. She was cleaning at home and it felt like her knee went backwards. That history is more consistent with a condition that occurred at home rather than any type of job[-]related injury.”

In a report dated April 3, 2000, Dr. Emanuel provided a history of appellant’s condition and current findings on examination and noted that a magnetic resonance imaging (MRI) scan of appellant’s left foot did not reveal any type of plantar-fascial tear, old or new, of the medial or lateral plantar fascia. Dr. Emanuel stated:

“I did not feel that [appellant’s] plantar fasciitis is work related. I do not feel that it is related to the work date of February 3, 1998. I believe that her plantar fasciitis predated this. I believe, because of the architecture of her foot, she is a set-up for developing plantar fasciitis on a natural basis.

“[T]he MRI scan of the left foot fails to reveal any type of evidence of a ruptured plantar fascia. Therefore, she did not, in my opinion, sustain a rupture of the left foot plantar fascia.... [I]t is my opinion that the rural-carrier job had a temporary aggravation of [appellant’s] plantar fasciitis of her left heel. I think that the left calcaneal spur is inconsequential. As far as temporary aggravation, I would state that it would cease approximately three months following the onset of the pain, which, in [appellant] was in February 1998. I would state that the temporary aggravation would have resolved in May 1998.

“I feel that [appellant] would be capable of performing her duty of a rural mail carrier. Any temporary, total disability sustained by [appellant] would be from February 3 to May 3, 1998.”

In notes dated March 20, 2000, Dr. Emanuel stated that an MRI scan performed on March 16, 2000 was normal with no evidence of any bone edema, contusion or abnormal fluid

collections, the plantar fascia was not thickened and there was no abnormal signal intensity within the plantar soft tissue or fascia.

The Board finds that the Office met its burden of proof in rescinding its acceptance of a permanent aggravation of a calcaneal spur of the left foot and a ligament rupture based on new evidence, the reports of the impartial medical specialist, Dr. Emanuel. The reports of Dr. Emanuel, dated April 26, 1999, March 20 and April 3, 2000, are based upon a complete and accurate factual background and detailed physical findings on examination and contain thorough medical rationale in support of Dr. Emanuel's conclusion that appellant sustained only a temporary aggravation of a left foot plantar fasciitis condition on February 3, 1998 that resolved by May 3, 1998.

The Board further finds that appellant failed to establish that she sustained a right foot, left knee or back injury in the performance of duty.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.⁷ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.⁸ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁹ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.¹⁰ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.¹¹

In a report dated August 4, 1998, Dr. J. Al Vellinga, an osteopath, stated that appellant experienced back pain on July 28, 1998 after tripping, losing her balance and falling while on vacation. He diagnosed low back pain status post fall and left sacralgia. An MRI scan performed for Dr. Vellinga indicated a possible herniated disc at L5-S2, bulging of the L3-4 and L4-5 discs, degenerative arthritis and spinal stenosis at L3 to S1. However, Dr. Vellinga did not opine that appellant's back conditions were causally related to her February 3, 1998 employment injury and therefore this report is not sufficient to establish that appellant sustained a back injury causally related to her employment injury.

In her report dated September 11, 1998, Dr. Seifert stated that appellant had consulted her in November 1997 for left heel pain and x-rays indicated several spurs including a calcaneal spur. She described appellant's course of treatment and noted that she was still limping and

⁷ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁹ See *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

¹⁰ See *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

¹¹ *Id.*

having problems with an old left knee injury and also low back pain caused by her unnatural gait. Dr. Seifert stated that while appellant was on vacation she threw out her back and had severe back pain and pain extending down the back of the left leg into the area of the heel spur. She stated that it was “not inconceivable” that appellant threw her back out because of her foot injury, “due to walking so badly for so long.” However, Dr. Seifert’s statement that it was “not inconceivable” that appellant’s back and left leg injuries were caused by her left foot injury is speculative. She provided insufficient medical rationale explaining how these conditions were causally related to appellant’s February 3, 1998 employment injury and therefore this report is not sufficient to discharge appellant’s burden of proof. Furthermore, Dr. Seifert noted that appellant’s left knee condition was an “old” injury.

In his report dated December 1, 1998, Dr. Gragnani noted that appellant was vacationing in July 1998 when she slipped and fell and hurt her back. Dr. Gragnani stated that appellant had also developed pain in the right foot. He diagnosed subjective complaints of pain of the low back, left leg and foot, and right knee and foot, and degenerative arthritic changes revealed by x-rays. Dr. Gragnani stated that appellant was in Colorado on vacation when she fell and there was no information that supported that she fell because of a foot problem. He noted that appellant had been off work for several months at the time of the incident in Colorado and should have experienced improvement of her left foot condition but, since no reversibility of any significance was shown when appellant was removed from her job, this further established the fact that her left foot condition was not work related. Dr. Gragnani indicated that appellant’s problems in her back, knee and foot were secondary to arthritic changes. In a report dated December 4, 1998, Dr. Gragnani reiterated his opinion that appellant’s conditions were degenerative in nature and not caused by her employment. Therefore, Dr. Gragnani’s reports do not establish that appellant sustained a left knee, right foot or back problem causally related to her February 3, 1998 employment injury.

In a report dated February 17, 1999, Dr. Seifert stated that appellant had experienced pain in her right foot since November 1998 and indicated her impression of tarsal tunnel syndrome or reticulopathy. However, she did not indicate the cause of the condition. Therefore, this report is not sufficient to establish that appellant’s right foot condition was causally related to her February 3, 1998 employment-related left foot injury.

In his April 26, 1999 report, Dr. Emanuel stated that appellant’s left knee and back conditions were not work related. Therefore, this report does not discharge appellant’s burden of proof.

In a report dated May 4, 1999 and an undated report received by the Office on December 13, 1999, Dr. Seifert stated that appellant developed a right foot condition in November 1998 due to favoring her left foot when she walked and to extensive standing and walking. However, as noted above, the Office determined in its August 4, 2000 decision that appellant’s work-related left foot injury, temporary aggravation of plantar fasciitis, resolved as of May 3, 1998. Dr. Seifert provided insufficient medical rationale explaining how appellant’s right foot injury in November 1998 was causally related to the February 3, 1998 left foot injury which resolved on May 3, 1998. Therefore, this report does not establish that appellant’s right foot injury was causally related to her February 3, 1998 employment injury.

The decision of the Office of Workers' Compensation Programs dated August 24, 2000 is affirmed.

Dated, Washington, DC
June 20, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member